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INDIVIDUALS WITH DISABILITIES EDUCATION ACT

NOVEMBER 3, 2003.—Ordered to be printed

Mr. GREGG, from the Committee on Health, Education, Labor, and Pensions, submitted the following

R E P O R T

[To accompany S. 1248]

The Committee on Health, Education, Labor, and Pensions, to which was referred the bill (S. 1248) to reauthorize the Individuals with Disabilities Education Act, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill (as amended) do pass.

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I. INTRODUCTION

S. 1248 is the product of an extensive bipartisan effort among Senators on the committee, as well as significant input from parents of children with disabilities, children with disabilities, educators, the U.S. Department of Education, and other individuals interested in improving the quality of education for children with disabilities. What makes this legislation unique is that it was bipartisan in its inception.

## II. PURPOSE AND SUMMARY

In reporting S. 1248, the Individuals with Disabilities Education Improvement Act of 2003, the committee improves the Individuals with Disabilities Education Act (IDEA) through provisions that: (1) encourage informal and speedy resolution of problems, prevent misidentification of students, and reduce bureaucratic paperwork for teachers; (2) provide local fiscal relief through risk pools and allowing localities to use a percentage of IDEA funds in a flexible manner; (3) shift IDEA from a compliance-driven model to a performance-driven model; (4) make schools safer by providing greater clarity and flexibility in the law, as well as supporting approaches, including behavioral interventions, that prevent dangerous discipline problems; (5) provide increased resources to better train teachers and parents; (6) facilitate better transitioning for students with disabilities from school to post-secondary experiences; and (7) strengthen implementation of the law to ensure that every child with a disability receives a free appropriate public education (FAPE).

## III. BACKGROUND AND NEED FOR LEGISLATION

Congress established a State grant program for the Education of Handicapped Children under title VI of the Elementary and Secondary Education Amendments of 1966 (P.L. 89-750). In 1970, Congress authorized the Education of the Handicapped Act (EHA) as title VI of P.L. 91-230. With the enactment of P.L. 91-230, the State grant program established in 1966 was redesignated as part B of the EHA.

In 1975, Congress passed the Education for All Handicapped Children Act, P.L. 94-142. It amended part B, the State grant program in the EHA. P.L. 94-142 refined and expanded requirements for State participation in the State grant program. In accepting State grant funds, a State was required to provide a free appropriate public education (FAPE) to all children with disabilities in the State according to specific procedures and civil rights protections.

From 1979 through 1994, a series of amendments to the EHA refined and increased in number discretionary programs in personnel preparation, research, demonstration, and technical assistance. In 1986, the Handicapped Children's Protection Act, P.L. 99-372, was enacted. In amending part B of the EHA, P.L. 99-372 authorized attorneys' fees for parents who prevail in due process proceedings and judicial actions against school districts. Also in 1986, P.L. 99-457 was enacted, creating a new part H in the EHA. Part H provides funds for State programs in early intervention services for infants and toddlers with disabilities from birth through two years of age. The EHA amendments of 1990, P.L. 101-476, renamed the statute as the Individuals with Disabilities Education Act (IDEA). In 1994, P.L. 103-382, the Improving America's Schools Act of 1994, eliminated the separate authorization for the chapter 1 Handicapped Program and merged its authorization for funding with part B funding under the IDEA and gave school districts the discretion to remove children with disabilities to an interim alternative educational setting for up to 45 days when such children bring firearms to school.

In the 105th Congress, the “Individuals with Disabilities Education Act Amendments of 1997,” P.L. 105–17, was enacted into law. Amendments to the legislation were comprehensive in nature and addressed a wide range of legal and programmatic issues affecting early intervention and special education. The 1997 law required that the individualized education program of each child with a disability relate programming for the child to achievement in the general education curriculum. Further, States had to establish performance goals and indicators for children with disabilities as well as include them in assessments. Schools were given specific statutory authority regarding discipline of students with disabilities, and new, but limited, authority was given to hearing officers to change the placement of children with disabilities. The law was clarified to ensure that children with disabilities were specifically entitled to special educational services, even if expelled from school. States were required to ensure that parents were offered mediation before going to a formal due process hearing over a dispute. The 1997 amendments also created new State and substate formulas in the grants to States and preschool programs, generally basing grant amounts on broader population factors rather than counts of children with disabilities served. When federal appropriations for the grants to States program exceed \$4.1 billion and a school district received a larger award, the district would be permitted to reduce local spending on special education by a certain amount. The 14 discretionary grant programs were consolidated into two new special purpose programs. A third new special purpose program focuses on statewide special education reform.

During this reauthorization of the Individuals with Disabilities Education Act, the committee believes it is crucial to concentrate on improving educational outcomes for children by focusing on accountability for results. The committee believes this can be accomplished by a number of means, including supporting teachers and other staff by providing high quality training and reducing paperwork burdens, encouraging more efficient and effective conflict resolution between parents and schools, providing earlier access to services and supports to children to reduce the need for IDEA services, and improving funding.

In the 107th Congress, the Committee on Health, Education, Labor, and Pension held four hearings to solicit recommendations for the reauthorization of IDEA.

On March 21, 2002, at a hearing entitled: “IDEA: What’s Good for Kids? What Works for Schools?”, the following individuals testified: Robert Pasternack, Assistant Secretary, Office of Special Education and Rehabilitative Services, U.S. Department of Education, Washington, DC; Lilliam Rangel-Diaz, Board of Directors, National Council on Disability, Washington, DC; Valarie Findley, Parent, Des Moines, Iowa; Bob Runkel, Montana State Director of Special Education, Helena, Montana; Bob Vaadeland, Superintendent, Minnewaska Area Schools, Glenwood, Minnesota; and Kim Ratcliffe, Director of Special Education of Columbia Public Schools, Columbia, Missouri.

On April 25, 2002, at a hearing entitled: “IDEA: Behavioral Supports in Schools,” the following individuals testified: Sarah A. Flanagan, Falls Church, Virginia; Kathleen B. Boundy, J.D., Co-Director, Center for Law and Education, Boston, Massachusetts;

George Sugai, Ph.D., Co-Director, Center on Positive Behavioral Interventions and Supports, University of Oregon; Marsha Weissman, Executive Director, Center for Community Alternatives, Inc., Syracuse, New York; and Dr. Ronnie M. Jackson, Superintendent, Dale County School District, Dale County, Alabama.

On June 6, 2002, at a hearing entitled: “Accountability and IDEA: What Happens When the Bus Doesn’t Come Anymore?”, the following individuals testified: Marisa Brown, Parent, Vienna, Virginia; David W. Gordon, Superintendent, Elk Grove Unified School District, Elk Grove, California; Stan Shaw, Professor and Coordinator, Special Education Program, University of Connecticut, Storrs, Connecticut; Arlene Mayerson, Directing Attorney, Disability Rights Education Defense Fund, Inc., Berkeley, California; and Lawrence C. Gloeckler, Deputy Commissioner, Vocational and Educational Services for Individuals with Disabilities, New York State Education Department, Albany, New York.

On July 9, 2002, the following individuals testified at a hearing on the President’s Commission on Excellence in Special Education: Terry Branstad, Chairman, President’s Commission on Excellence in Special Education, Washington, DC; Douglas Gill, Chair, Finance Task Force, President’s Commission on Excellence in Special Education, Washington, DC; and Douglas Hunt, Chair, Transition Task Force, President’s Commission on Excellence in Special Education, Washington, DC.

In addition, between June 16 and 19, 2003, both majority and minority staff for the committee met with 83 groups to hear their concerns and recommendations regarding S. 1248.

#### THE PRESIDENT’S COMMISSION ON EXCELLENCE IN SPECIAL EDUCATION

The committee has also taken into consideration recommendations made by the President’s Commission on Excellence in Special Education, released in July 2002. While the Commission report was filled with a number of more detailed recommendations, its three major recommendations were: (1) Focus on results—not on process; (2) Embrace a model of prevention, not a model of failure; and (3) Consider children with disabilities as general education children first.

#### THE PRESIDENT’S PRINCIPLES FOR IDEA REAUTHORIZATION

February 25, 2003, U.S. Secretary of Education Rod Paige released a set of principles to guide the Education Department in its work toward seeking reauthorization of the Individuals with Disabilities Education Act (IDEA). Those principles were: (1) Stronger accountability for results; (2) Simplify paperwork for States and communities and increase flexibility for all; (3) Focus on doing what works; and (4) Increase choices and meaningful involvement for parents.

#### IV. LEGISLATIVE HISTORY AND COMMITTEE ACTION

The committee considered S. 1248 on June 25, 2003. Senator Gregg, Chairman of the Committee on Health, Education, Labor, and Pensions, and Senator Kennedy, the ranking member of the committee, offered one amendment in the nature of a substitute.

Along with a number of smaller technical changes, there were five main differences between the substitute amendment and S. 1248 as introduced.

The first change added a new provision clarifying that there is no right of action based solely upon the failure of a State educational agency or local educational agency staff person to be highly qualified.

The second change amended the discipline provisions of the bill. The substitute restored current law language describing instances of weapons possession, drug possession or solicitation, and definitions of “illegal drug” and “controlled substance.” The revised language also requires school districts to notify parents when a disciplinary action is contemplated. It states that when a child is removed from their current educational placement for disciplinary reasons, a school district must conduct a functional behavioral assessment if it has not previously done so. Finally, the substitute clarifies that a school may request a hearing to change a child’s placement if it believes maintaining that placement is substantially likely to result in injury to the child or to others.

The third major change in the substitute added a new provision permitting States to create a seamless system for infants, toddlers, and preschoolers with disabilities, giving parents the opportunity to choose to have their child continue early intervention services until the age of 5.

Fourth, the substitute amendment established a commission to study, evaluate, and make appropriate recommendations to Congress and to the Secretary of Education on the issue of universal design and accessibility of curriculum and instructional materials for use by all children, with a particular emphasis on children with disabilities.

The fifth major change in the substitute amendment added new provisions providing for a smooth transition of research activities from the Office of Special education to the Institute of Education Sciences.

Final Action: The substitute amendment was adopted and the bill as amended was reported favorably by unanimous roll call vote of 21–0.

#### V. EXPLANATION OF BILL AND COMMITTEE VIEWS

The purpose of the Individuals with Disabilities Education Improvement Act is to improve educational results for children with disabilities by:

- Providing a performance-driven framework for accountability to ensure that children with disabilities receive a free appropriate public education;

- Encouraging early informal resolution of problems, reducing misidentification of students, and limiting paperwork for teachers and other education personnel;

- Providing fiscal relief to school districts;

- Providing increased resources to better train teachers and parents;

- Providing better interagency support for post-secondary transition; and

- Strengthening effective enforcement of the law.

Nearly 30 years ago, the Education for All Handicapped Children's Act was enacted to provide keys to the schoolhouse door for children with disabilities. Previously, many of these children did not have the opportunity to receive a public education in America's classrooms. Today the school house door is open. The committee's focus during this reauthorization is on the quality of education children are receiving under the law. The committee has sought to ensure that the framework of IDEA helps to produce improved educational results for children with disabilities.

The committee affirms that States and school districts must be held accountable for complying with IDEA. However, many school representatives, policy analysts, and even some parents of children with disabilities believe that the current accountability provisions in the IDEA law focus more on measuring compliance with legal processes, rather than gauging student performance and results. Therefore, the committee has worked to make changes to the law which will focus compliance and enforcement efforts on student performance.

The committee is concerned about the paperwork burden experienced by special education teachers. According to a recent study by the Council for Exceptional Children, a majority of special educators estimate that they spend a day or more each week on paperwork, and 83 percent report spending from half to one and a half days per week in IEP-related meetings. The committee has included a number of provisions that will reduce unnecessary paperwork and excessive meetings for both teachers and parents.

The committee is discouraged to hear that many parents, teachers, and school officials find that some current IDEA provisions encourage an adversarial, rather than a cooperative, atmosphere, in regards to special education. In response, the committee has made changes to promote better cooperation and understanding between parents and schools, leading to better educational programs and related services for children with disabilities.

The committee has also found that certain aspects of the law create an inflexibility which can discourage improved services for children, create hardships for parents, and hamper the effectiveness of teachers. Therefore, S. 1248 gives both parents and school personnel more flexibility to ensure that children with disabilities receive the appropriate educational and related services in a more expeditious manner.

The committee is also aware of problems in appropriately identifying students for IDEA. S. 1248 targets services and teacher training in order to reduce the number of inappropriate identifications, as well as making accurate identifications in a more timely manner. The legislation provides new opportunities to provide early intervening services for students who do not meet the definition of a child with a disability, but who need additional academic or behavioral support to succeed in a general education environment.

Finally, the committee wants to emphasize that schools must be safe harbors for all children and classrooms must be conducive to learning. S. 1248 adds provisions to assist teachers and other educational personnel by supporting training to address behavioral issues, and clarifying rules for implementing disciplinary decisions. These provisions will help schools keep classrooms safer, while bal-

ancing the child’s right to receive appropriate educational and related services under IDEA.

TITLE I—AMENDMENTS TO THE INDIVIDUALS WITH DISABILITIES  
EDUCATION ACT

*Amendments to part A of the Individuals with Disabilities Education Act*

*Definitions*

In section 602, the committee made a number of small revisions and additions to the definitions for the law. The definition of a child with a disability aged 3 through 9 (section 602(3)(B)) is changed to make clear that a State has discretion to classify children as disabled due to a developmental delay any subset of children within the age range of 3 and 9, including ages 3 through 5. This change reflects the same policy in regulations (34 C.F.R. 300.313(a)(1)).

The definition of “core academic subject” is added at section 602(4), and has the same meaning as that found in the Elementary and Secondary Education Act of 1965, which was reauthorized by the No Child Left Behind Act of 2001 (NCLB), P.L. 107–110. The definition was added in conjunction with the new definition of “highly qualified” in section 602(10).

*Highly qualified teachers*

S. 1248 includes a definition of “highly qualified special education teacher” which acknowledges that special education teachers’ responsibilities vary widely. The committee is aware that many special education students may be provided instruction by individuals who are either untrained in working with children with a particular disability or individuals who lack appropriate content knowledge. Therefore, the committee intends that special education teachers have both content knowledge and training in special education instruction. The committee further recognizes that many children with disabilities are taught both by regular and special education teachers. As a result, the definition of a highly qualified special education teacher is designed to work in concert with the definition of a “highly qualified” regular education teacher in NCLB to ensure that the vast majority of special education students have access to a teacher who has demonstrated competence in the subject areas they are teaching. For example, S. 1248 stipulates that special education teachers who team-teach in a regular education classroom by adjusting the learning environment and modifying instructional methods must be licensed to teach special education, but do not have to be certified in other subject areas. It is the assumption of the committee that in such a classroom, the regular education teacher is highly qualified in the requisite subject areas, and therefore the child has access to instruction by a teacher who has demonstrated content knowledge. It is not the intent of the committee that consultation occur outside the classroom, thereby shortchanging a mainstreamed child with a disability of direct instruction by a teacher who has demonstrated individual subject mastery.

S. 1248 makes it clear that this definition of highly qualified special education teacher is what should be applied to “special edu-

cation teacher” when the issue of highly qualified teachers is mentioned in NCLB. For example, under S. 1248, in carrying out NCLB’s parental right to know language regarding teachers (sec. 1111(h)(6) of NCLB), school districts would use the definition of highly qualified special education teacher in S. 1248. The only exception is that NCLB’s deadline by which all teachers have to be highly qualified was extended by one year for special education teachers, to the 2006–07 school year. This one-year extension results from recognition of the shortage of special education teachers and the challenges of applying a new definition of a highly qualified teacher.

S. 1248 adds a new definition for “limited English proficient” (section 602(17)), which is the same as that found under NCLB.

S. 1248 amends both section 602(1) and section 602(25) to clarify that the definitions of “assistive technology device” and “related services” do not include a medical device that is surgically implanted, or the post-surgical maintenance, programming, or replacement of such device, or an external device connected with the use of a surgically implanted medical device (other than the costs of performing routine maintenance and monitoring of such external device at the same time the child is receiving other services under the act).

Recent cases around the country have shown that hearing officers and courts alike are unsure as to whether maintenance and programming of implanted medical devices are covered under IDEA. Many schools have argued that IDEA does not require coverage of these items, and that requiring such coverage will prove very costly to school districts.

The committee acknowledges that we have only begun to see the future of implanted medical devices and other new technology to help children with disabilities. For example, some children with seizure disorders have implanted vagus nerve stimulators to help control seizures. Implanted electronic muscle stimulators can help children walk. However, the committee does not believe that surgically implanted medical devices and the costs associated with programming and maintaining them are items that should be covered under IDEA.

The committee does believe, however, that schools should perform routine maintenance and monitoring of external devices connected with the use of a surgically implanted medical device. For example, school personnel should cover activities such as changing a battery in the external processor used in connection with a cochlear implant, ensuring that the processor is turned on, or performing other troubleshooting that may arise in regard to the proper functioning of the device while the child is at school. However, the committee does not intend that mapping a cochlear implant, or even costs associated with mapping, such as transportation costs and insurance copayments, be the responsibility of a school district.

The committee clarifies the definition of “related services” (section 602(25)) by adding interpreting services, school health services, and travel training instruction to the list contained in current law. The committee intends that counseling services and other related services may be provided by marriage and family therapists, where appropriate, and to the extent authorized by State law. Finally, with respect to children who are deaf or hard of hearing, the



term “interpreting services” includes, but is not limited to, oral transliteration services, cued language transliteration services, and sign language interpreting services.

The definition of “transition services” (section 602(33)) has been amended to emphasize a focus on improving the academic and functional achievement of a child with a disability.

*Policy letters and regulations*

Section 607 is revised significantly to reflect the committee’s intent to implement the enacted law in an efficient and effective manner. The changes provide States, local educational agencies, and parents with the secure knowledge that once the law and implementing regulations are finalized there will not be significant changes in the way the law is interpreted or implemented without the opportunity to react to such changes.

Section 607(a) consolidates language on regulations with section 617 of the current act to create a clear, concise section on the Department’s authority to regulate under the act. This provision clearly expresses the committee’s intent that the Secretary should regulate only where necessary to ensure compliance with the act. Further, section 607(b) prohibits the Secretary from issuing regulations that violate or contradict the provisions of the act. The committee encourages the Secretary to take a careful and deliberate approach to developing regulations.

At the same time, the committee encourages the Secretary to expedite the regulatory process so that parents, teachers, school officials, and States can have a thorough and complete understanding of the law and regulations within one year of the date of enactment of the bill. The Department’s long delay in issuing regulations under the 1997 act increased the challenges of implementation of the new law. While it is important to solicit public input on the implementing regulations, it is also equally important to keep the regulatory process from causing undue delay in finalizing regulations so that States and local educational agencies can begin to implement the reauthorized law in a timely manner. Section 607(c) requires the Secretary to allow public input for not more than 90 days on any regulations issued under this act.

The committee feels that the Secretary should be particularly thoughtful in issuing policy letters, and therefore makes several changes to the requirements regarding policy letters. Section 607(d) requires the Secretary to subject policy letters that establish a rule of compliance to public comment requirements to ensure that there is adequate notice regarding the Department’s interpretation of the act. Additionally, section 607(e) requires the Secretary to state that any particular policy letter is written in response to the specific facts presented. Finally, section 607(f) maintains the requirement that a list of the policy letters be published in the Federal Register on a quarterly basis to ensure that there is adequate public information about any interpretations of policy the Department issues.

The committee recognizes the need for the Secretary to issue correspondence under the act for a variety of reasons; however, the committee is concerned that previous policy letters have been interpreted by States and local educational agencies to be binding upon them, even in unrelated situations or circumstances. The Secretary has the ability, through the regulatory process, to impose rules for

complying with the act, and should not attempt to use policy letters to subvert the rulemaking process. This section does not prohibit or prevent the Secretary from issuing standard letters of communication regarding specific language in the bill or implementing regulations, but requires the Secretary to carefully delineate responses that go beyond a mere recitation of law or regulation to offering a policy interpretation. Any letter issued after the date of enactment of the Individuals With Disabilities Education Improvement Act that purports to offer an interpretation of policy is subject to the new requirements of the bill.

#### *State rulemaking*

Section 608 is a new section of the act regarding the efforts of States to establish their own rules and regulatory systems to ensure compliance with the act. The committee feels that there is a tremendous amount of confusion about the level of requirements under the act, and that it is often convenient to place responsibility for the burden of the requirements on the act or regulations. While the committee agrees that the act and regulations should be clear and concise, it is also clear that State and local educational agencies have added additional requirements for compliance with individual State laws regarding the education of children with disabilities. Through section 608(a), the committee is in no way attempting to reduce State input or State practice in this area, but intends to make clear what is a Federal obligation and what is a State or local educational agency requirement for compliance with the act. However, the committee does intend that States not use Federal funds to administer State-imposed requirements. Section 608(b) encourages States to maintain their focus on improving results for children with disabilities, rather than on process compliance, and to ensure that all State policies are designed to support the improved academic achievement of all students. In addition to the emphasis on academic achievement, the committee recognizes that for some children, functional improvement is also crucial.

#### *GAO Study on Paperwork Reduction*

The committee is very interested in reducing the paperwork burden on teachers, schools, local educational agencies, and States. To that end, a new section 609 calls for an independent review of Federal, State, and local requirements relating to the education of children with disabilities to determine which requirements are responsible for causing the paperwork burden. The bill calls on the Comptroller General to issue a comprehensive report regarding the paperwork requirements to enable Congress to determine what appropriate steps can be made to reduce that burden and enable teachers to spend more time in the classroom with children with disabilities.

#### *Amendments to part B of the Individuals With Disabilities Education Act*

##### *Funding formula*

Section 611 sets out funding for States, outlying areas, freely associated States, local educational agencies, and the Secretary of the Interior for the education of children with disabilities living on res-

ervations or enrolled in elementary or secondary schools for Indian children operated or funded by the Secretary of the Interior.

During the last reauthorization of IDEA, Congress took important steps to decouple funding from the identification of students with disabilities to eliminate incentives for States to increase grants by overidentifying students for special education services. In establishing the permanent formula, Congress determined that States would receive a base amount of funding including a student-identification component but provided for all future funding after a base year (1999) to be calculated using a weighted growth factor based on changes in population (85 percent) and poverty (15 percent).

However, because total funding levels for Part B were below the base year trigger and significantly below the cumulative maximum grant calculation for all the States during the last reauthorization of IDEA, the underlying formula for the maximum grant calculation and the issue of its modification to be consistent with the newly established permanent formula was not addressed. As a result, the maximum grant calculation is still based on the number of children with disabilities eligible for services. Thus, the incentive for States to overidentify is re-established under current law in the years leading up to and including the year(s) the maximum grant language is operative.

The committee has addressed this problem in this reauthorization in section 611 by incorporating the population and poverty components of the permanent formula to establish the amount available to provide States with their maximum grants. By doing so, S. 1248 immediately addresses the issue of overidentification by locking in place each State's identified number of children with disabilities who were eligible in the 2002–03 school year—a number, and proportion of the total school-aged population that cannot be altered. Moving forward, S. 1248 calculates the amount needed to fund each State's maximum grant based on the number of eligible children nationwide in 2002–03 and updates this amount using the identical census and poverty factors in the permanent formula and the inflation-adjusted average per pupil expenditure. In this way, the committee intends to remove any fiscal incentive to overidentify in years leading up to and including years in which Congress provides the maximum grants.

Section 611(b) provides for continued support to the outlying areas and to provide each freely associated State that meets relevant requirements a grant equal to the amount it received under this part in FY 2003. As opposed to P.L. 105–17 that included a sunset provision for the eligibility of the freely associated States, the committee intends that freely associated States continue to remain eligible for funding—at the FY 2003 level—in order to provide continued assistance in serving their children with disabilities.

In 1999, Congress appropriated an amount to trigger the permanent formula established under P.L. 105–17 for allocating funds among the States. Because the permanent formula is now operative and the interim formula is no longer needed, S. 1248 repeals the language differentiating between an interim and permanent formula.

*State level activities*

The committee has restructured the calculation for determining the amount that States may use for State administration and other activities. State reserves for administration are limited to the greater of the amount reserved for FY2003 or \$800,000 increased by inflation for subsequent years. By so doing, the small State minimum has been increased from \$500,000 to \$800,000. State reserves for other State-level activities are linked to percentages of the overall grant (less amounts reserved for State administration) for FY2004 and FY2005, with reserves thereafter through FY2009 increased by inflation. With the anticipated increases in federal funding for IDEA, the committee believes that this amount will provide States with sufficient resources to administer the program.

As opposed to P.L. 105-17, which listed a set of required activities which States must undertake, S. 1248 creates two types of State activities: required and optional. The committee retains the establishment of mediation system as a required activity, as well as monitoring and complaint investigation, but adds enforcement to this list. In addition, States must also use a portion of State activity funds to support the State protection and advocacy system to advise and assist parents in the areas of dispute resolution and due process, voluntary mediation, and the opportunity to resolve complaints. The committee intends that nothing would prohibit the State protection and advocacy system from using the funds it receives under this subsection to subcontract with another not-for-profit legal organization that has legal expertise in special education advocacy and representation.

States may also direct funds toward a variety of optional activities according to the needs in their State, including: support and direct services, paperwork reduction, positive behavioral interventions and supports and mental health services, technology, transition programs, meeting personnel shortages, capacity building, alternate programming for those expelled from school, and the development of appropriate accommodations and alternate assessments for children with disabilities.

*Risk Pool*

The bill requires States to reserve 2 percent of Part B funds (less the amount reserved for State administration) to establish a risk pool fund to assist school districts in serving high-need children with disabilities or unanticipated special education costs. The risk pool fund will be particularly beneficial for small school districts, rural school districts and charter schools. For example, all States will now reserve funds to assist a school district that educates a severely disabled child at cost of \$100,000, or a small school district that unexpectedly enrolls multiple children with disabilities.

The committee recognizes that States currently administering risk pool programs share many of the principles of the model prescribed and should be allowed to continue these successful programs. However, it is important that these reimbursement or cost-sharing policies not override educational and placement decisions best made by a student's IEP team. Accordingly, the term "placement neutral" in this section is intended to ensure that policies for placement settings of high-need students do not favor public, non public or out-of-district placements; rather, children should be re-

ceiving the services to which they are entitled in the setting that is consistent with their IEP. To ensure that each public agency is meeting its responsibility to children with disabilities, the committee added language to clarify that the risk pool funds shall not be used to pay costs that otherwise are reimbursable as medical assistance for a child with a disability under a State Medicaid program.

*Payor of Last Resort*

In order to clarify existing uncertainty regarding public agencies' obligations and responsibilities of ensuring provision of, and ultimate financial responsibility for, services within a State, the committee has made expenditure of administrative funds by a State under section 611 contingent upon a State's certification that the agreements to establish these responsibilities within a State are current.

The committee further clarifies in section 612 of part B and section 640 of part C that if there are instances when a public agency initially fails to provide or pay for the special education and related services but is required to do so under a State's current system of arrangements, the local educational agency that did so is authorized to claim reimbursement. The committee intends that the public agency which failed to provide or pay for such services pursuant to the current agreement be required to meet its financial responsibility.

*Subgrants to local educational agencies*

The committee added language to the section on subgrants to local educational agencies to clarify that public charter schools that operate as local educational agencies (LEAs) are entitled to these subgrants, the same as any other LEA. The committee has also removed obsolete and outdated language, including references to Chapter 1 State agencies.

*State Eligibility*

Section 612 establishes the conditions of State eligibility for part B funds. The committee believes strongly that States should be held accountable for complying with the federal IDEA law, so that students with disabilities receive the education and services they need to succeed and become educated and productive citizens when they leave high school.

A recent study by the National Council on Disability found that every State and the District of Columbia is out of compliance with IDEA requirements. This has raised the question of whether the statute and regulations make it impossible for any State to be in full compliance. The committee believes that States and school districts want to assist children with disabilities in achieving high educational outcomes and functional performance and recognizes that some of the requirements that States must meet focus too much on process and not enough on student progress.

One example of process compliance within the 1997 law is the requirement in section 612(a) for States to submit a State plan that "demonstrates to the satisfaction" of the Secretary that the State has in effect policies and procedures to ensure that it has met the enumerated conditions of the law. The Secretary has interpreted

this provision to require States to submit thousands of pages of documents pursuant to an 813-point procedural checklist furnished by the Department of Education. This includes having to send the Department copies of each State statute, court order, State Attorney General opinion, and other State documents that verify the source of the State's policy relating to a free appropriate public education. This diverts the focus away from the goal of the law: improved educational results for children with disabilities.

Therefore, the committee has amended section 612(a) to now require that States must merely "provide assurances" that they have the appropriate policies and procedures in place to ensure that they have met the law's requirements. The committee hopes that this change in the law will encourage both the Secretary and the States to spend more time and effort on achieving successful outcomes by students. The committee still expects States to meet the law's requirements, even though States are relieved of the burden of creating a paper trail to prove compliance. The committee expects that, if the Secretary receives information indicating that a State has provided false assurances or is not fulfilling its assurances, the Secretary shall disapprove the State plan and take immediate corrective action.

#### *Least Restrictive Environment*

The committee is concerned that some States continue to use funding mechanisms that create financial incentives for, and disincentives against, certain placements for students with disabilities. Mechanisms that tie funding to educational settings undermine the IEP Team's responsibility to make placement decisions based upon the individual needs of a child. To address this issue, new provisions in section 612(a)(5)(B) prohibit States from having funding mechanisms that distribute funds based upon of the type of setting in which a child is served, and requires that States revise such policies or procedures that are currently in effect.

#### *Foreign adopted children*

The committee has heard of a number of instances in which parents with adopted foreign born children have felt as if school districts have not provided appropriate evaluation procedures for children suspected of having a disability. For example, these children have been asked to take tests in their native language, long after they have begun using English as a primary language. In addition, school personnel often require foreign born children to wait long periods of time before going through the IDEA evaluation process on the mistaken assumption that the child is not familiar enough with English to receive an appropriate evaluation. The committee encourages States to consider the needs of foreign born children as a part of its obligation in section 612(a)(6) to ensure that testing and evaluation materials and procedures utilized for the purposes of evaluation and placement of children with disabilities be selected and administered so as not to be culturally discriminatory.

#### *Transition from part C to preschool programs*

No changes were made to section 612(a)(9), which requires States to have policies and procedures in place to ensure smooth and effective transitions for children with disabilities and their families

from the Part C infants and toddlers program to the preschool program. Although no changes were made to this section, the committee would like to highlight a new option provided for under Part C of the bill that would authorize States to create a seamless system for infants, toddlers and preschoolers with disabilities, giving parents the opportunity to continue services with the provider of their choice. This provision is more fully discussed in the section of the report that covers Part C.

*Private school students*

Section 612(a)(10) includes a number of changes with regard to provisions that impact parentally-placed private school children with disabilities. The intent of these changes is to clarify the responsibilities of LEAs to ensure that services to these children are provided in a fair and equitable manner. Many of the changes reflect current policy enumerated either in existing IDEA regulations or the No Child Left Behind Act.

First, the bill clarifies that the proportional amount of money obliged to serve these children must be used to provide some direct services. The bill specifically states that to the extent practicable, the LEA shall provide direct services to children with disabilities in private schools. It is the committee's intent that school districts place a greater emphasis on services provided directly to such children—like specifically designed instructional activities and related services—rather than devoting funds solely to indirect services such as professional development for private school personnel.

Second, the bill not only stresses the importance of direct services for these children, but it also contains several provisions designed to ensure that the proportional amount dedicated to serving children in private schools is accurate. Under the bill, an LEA must provide data on the number of students evaluated and found to have a disability and served under this part. Such requirements help to ensure that these funds are serving their intended purpose. The bill specifies that child find, the mechanism used by LEAs to generate funds to serve children who are parentally placed in private schools, is conducted in a comparable time period as for other students attending public schools. The bill clarifies that the cost of child find, including individual evaluations, may not be considered in meeting the LEA's proportional obligation.

The bill also requires LEAs to consult with private school officials on the child find process, determination of proportional share of federal funds, provision of services, alternative delivery mechanisms and third party providers. A sign-off is required from private school officials to document that the consultation process was carried out. If private school officials believe the consultation process was not followed, they have a right to appeal to the State Education Agency. Both the consultative and appeals process are very similar to provisions in NCLB; therefore, the committee does not believe including these provisions places an undue burden on LEAs.

Finally, in an effort to streamline and simplify the provision of services to parentally-placed private school children with disabilities, the bill stipulates that the LEA in which the private school is located is responsible for ensuring equitable services. This stipulation protects LEAs from having to work with private schools lo-

cated in multiple jurisdictions when students attend private schools across district lines.

*Children in out-of-State or out-of-district residential treatment or special education schools*

The committee has heard that there is often confusion regarding which public agency has the obligation to pay for children with disabilities who are placed by public agencies in residential treatment or special education schools that are out-of-local educational agency or out-of-State. Many of these children have multiple and complicated problems, and often are victims of severe neglect, sexual and physical abuse, violence, and abandonment. These children may be in the foster care system or parental rights may have been terminated with the State becoming the legal guardian. Under IDEA, when such children are placed by public agencies, the State is responsible for determining which agency is responsible for paying for educational and related services for these children. The committee encourages States to clarify agency financial obligations and responsibilities in these situations, and to make information about those obligations and responsibilities available to school districts and parents of children with disabilities.

*Obligations related to and methods of ensuring services*

In order to clarify existing uncertainty regarding public agencies' obligations and responsibilities of ensuring provision of, and ultimate financial responsibility for, services within a State, the committee has made expenditure of administrative funds by a State under section 611 contingent upon a State's certification that the agreements to establish these responsibilities within a State are current.

The committee further clarifies in section 612(a)(12) that if there are instances when a public agency initially fails to provide or pay for the special education and related services but is required to do so under a State's current system of arrangements, the local educational agency that did so is authorized to claim reimbursement. The committee intends that the public agency which failed to provide or pay for such services pursuant to the current agreement be required to meet its financial responsibility.

*Personnel standards (612(a)(14))*

Given the emphasis on improving the quality of personnel in both the No Child Left Behind Act and this Act, the bill stipulates that States must adopt a policy that requires local educational agencies to take measurable steps to recruit, hire, and retain highly qualified personnel. With regard to teachers, the bill requires that all special education teachers teaching in an elementary, middle or secondary school be highly qualified no later than the end of the 2006–07 school year.

The committee eliminated Section 612(a)(14) of the 1997 law, which requires States to develop a comprehensive system of personnel development. The committee is not convinced that the current requirement has provided any added value to State efforts to secure an adequate supply of qualified personnel. The committee believes the provision in NCLB that requires States to develop a plan to ensure that all teachers, including special education teach-



ers, be highly qualified by a date certain, coupled with the aforementioned requirement for LEAs to take measurable steps to both recruit and retain high qualified personnel will have a greater impact on increasing the number of highly qualified personnel. Finally, the committee believes changing the State Improvement Grant program to the State Personnel Preparation and Professional Development Grant program in Part D will also have a significant impact on ensuring that children have access to highly qualified personnel. Part D requires not only that the State identify and address the State and local needs for the preparation of personnel serving children with disabilities, but also that all money provided for under this grant program be spent exclusively on efforts to recruit, train and retain highly qualified personnel, especially teachers.

While the committee is interested in securing a high quality workforce to provide services to children with disabilities under IDEA, it recognizes the personnel shortages and constraints faced by States and school districts in addressing those shortages. The committee urges the U.S. Department of Education to work with States to assist school districts in implementing strategies to improve the recruitment of and retention of fully qualified personnel in fields where such shortages exist.

The bill mandates that standards governing the qualifications of related service personnel be consistent with any State-approved or State-recognized certification or licensing or other comparable requirement that applies to the specific professional discipline of related service providers. The bill further stipulates that the State must ensure that related service personnel serving children with disabilities have not had their certification or licensure requirements waived on an emergency, temporary or provisional basis.

Finally, Section 612(a)(14)(E) makes clear that, notwithstanding any other individual right of action that a parent or student may maintain under this part, nothing in this subsection shall be construed to create a right of action on behalf of an individual student for the failure of a particular SEA or LEA staff person to be highly qualified. Further, nothing in the subsection prevents a parent from filing a State complaint regarding staff qualifications with the SEA, as provided for under the IDEA regulations (34 C.F.R. 300.660–662) and under 20 U.S.C. 1221e–3.

*Academic achievement and functional performance of children with disabilities*

S. 1248 makes a series of significant modifications to reflect the important changes to accountability that were enacted under the No Child Left Behind Act. NCLB established a rigorous accountability system for States and local educational agencies to ensure that all children, including children with disabilities, are held to high academic achievement standards and that States and local educational agencies are held accountable for the adequate yearly progress of all students. Most importantly, NCLB requires schools and local educational agencies to disaggregate their data to examine the results of children with disabilities and ensure that such subgroup is making adequate yearly progress towards reaching proficiency. The bill carefully aligns the IDEA with the accountability system established under NCLB to ensure that there is one

unified system of accountability for States, local educational agencies, and schools. The committee also recognizes that functional performance is critical for many children with disabilities in order to improve educational outcomes.

*Performance goals and indicators (section 612(a)(15))*

Section 612(a)(15) maintains the requirement that States must establish performance goals and indicators for children with disabilities, but revises the language to align with provisions of NCLB involving adequate yearly progress. Since NCLB already established a system to measure the educational results for all children, including children with disabilities, the committee believes that any goals for the performance of children with disabilities should be the same as the State definition of adequately yearly progress, which include the State's objectives for progress by children with disabilities as provided for under NCLB. The section maintains the current law requirement that the performance goals should address graduation and drop-out rates, in addition to the goals established by the State for children with disabilities under section 1111(b) of the Elementary and Secondary Education Act, as amended by NCLB.

*Participation in assessments (section 612(a)(16))*

Given the emphasis on accountability and academic achievement in NCLB and this Act, appropriately assessing students with disabilities is essential. The 1997 amendments to this Act required that students with disabilities be included in State and districtwide assessment programs and accountability systems. Students could take assessments with or without accommodations, and alternate assessments were required to be provided for students with significant disabilities who are unable to be included in assessment programs, even with accommodations. The committee considers accountability for the progress of students with significant disabilities to be extremely important. Consequently, section 612(a)(16) requires that alternate assessments be a part of, not separate from, State and districtwide assessment programs and accountability systems.

The decision of whether a child should take a regular assessment with or without accommodations, or to take an alternate assessment is guided by two factors: State or district guidelines regarding accommodations and assessments, and by the IEP team.

The committee recognizes that, for some students with significant disabilities, measuring achievement, especially academic achievement, can be challenging. There are some students for whom the curriculum focuses on functional skills that cannot be easily translated into core academic content such as reading or math. However, adapted curricula can be aligned with State standards and the progress of these students still can be measured through assessments. To ensure greater accountability for these students, the bill contains new requirements for the development and administration of alternate assessments that are aligned with the State's academic content and achievement standards, or for the development of alternate standards for those children with significant cognitive disabilities.

The committee believes that accountability for the progress of students with disabilities requires the use of assessments that are valid, reliable, and accessible for the widest range of students and abilities. Therefore, S.1248 requires, to the extent feasible, that States and local educational agencies develop and use universally designed assessments.

*Instructional materials for blind and print-disabled students*

The committee is concerned that many blind or print-disabled students are regularly denied timely access to instructional materials. Currently, instructional materials needed in specialized formats such as Braille, synthesized speech, and digital text, are often not provided to the students who require them. The committee feels strongly that instructional materials should be provided to blind and print-disabled students at the same time their fellow students without print disabilities are receiving the same materials. The committee convened a hearing on this issue in the 107th Congress at which it heard from both students and educators who have witnessed firsthand the great difficulties facing those who are blind or print-disabled and experiencing delays in receiving their instructional materials.

Presently, many States require instructional materials in diverse electronic file formats, making it difficult for educational agencies to obtain required textbooks from publishers in the form suitable for use in reproducing the material in the required specialized format. Frequently required file formats (e.g., ASCII) are often ill-suited for the needs of those who actually use the publisher-provided files (pursuant to a special exemption in the Federal Copyright Act) to reproduce and distribute copies of the required instructional materials in the needed specialized formats for blind and print-disabled students.

In order to ensure the timely provision of instructional materials for blind and print-disabled students, the bill creates a new section, sec. 675, Accessibility of instructional materials, that would require the Secretary, not later than 180 days after enactment, to promulgate an "Instructional Materials Accessibility Standard" to be used by publishers in the preparation of electronic files for reproducing print instructional materials in specialized formats. A National File Format Initiative funded by the Office of Special Education Programs (OSEP) is now finalizing recommendations about such a standard, and the committee anticipates that this effort will inform the Secretary's rule making by developing a format requirement that will be more convenient for the publishers who must produce the electronic files and the people who use them to reproduce the content of the print instructional materials in needed specialized formats.

Sections 612(a)(22) and 613(a)(6) of the bill call for State and local educational agencies to adopt the Instructional Materials Accessibility Standard in a timely manner after it is published in the Federal Register, so that not later than two years after the date of enactment any purchase agreement for print instructional materials (as defined in the provision) will require the publisher of the materials to apply that standard when providing electronic files to be used in reproducing the instructional materials in specialized formats for students with print disabilities. The committee has pro-

vided the two-year transition period for actually applying the standard in the production of the required electronic files in order to meet the adaptation needs of the publishers who must provide the files and the authorized entities who actually use the files to convert the printed instructional materials into specialized formats.

The committee feels that a central repository, providing for the collection and dissemination of instructional materials in the formats required for their suitable translation for use by blind and print-disabled students, is essential to ensure their timely availability. To serve this need, the bill includes a provision in section 675 establishing the National Instructional Materials Access Center. The Center would serve to facilitate the collection and dissemination of instructional materials for blind and print-disabled students by requiring publishers “on or before delivery of the print instructional materials,” to provide a copy to the Center, so whenever the file is needed, it is readily available. The Center will additionally provide a single point of contact for any entity authorized to have access to the electronic file. The committee feels, that taken together, these two factors will significantly reduce the time required for the procurement and distribution of instructional materials in the format suitable for use by blind and print-disabled individuals.

#### *Local educational agency eligibility*

The majority of section 613 relates to local eligibility requirements under part B. Similar to section 612(a) for State plans, the bill amends section 613(a) to require that local educational agencies must “provide assurances” rather than “demonstrate to the satisfaction” of the State that they have the appropriate policies and procedures in place to ensure that they have met the law’s requirements. While the committee has expressed its concern that the current federal IDEA law has overemphasized paperwork compliance, the committee is also concerned that States have engaged in similar practices with local educational agencies. The committee wants to encourage both the States and local educational agencies to spend more time and efforts on successful outcomes by students. The committee still expects local educational agencies to meet the law’s requirements, even though they are relieved of the burden of creating a paper trail to prove compliance. The committee expects that, if a State receives information indicating that a school district has provided false assurances or is not fulfilling its assurances, the State shall disapprove the district’s plan and take corrective action.

#### *Local flexibility*

The committee recognizes that because the Federal Government has not met its commitment to provide 40 percent of the estimated additional costs of serving children with disabilities, local and State educational agencies have paid more than their share of these costs for over 25 years. In addition, because the local funds flexibility provision in current law is limited to a fraction of new funding and available only on a year-to-year basis, few school districts have been able to utilize the flexibility option to dampen the fiscal effect of covering a portion of the Federal Government’s share of the costs of Part B.

To make the local funds flexibility more meaningful to the agencies that are covering the direct costs of providing services to children with disabilities, the committee amends section 613(a)(2)(C) to allow local school districts to use up to 8 percent of the federal funds they receive under Part B as local funds, and up to 25 percent as local funds once full funding is achieved. The committee believes that because this flexibility is no longer linked to new funding it provides a more tangible opportunity for school districts to utilize the flexibility and better align funding among programs based on local priorities, including financing strategies to increase reimbursement from Medicaid for eligible services.

*Personnel development (section 613(a)(3))*

The bill is amended to state that a local educational agency must ensure that personnel development activities connected with this expenditure must be consistent with the bill's requirements in section 612(a)(14), as well as personnel provisions under NCLB.

*Permissive use of funds (613(a)(4))*

S. 1248 revises the list of allowable uses that a local educational agency may undertake with its Part B funds: they may be used for early intervening educational services (described below), as well as for administrative case management. The committee recognizes that one area creating paperwork for teachers and related services personnel is the lack of technology for recordkeeping, data collection, and related case management activities. The bill makes clear that local educational agencies may use funds for technology to assist personnel in this area.

*Charter schools*

The bill makes two key changes to section 613(a)(5) regarding the treatment of charter schools that are public schools of the local educational agency (LEA). Current law includes provisions to ensure that charter schools are treated equitably both in the distribution of funds and the provision of services. Both changes are consistent with current law and are intended to further assist both the charter schools and the LEA in better serving children with disabilities that attend charter schools.

First, with regard to the distribution of IDEA funds to charter schools, the committee strengthens current law which requires that LEAs provide funds to charter schools on the same basis as they provide funds to other public schools. Given the unique nature, enrollment practices, and size of charter schools, the committee recognizes that LEAs should have the authority to distribute IDEA funds to charter schools based on relative enrollment and proportional distribution.

Second, on the issue of providing services, the bill clarifies that the LEA shall provide supplemental and related services on site at the charter school to the same extent the LEA has a policy or practice of providing such services on site to its other public schools. The intent of this language is to ensure that parents who choose to send their child with a disability to a charter school are not unduly burdened to go off site to receive services for their child. The committee believes that to the extent that an LEA provides on site services to students with disabilities enrolled in traditional public

schools they should provide on site services at charter schools so as not to unfairly disadvantage and inconvenience parents of children with disabilities enrolled in charter schools.

The aforementioned provisions are designed to assist charter schools that are public schools of the LEA. Some charter schools are independent of the LEA; they are in fact recognized by the State and considered their own LEA. As these charter schools are significantly smaller than most LEAs they are more exposed to varying and unforeseen costs than most traditional LEAs.

Although the committee believes that the risk pool described earlier will be beneficial to many LEAs, the committee believes the risk pool will be especially helpful in ensuring that charter schools treated as separate LEAs receive additional resources to serve children with disabilities.

*Records regarding migratory children with disabilities  
(613(a)(9))*

S. 1248 adds a new provision, section 613(a)(9), requiring local educational agencies to cooperate in the Secretary's efforts under NCLB to ensure the linkage of records pertaining to migratory children with a disability for the purpose of electronically exchanging, among the States, health and educational information regarding such children.

*Early intervening services (section 613(f))*

The committee is greatly concerned that too many children are being identified as needing special education and related services, and has sought approaches to help prevent students from being inappropriately identified for services under IDEA. Research shows that with appropriate, early regular education interventions, many children can learn to perform effectively in the regular education environment without the need for special education services. These procedures also have the promise of reducing the amount or intensity of services needed for children who ultimately do get appropriately referred for special education. For example, both the President's Commission on Excellence in Special Education and the National Research Council's report on minority students in special education cited with approval to the results of large scale clinical trials indicating that early intervention on reading skills in conjunction with positive behavior programs resulted in improved academic achievement and reduction in behavioral difficulties in high-risk, predominantly minority children. Research supported by OSEP on addressing behavioral and emotional problems in schools also indicates that universal screening can greatly assist in early identification of children at risk for these problems and that more significant behavioral problems and emotional disabilities can be significantly reduced through classroom-based approaches involving positive behavioral interventions and classroom management techniques. Other evidence shows that when schools make available services, such as mental health services, not normally available in schools, to at-risk children the number of special education referrals can be reduced.

Therefore, the committee believes that it makes sense to give school districts flexibility to use up to 15 percent of their IDEA funds to develop and implement coordinated, early intervening edu-

cational services for students who are not receiving special education services but who require additional academic and behavioral support to succeed in a regular education environment, and who may be likely referrals to special education programs and services at a later time. These activities have the promise of benefiting both the regular education environment and the special education program by reducing academic and behavioral problems in the regular education environment and the number of referrals for special education and the intensity of special education services required for some students.

Section 613(f) of the act would be revised to authorize such use of IDEA funds, in combination with other non-special education funds, to develop and implement coordinated, early intervening educational support services that include activities such as professional development for teachers and other school staff so that they can deliver scientifically-based academic and behavioral interventions; providing educational and behavioral evaluations, services and supports, including scientifically-based literacy instruction; and developing and implementing interagency financing strategies for the provision of those evaluations, services and supports. An example of innovative early intervening services may include programs that develop children's cognitive and perceptual abilities.

It has come to the committee's attention that many children struggle in school as a result of trauma and the effects of traumatic events. The committee encourages local educational agencies to respond to the needs of these children through early intervening programs established in this section.

The committee does not intend for early intervening to prevent or delay a student from receiving an evaluation to determine the presence of a disability and the need for special education and related services. The committee encourages local educational agencies to develop a systematic process by which they determine whether or not a student receiving early intervention services should be subsequently referred for an evaluation.

Use of IDEA funds for activities authorized under this provision would not violate excess costs, commingling, or supplement not supplant requirements of the act. Students who participate in receiving these services would not be entitled to a free appropriate public education under the act, however, unless they were found eligible for services as a "child with a disability" as defined by section 602(3) of the act. Finally, school districts may use funds available under this subsection to carry out a coordinated, early intervention educational support services that are also funded under NCLB, as long as the IDEA funds are used to supplement and not supplant NCLB funds for the activities and services assisted under the coordinated, comprehensive, educational support system.

*Elimination of School-Based Improvement Plan (section 613(g))*

S. 1248 eliminates the authority in current section 613(g) for a School-Based Improvement Plan, because this provision has not been effective. Schools can undertake school improvement activities and realize improved educational and transitional results for children with disabilities without incurring the additional administrative and paperwork burdens required under this authority.

*State agency flexibility (section 613(j))*

The committee recognizes that certain State educational agencies pay all or a significant portion of the non-Federal share of costs of direct services to special education students. These State agencies are essentially like other local educational agencies that provide direct services; they have paid more than their share of these costs for over 25 years because the Federal Government has not met its commitment to provide 40 percent of the estimated additional costs of serving children with disabilities. Accordingly, section 613(j) authorizes the small number of States that pay 80 percent or more of the non-Federal special education costs to treat portions of Federal funds as general funds to support educational purposes described in NCLB and for other education-related purposes.

*Evaluations, eligibility determinations, IEPs, and placements*

The committee has added a new provision (section 614(a)(1)(B)) clarifying that a parent, a State educational agency, other State agency, or local educational agency has a right to request an initial evaluation to determine whether a child qualifies for IDEA services. While current IDEA law already allows parents to request evaluations, the committee wants to ensure that parents are aware of this right. The committee does not intend to alter the ability of teachers or other personnel of LEAs to initiate requests for evaluations of their students.

The committee believes that it is important that children are evaluated in a timely manner. Therefore, S. 1248 contains a timeline in which a local educational agency must conduct an evaluation. Under section 614(a)(1)(C), the eligibility determination must be completed within 60 days after parental consent is given for the initial evaluation, or, if the State has instituted a timeframe for completing evaluations, within the time imposed by State law. The committee also feels that this provision will discourage a local educational agency from unnecessarily delaying an evaluation in cases where a child is receiving early intervening services under section 613(f).

*Parental consent*

There are cases in which a parent may refuse to consent to their child's receipt of special education and related services offered by the local educational agency once it has been determined that the child is a child with a disability. In this situation, section 614(a)(1)(D)(iii) states that a local educational agency does not violate the FAPE requirement by failing to provide the special education and related services refused by the parent on behalf of the child. However, the committee expects that, in such a case, the local educational agency must make every reasonable effort to obtain consent from the parent. Further, the local educational agency has an obligation to provide FAPE to the child if the parent provides consent at a future time or under a new circumstance.

*Reevaluations*

In the interest of parents, children, and school districts, the committee believes that requiring costly and time-consuming reevaluations when both parents and local educational agencies deem them to be unnecessary is counterproductive. To this end, the committee



has amended section 614(a)(2) to state clearly that the local educational agency does not have to conduct a reevaluation of a child with a disability if both the parent and the local educational agency agree that it is unnecessary.

#### *Evaluations*

In section 614(b)(2), the committee has added “academic information” to the list of information the local educational agency should gather in the evaluation process of a child, believing it to be a critical factor to consider in determining whether a child is a child with a disability.

The committee has revised the “Additional Requirements” section in 614(b)(3) to provide local educational agencies more clarity in the procedures they should use in selecting and administering tests and other evaluations to determine a child’s eligibility under IDEA. In particular, tests and evaluations should be provided and administered, to the extent practicable, in the language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally. The committee hopes that, by striking the phrase “in the child’s native language,” schools will perform more accurate assessments on foreign born children who have been adopted by families in the United States. The committee has heard of instances in which schools have attempted to evaluate these children in a native language which they no longer use, yielding inaccurate results. In addition, school personnel have often required that foreign born children wait long periods of time before going through the IDEA evaluation process on the mistaken assumption that the child is not familiar enough with English to receive an appropriate evaluation. The committee encourages local educational agencies to conduct prompt evaluations of these children when requested, and believes that other changes made in section 614 regarding the parental right to request an evaluation, as well as a 60 day timeline for conducting an evaluation, will address the current problem many foreign born children have in regard to evaluation for IDEA eligibility.

In addition, it is reported that some foreign born adopted children are refused services even after testing shows evidence of a disability because of the mistaken assumption that such disabilities are simply from a lack of English proficiency. The committee encourages schools to recognize the differences between language acquisition in ESL students and language acquisition for foreign-born adopted children.

Further, some have reported to the committee that some foreign-born adopted children are denied services under section 614(b)(5), which states that a child “shall not be determined to be a child with a disability if the determinant factor for such determination is lack of instruction in reading or math or limited English proficiency” or under section 602(29)(c), which states that a child cannot be determined to have a specific learning disability if the disability is “primarily the result of “environmental, cultural or economic disadvantage.” The committee wishes to clarify that these clauses should not be used to deny services to children with disabilities simply because they were born in a foreign country and were thus not exposed to English instruction, nor because they have ex-

perienced institutionalization or were born into disadvantaged circumstances.

The committee has also revised the Special Rule for Eligibility Determination (section 614(b)(5)) by stating that the determinant factor for determining whether the child is a child with a disability cannot be a lack of “scientifically based” reading instruction. The phrase “scientifically based” was added to align IDEA with the No Child Left Behind Act, and its meaning is the same as defined under that act.

#### *Specific learning disabilities*

The committee believes that the IQ-achievement discrepancy formula, which considers whether a child has a severe discrepancy between achievement and intellectual ability, should not be a requirement for determining eligibility under the IDEA. There is no evidence that the IQ-achievement discrepancy formula can be applied in a consistent and educationally meaningful (i.e., reliable and valid) manner. In addition, this approach has been found to be particularly problematic for students living in poverty or culturally and linguistically different backgrounds, who may be erroneously viewed as having intrinsic intellectual limitations when their difficulties on such tests really reflect lack of experience or educational opportunity.

The committee has heard from many experts about innovations and advances in the methodologies used to determine the existence of specific learning disabilities. In response to this growing base of knowledge, the bill clarifies that, in determining whether or not a student has a specific learning disability, a local educational agency is not required to take into account a severe discrepancy between IQ and achievement. This would not prohibit the use of this model, however, if an LEA chooses to base its decisions on the discrepancy formula.

The bill allows local educational agencies to make an eligibility determination through the use of another mechanism, such as through a process based upon a child’s response to scientific, research-based intervention. This provision is supported by the findings of the President’s Commission on Excellence in Special Education. The Commission recommended that the identification process for children with high-incidence disabilities be simplified and that assessments that reflect learning and behavior in the classroom be encouraged, with less reliance on the assessments of IQ and achievement that are now prominent. The Commission also recommended that a student’s response to scientifically based instruction become part of the criteria for SLD identification. However, the Commission noted that the development of these responses to instruction models is uneven and that technical assistance from OSEP will be critical for implementation. In addition, the Commission noted that parents should always have the right to request an evaluation, and current placement decisions should be respected.

While the committee believes that allowing this flexibility is appropriate, it also acknowledges that the research base supporting such changes continues to advance and improve. Section 614(b)(3)(A)(iii) will require that all procedures, including alternate procedures, be valid and reliable for the purpose for which they are

used; the committee expects that new methodologies adopted for use by local educational agencies also will be based on sound research findings. In order to prevent radical differences in how local educational agencies determine the presence of specific learning disabilities, the committee encourages States to develop research-based models that can be adopted by local educational agencies. Further, the committee emphasizes that nothing in the new statutory language would prohibit a State from establishing a consistent statewide process for determining whether a child has a specific learning disability. States should collaborate with LEAs to identify the criteria for determining an SLD and ensuring the consistency and integrity of the classification system across the State. In addition, the committee strongly encourages the Secretary of Education to assist States and LEAs in this effort by developing guidance and technical assistance systems for the improvement of SLD identification and eligibility.

The committee also emphasizes that nothing in this new provision prevents a parent from requesting a full evaluation of a child. Parental input is critical in this area, as parents most always know their child better than anyone else does.

A scientific, research based intervention model of SLD identification, such as that allowed in the committee bill, recognizes the prelude to any intervention process must be effective, research-based instruction in the regular education classroom. Gathering data on each student can help teachers and others frame concerns about a student's progress. The new law supports a continuum of intervention options—regular and special educators and related service providers working together as part of a coherent system that is accountable for educational outcomes for students with SLD.

Interventions are most effective when they are implemented consistently and with fidelity, with a sufficient level of intensity, and are relevant to individual student needs. Above all, an improved system contemplates the design and timely implementation of individualized interventions, monitoring progress on specified academic and behavioral skills relative to peers in the same educational setting, and full individual assessments as needed, to identify strengths and weaknesses in relevant skills areas and to rule out other disabilities or non-cognitive factors as the primary cause of low achievement.

#### *Exit evaluations*

The committee has heard that local educational agencies feel compelled by current statutory language to conduct a reevaluation of a child with a disability when he or she either graduates from secondary school or ages out of IDEA eligibility. Both parents and schools have complained that a reevaluation seems unnecessary, time-consuming, and costly. The committee agrees. Therefore, the committee has included language in section 614(c)(5)(B), based upon existing Federal education regulations (34 C.F.R. 300.534(c)(2)), stating that a student does not need to be reevaluated before leaving secondary school. The bill also requires local educational agencies to provide a summary of the child's performance. The committee intends for this summary to provide specific, meaningful, and understandable information to the student, the

student's family, and any agency, including postsecondary schools, which may provide services to the student upon transition. The committee does not intend that the contents of this summary be subject to any determination of whether a free appropriate public education has been provided. Further, the committee does not expect local educational agencies to conduct any new assessments or evaluations in providing the summary; rather, it should be based upon information the school has already gathered on the child.

*Individualized education programs*

In describing what an individualized education program (IEP) should contain, section 614(d)(1)(A)(i)(I) of the bill states that an IEP must include a statement of the child's present levels of "academic achievement and functional performance," rather than simply "educational performance" as required by the 1997 law. The committee believes that it is important to emphasize academic achievement, consistent with NCLB, and recognizes that for some children, functional performance is also a critical element that should be measured. The committee intends that the statement of measurable annual goals should include academic goals, and, where appropriate, functional goals.

*Elimination of benchmarks and short-term objectives*

Current IDEA law requires that a child's IEP must contain a statement of measurable annual goals for the child, including benchmarks or short-term objectives. Additionally, the IEP must include a statement of how the child's progress toward the annual goals will be measured and how the child's parents will be regularly informed of their child's progress toward the annual goals and the extent to which that progress is sufficient to enable the child to achieve the goals by the end of the year.

While benchmarks and short-term objectives are thought by some to help track the child's progress, their inclusion in IEPs contributes greatly to the paperwork burden on educators and parents, and often bears no relationship to the non-linear reality of a child's development. Special education practice via short-term objectives too often focuses on achieving only small incremental improvements in student performance to the detriment of more effective longer range planning. Short-term objectives and benchmarks can focus too much on minor details and distract from the real purpose of special education, which is to ensure that all children and youth with disabilities achieve high educational outcomes and are prepared to participate fully in the social and economic fabric of their communities.

Both education officials and the President's Commission on Excellence in Special Education have found that benchmarks and short-term objectives to be unnecessary and time consuming. Some teachers have commented that their lesson plans that are aligned with the district curriculum frameworks are more useful than the benchmarks and short-term objectives required by IDEA.

During the last reauthorization of IDEA in 1997, the continued value of short-term objectives was debated, and benchmarks were added. To date, States and LEAs have made minimal use of benchmarks; most do use short-term objectives, but continue to question their utility.

With all these factors in mind, the committee has revised section 614(d)(1)(A) to eliminate the requirement for benchmarks and short-term objectives. The committee does not intend for the elimination of these requirements to lessen parental input or information, or to eliminate the need to break annual goals into instructional objectives.

In order to measure and report the students' progress toward their annual goals, the IEP must instead contain a description of how the child's progress toward meeting the annual goals will be measured, as well as when periodic reports on the child's progress, such as through the use of quarterly or other periodic reports, will be provided. The committee feels that such progress reports are especially important for students whose IEPs contain non-academic goals and whose progress may not be measured easily by standardized tests or grades. These progress updates must provide parents with specific, meaningful, and understandable information on the progress children are making.

The committee expects that eliminating the requirements for benchmarks and short-term objectives will reduce unproductive paperwork and allow greater attention to be focused on the child's annual IEP goals and on the methods of measuring progress and reporting that progress to parents in a meaningful way.

Some parents have expressed concern about losing the individualization in instruction via short-term objectives. However, individualization in practice occurs through the accommodations and modifications provisions in the IEP. The committee feels that the new language is sufficiently explicit and will yield more instructionally relevant information to be used by teachers as well as reported to parents regarding a student's progress, and provide a clear and more appropriate accountability mechanism for monitoring and reporting progress than do short-term objectives and benchmarks.

For most students with disabilities, many of their IEP goals would likely conform to State and district wide academic content standards and progress indicators consistent with standards based reform within education and the new requirements of NCLB. IEPs would also include other goals that the IEP Team deemed appropriate for the student, such as life skills, self-advocacy, social skills, and desired post-school activities. Moreover, since parents will receive individual student reports on their child with a disability's achievement on assessments under NCLB, they will have additional information to evaluate how well their children are doing against grade-level standards.

#### *Accommodations and alternate assessments*

The committee expects local educational agencies to test their students with disabilities using State or districtwide assessments administered to children without disabilities. To accurately assess a child's progress, the committee recognizes that for some children this framework would include certain necessary accommodations, an alternate assessment, or an alternate assessment based upon alternative standards for those children with significant cognitive disabilities.

The bill also amends the current law's provision regarding districtwide assessments to incorporate proper terminology used today

by test creators and researchers. Where the 1997 law said that IEPs must state the individual modifications to be made for a child to participate in a State or districtwide assessment, S. 1248 requires a statement of “appropriate accommodations” to be made for such assessments. In the testing field today, a “modification” to a test may affect the validity of that test, while an “accommodation” to a test will not affect the test’s validity. Since the committee desires improved academic achievement for all children with disabilities, it is critical that assessment devices for these children are accurate and valid. The bill also provides that if the IEP team determines that a child shall take an alternate assessment, then it must state why the child cannot participate in the regular assessment and why the particular alternate assessment selected is appropriate for that child.

#### *Transition services*

Both parents and local educational agencies have complained that the current section 614(d) regarding transition services in the IEP creates some confusion as to what schools are obligated to provide to students at various times. The President’s Commission on Excellence in Special Education recommended that the arbitrary age 14/16 distinctions should be replaced with a uniform standard at an appropriate age or school point readily understandable by teachers and students. The committee has heeded this suggestion and revised the law accordingly. Under S. 1248, beginning not later than the first IEP to be in effect when the child is 14, and updated annually thereafter, the IEP must contain: (1) appropriate measurable postsecondary goals based upon age appropriate assessments related to training, education, employment, and, where appropriate, independent living skills; and (2) the transition services the child needs to reach those goals. The committee believes that eliminating the arbitrary age 14/16 distinction and providing more specifics in the legislation will assist local educational agencies in providing improved transition services to students.

#### *Streamlining the IEP*

The committee is greatly concerned about the paperwork burdens experienced by teachers and other education personnel in connection with writing IEPs. Lengthy and complex IEPs are not necessarily beneficial to students if they create confusion and take teachers away from instructional time with children. The committee has examined a number of actual IEPs, and has discovered that many items in those documents are not required by federal IDEA law. While it has proven difficult to determine the source or sources generating this additional paperwork, the committee wants to ensure that the federal law does not contribute to this problem. Therefore, section 614(d)(1)(A)(ii) provides that nothing in the section shall be construed to require that additional information be included in an IEP beyond what is explicitly required in the section. The bill retains an existing provision ensuring that the IEP team does not need to include information under one component of an IEP that is already contained in another component of the IEP. The committee also recognizes that section 617 requires the Department of Education to develop a model IEP, suitable for adoption by a State or LEA, which will accommodate the committee’s

desire for a streamlined, straightforward, expression of only the requirements mandated by this Act. However, the committee does not intend to eliminate the requirement to individualize an IEP based upon each child's own unique needs.

*The IEP team and IEP meetings*

The committee has made no changes to the members of the IEP team (section 614(d)(1)(B)), but wants to reiterate the importance of the attendance of certain members. It has come to the attention of the committee that, despite the requirement in IDEA 1997, many IEP meetings are conducted without a member present who is knowledgeable about the availability of resources of the local educational agency. Many disagreements arising at IEP meetings could be resolved if this person were in attendance instead of intervening only after a parent has filed a complaint. The committee encourages local educational agencies to prevent complaints by ensuring that such a representative is in attendance and by providing IEP team members with the skills to constructively facilitate IEP meetings. Secondly, the committee encourages the participation of the child on the team to the greatest extent possible.

The committee has heard from many individuals that the amount of time spent preparing for and attending IEP meetings, and the number of individuals required to attend such meetings, reduces the amount of time that personnel spend with students. Scheduling IEP meetings involves coordinating the schedules of a number of individuals, including parents, who are balancing work and family demands. At the same time, a certain member of the IEP team may not be needed at an IEP meeting if the topics of discussion do not involve that member. Or, an IEP meeting may be scheduled, but an IEP member later learns that they have an unavoidable scheduling conflict, which could force the cancellation of the IEP meeting.

To address these concerns, the bill provides parents and schools with greater flexibility regarding the personnel attending IEP meetings. Under section 614(d)(1)(C), a member of the IEP team can be excused from the meeting if no modifications are being made to that member's area of curriculum or service; or, when a relevant modification is made, if the member provides input prior to the meeting. The committee expects this input to be meaningful, understandable, and preferably in writing. The IEP team member, the parent, and the local educational agency must agree to any such excusal, and the committee expects the local educational agency to ensure that the parent is making an informed decision. The bill also requires that local educational agencies encourage the consolidation of IEP meetings and reevaluation meetings (section 614(d)(3)(D)) to ease time burdens for parents, school personnel, and related service providers.

Parents and professionals alike feel that parent involvement in IEP meetings could be increased if parents could participate in meetings through alternative means. Section 614(f) of the bill clarifies that it is appropriate for parents and LEAs agree to participate in IEP Team and placement meetings via means such as video conferences and conference calls. This does not, however, negate a parent's right to request an in-person meeting. Further, the committee acknowledges that many meetings, such as meetings related to pro-

cedural safeguards in section 615, may be more appropriately handled through in-person meetings.

The committee heard testimony that, often, common sense changes developed by a teacher and a parent to improve the child's educational services cannot be implemented without reconvening an IEP meeting, which requires coordinating the schedules of a number of people, and often forces a parent to take off work to attend. Such a process is so burdensome that often changes that could benefit a student are simply not made. The committee feels strongly that educators and parents need to have the flexibility to make minor changes to IEPs during the time span covered by the IEP without sending legal notices of a meeting, without convening the full IEP team, or rewriting the entire IEP. Therefore, section 614(d)(3)(D) of the bill allows the parent of a child with a disability and the local educational agency, through the responsible teacher or service provider, to amend or modify the child's current IEP without having to convene an IEP meeting. Such an amendment is not appropriate, however, as a substitute for an annual IEP meeting, and the parent should make an informed decision when agreeing to such an amendment.

*Requirement that program be in effect*

As does the 1997 law, S. 1248 requires that each child have an IEP in effect at the beginning of each school year (section 614(d)(2)). The committee understands that many children with disabilities who enter and exit local educational agencies during the course of the school year, especially migrant children, foster children, and homeless children, experience a gap in services. The committee believes that, when a child enters a new local educational agency, the services identified on his or her former IEP should be provided until the receiving local educational agency develops a new IEP.

*Development of IEP*

The bill adds a new factor that the IEP team must consider in developing a child's IEP: the academic, developmental, and functional needs of the child (section 614(d)(3)(A)). The committee recognizes that all students may not experience all of these needs simultaneously, and that this requirement shall apply when necessary.

*Special factors*

The committee has heard a great deal from professionals about the behavior of students with disabilities, the danger posed by some behavior, and the effect that behavior has on the learning environment. The committee believes that, in most cases, the behavior of students can be addressed and prevented effectively through positive behavioral interventions and supports. Therefore, section 614(d)(3)(B)(i) requires IEP teams to provide positive behavioral interventions and supports for children with disabilities whose behavior impedes their learning or the learning of others. The committee believes that taking this proactive approach should result in reductions in behavior problems and disciplinary referrals, as well as improved educational results for students with disabilities.



Blind or visually impaired students may require specialized instruction to acquire skills that sighted students gain from visual observation. Section 614(d)(3)(B)(iii) contains a new provision requiring an IEP team working with blind or visually impaired students to consider, when appropriate, instructional services related to functional performance skills, orientation and mobility, and skills in the use of assistive technology devices, including low vision devices. The committee intends the term “functional performance skills” to facilitate inclusion in the IEP for blind or visually impaired students instruction in a variety of skills necessary for independent living. These skills are critical in preparing children for employment, social integration, and full participation in their communities. The committee also emphasizes the importance of orientation and mobility training as a part of an IEP for a child who is blind.

#### *Three year IEPs*

A new provision, section 614(d)(5), allows parents and local educational agencies to develop a 3-year IEP for students aged 18 and older, with an emphasis on interagency coordination with adult programs. The committee intends that those local educational agencies choosing to offer this option do so with the purpose of focusing on the post-secondary transition goals of students. A 3-year IEP will provide parents with the ability to engage the school district in long term planning for their child’s post-secondary future. This option serves as a mechanism to focus on the long-term goals of the child with a disability upon leaving school. The committee expects local educational agencies to ensure that parents are making an informed decision when exercising this option.

#### *Children with degenerative diseases*

The committee has heard from many parents and teachers regarding the special situations of children with a medical condition that is degenerative (i.e., a disease that results in negative progression and cannot be corrected or fully stabilized). For these children who have been found to be eligible under IDEA, services under the IEP can be provided to help maintain the child’s present level of functioning for as long as possible in order for the child to fully benefit from special education services. In developing an IEP for these children, the IEP Team may consider recommendations from professional consultants familiar with the child and the medical condition in the development of the IEP. The IEP Team can include related services designed to provide therapeutic services prior to loss of original abilities to extend current skills and throughout the child’s enrollment in school. These services may include occupational and physical therapy, self-help, mobility and communication, as appropriate.

#### *Procedural safeguards*

Through its revisions to section 615, the committee intends to preserve and protect procedural safeguards so that all students with disabilities receive a free and appropriate public education, while also giving parents and schools the opportunity to resolve issues in a constructive manner. The committee has also sought to

simplify and clarify the law to assist schools in serving students and their parents in more positive and effective ways.

*The right to present complaints*

The committee has revised section 615 in a number of areas, such as subsection (b)(6), to clarify that local educational agencies, as well as parents, have the right to present complaints.

*Notice of complaint*

In the interest of resolving disputes in the most effective and efficient way possible, it is critical that a party has timely notice of a complaint filed against them. The committee has heard of situations in which a local educational agency does not learn of a parent's complaint in a timely manner, because the State educational agency has not yet forwarded that complaint to the local agency. Therefore, S. 1248 revises section 615(b)(7) to require that the party filing the due process complaint under section 615(b)(6) must send the complaint to the other party, as well as to the State agency.

The committee put in the 1997 law a very important requirement that a parent filing a due process complaint must provide the local educational agency with sufficient notice of the complaint, including: the child's name, address, and school; a description of the nature of the problem, including facts related to that problem, and a proposed resolution to the problem to the extent known and available at the time to the parent. S. 1248 adds a new requirement that, in the case of a homeless child or youth, the notice must contain available contact information for the child and the name of the school they are attending.

The committee does not intend for a notice of a due process complaint to reach the level of specificity and detail of a pleading or complaint filed in a court of law. The purpose of the sufficiency requirement is to ensure that the other party, which is generally the school district, will have an awareness and understanding of the issues forming the basis of the complaint.

In the 1997 reauthorization, the committee assumed that this notice requirement would give school districts adequate notice to be able to defend their actions at due process hearings, or even to resolve the dispute without having to go to due process. Unfortunately, the Department of Education's regulation (34 CFR 300.507(c)(4)) interpreting this provision nullified the statutory notice requirement by providing that a parent's failure to provide notice required by section 615(b)(7) will not delay or deny a parent's right to a due process hearing. As a result, the committee has heard of situations in which a parent or their attorneys have filed a notice of complaint stating only that "Child was denied FAPE," leaving the school with no idea as to what the real issues would be at the due process hearing, and forcing the school to prepare for any and every issue that could be possibly raised against it. While section 615(i)(3)(F)(iv) authorizes a court to reduce attorneys fees when the attorney representing the parent did not provide the school district the appropriate information in the due process complaint, this still does not prevent the loss of time, money, and other resources spent by a school district that has to prepare for this type

of situation, and it would not address the case in which a parent, representing himself, fails to provide adequate notice.

Therefore section 615(b)(7)(B) states that a due process hearing may not occur unless and until the requesting party has filed a complaint that meets the notice requirements of section 615(b)(7)(A)(ii). The committee believes that this language merely restates the intent of the 1997 law, which was to avoid the case of a school district having to prepare for and attend a due process hearing based upon an insufficient notice. S. 1248 makes clear that this sufficiency of notice requirement applies to local educational agencies filing due process complaints as well. While the committee agrees that a party's right to a due process hearing should not be delayed or denied for no reason, a party's failure to provide notice of their complaint to the other party is reasonable grounds for delaying a hearing until the other party is reasonably apprised of the issues underlying the complaint.

If the hearing officer determines that the notice of the complaint does not meet the sufficiency requirements, then the party must amend their complaint. The committee intends that if such an amendment is necessary, the appropriate timelines for completion of the hearing begin upon the filing of the amended complaint. The committee encourages local educational agencies to provide parents with a list of local parent training and information centers, the State protection and advocacy system, and other groups that may assist parents in filing a sufficient complaint. In addition, the committee has expanded the existing model forms provision, section 615(b)(9), to require that States develop a model form to assist parents in not only filing complaints, but also in filing due process complaint notices.

A due process complaint notice filed under section 615(b)(7)(A) is deemed to be sufficient for purposes of going to a due process hearing. However, if the party receiving the notice believes it to be insufficient, section 615(c)(2) requires the receiving party to notify the hearing officer and the other party within 20 days of receiving the notice. A hearing officer then has five days from receipt of the notice of insufficiency to determine whether the due process complaint notice meets the statutory requirements. This determination shall be made on the face of the complaint. There should be no hearing or appeal in regard to the hearing officer's determination. The party contesting the sufficiency of the notice should also understand that the sufficiency requirement may not be used as a mechanism to delay a due process hearing. Even though the statute gives a party 20 days to file a notice of insufficiency, the applicable time frames for conducting and completing a due process hearing begin to run 15 days after the local educational agency has received due process complaint notice or, in the case of the hearing officer's determination that the notice was deficient, the receipt of the revised due process complaint notice.

Normally, when a parent files a due process complaint under section 615(b)(7), he or she previously asked the school to take some type of action in regard to the education of their child with a disability. IDEA requires a school to provide the parent with written notice of its response to the parent's request, explaining the school's course of action regarding the child. However, there may be cases in which a parent has not brought a problem to the

school's attention until the school receives a parent's due process complaint. To address this type of situation, the committee has added a new provision, section 615(b)(8), which requires the school to provide a parent with a prior written notice under section 615(c), when learning of a parent's dispute for the first time in a parent's due process complaint. The contents of this notice should be no different in this situation than it is when issued before a due process complaint is filed. The committee does not intend for this prior written notice to reach the level of specificity and detail of an answer filed in a court of law. The committee is hopeful that such a written response from the school may, in fact, help a parent to resolve a disagreement, and eliminate the need to proceed to a due process hearing.

#### *Procedural safeguards notice*

While the procedural safeguards notice is critical for notifying parents and children with disabilities of their rights under the law, parents, as well as district personnel, have often criticized the frequent distribution of this notice within a year. Many view this as an example of either federal excess or as contributing to the uncomfortable feeling of an adversarial legal process as opposed to an educational practice. If a school holds an annual IEP meeting, conducts a reevaluation of a child, and then needs a follow-up IEP meeting in the course of a school year, the school must provide the parent a procedural safeguards notice at least three different times during that year. This process can create additional expense to print and mail the extensive document, and may even create a sense of mistrust on the part of parents. The committee believes that it does not make sense to require the issuance of a lengthy statement of procedural safeguards multiple times during a single school year. Therefore, section 615(d)(1) has been amended to require that parents receive the procedural safeguards generally only once a year. Schools would most likely send this notice to parents either at the beginning of the school year, or at the annual IEP meeting for the child. In addition, the procedural safeguards notice must be given in three instances: upon initial referral or parental request for an evaluation; upon a parent's registration of a due process complaint under section 615(b)(6); or when requested by the parent. The committee also encourages States and local educational agencies to post their notice of procedural safeguards on their websites. In addition, a new subsection (n) of section 615 provides that a parent may elect to receive notices by e-mail, if the public agency makes such option available.

S. 1248 also revises section 615(d)(2) to require that the procedural safeguards notice inform parents regarding the time period in which parents can file complaints, the school district's opportunity to resolve a complaint before a due process hearing, and the time period in which a party can appeal a hearing officer's decision to court.

#### *Mediation*

The committee is encouraged by the success of mediation occurring throughout the nation in resolving disputes between parties under IDEA. For example, a recent Michigan survey found that 82.3 percent of people surveyed said they strongly agreed with the

statement that they would use mediation again. In Texas, 96 percent of parents and school district personnel who used mediation would do so again. Between 1992 and 2000, the Texas Education Agency received 3,637 referrals for special education mediation, and conducted 1,108 mediation settlements. Settlements were agreed to in 77 percent of the cases, amounting to an estimated savings of \$50 million in attorneys' fees and related expenses. According to a General Accounting Office report released in September 2003, 93 percent of the mediation cases in California resulted in agreements between families and schools during the 2001–02 fiscal year; the cost of a mediator was about one-tenth of that of a hearing officer. The committee wants to build upon this success by encouraging parties to consider mediation as an option at earlier stages of disagreements and disputes. Accordingly, S. 1248 revises section 615(e) to clarify that parents can ask for mediation before filing a complaint under section 615(b)(6). The committee takes note of States such as New Hampshire, which encourages mediation by scheduling a mediation session when a parent files for a due process hearing, and then allows the parent to decline the mediation process.

Because the committee places such a high value on the successful use of mediation, it has added a provision stating that a written mediation agreement is enforceable in court. A mediation agreement is a written contract entered into between two parties, and should be afforded the same legal protection as other binding contracts.

The bill revises section 615(e)(2)(B) to provide that a State agency may establish procedures to offer—rather than require—parents, as well as to schools who choose not to use the mediation process, an opportunity to speak with a disinterested party regarding the benefits of mediation. The committee, however, also believes that a hearing officer, in the same fashion as a Federal or State judge, has the authority to mandate that a matter proceed to mediation as part of the hearing officer's plenary power once a complaint has been filed.

#### *Qualifications of mediators*

The committee is puzzled by the Department of Education's regulation, 34 CFR 300.506(c), which does not allow an unbiased person from another local educational agency to mediate a dispute. While it makes sense to disallow an LEA employee to mediate a dispute involving that individual's own LEA, the committee believes that a total ban on the use of any such employees is too restrictive, and could lead to a lack of qualified mediators. Therefore, the committee expects that the Department of Education will revise this regulation.

S. 1248 revises section 615(f)(1) to clarify that both a parent, as well as a local educational agency, has an opportunity to have a due process hearing after filing a complaint.

Although it is to be expected that a parent would try to resolve a disagreement with the IEP team before filing a due process complaint, the committee has heard of instances in which a school district learns for the first time that a parent has a problem with the district when it receives a notice of the parent's complaint. When this occurs, the school district has not had the opportunity to re-

solve the disagreement before going to a due process hearing. The committee believes that the parties should have a forum to resolve matters in a more informal way before moving to a more adversarial process. The bill adds a new provision, section (f)(1)(B), to provide this forum.

During this resolution session, the parent will meet with the IEP team to discuss his or her complaint and the specific issues that form the basis of the complaint, and the local educational agency shall have an opportunity to resolve the complaint. The committee intends the local educational agency to promptly schedule the resolution session and the parent to facilitate the occurrence of the resolution session by not delaying the meeting or refusing to attend. The committee does not intend that either party would have the right to refuse to participate in the resolution session. However, the parties may agree to waive the resolution session, such as in cases where the local educational agency is aware of the parent's complaint, and has already attempted to resolve the matter during an IEP team meeting, or when the parties have agreed to take their dispute to mediation.

At the resolution session, a representative who has decision-making authority on behalf of the local educational agency must be in attendance, and the agency may not have an attorney present unless the parent is accompanied by an attorney or a third party advocate. The committee expects that State protection and advocacy agencies, as well as parent training and information centers can provide parents support they may need to participate in these resolution sessions. The committee does not intend that an agreement must be reached during the meeting, as parties will often need time to consider proposed methods of resolution. Therefore, the local educational agency has 15 days from receipt of the complaint to resolve the matter. The parties shall memorialize any resolution agreement in a written document that is enforceable in court, as is any other written settlement agreement.

If the local educational agency and parent cannot resolve their issues within 15 days of receipt of the due process complaint, the due process hearing may occur, and all of the applicable timelines for a due process hearing under the law shall commence. The committee does not intend that the resolution session be used simply as a means to delay a due process hearing. It simply intends that a school district be given 15 days to resolve a disagreement before the timeframe for conducting a due process hearing begins.

A school district's belief that a parent has failed to meet the notice requirements of section 615(b)(7)(B) should not delay a resolution session between the parties. In fact, the parent may be able to more clearly articulate their problem during the session, which would give the LEA sufficient information to try to resolve the problem. In this case, if agreement is still not reached, the LEA should waive the notice sufficiency requirement for the due process hearing, as it has been apprised of the problem, and has the opportunity to prepare its position for the due process hearing. In addition, if the parent raises new issues at the resolution session, but the school and parent cannot resolve these issues, the school can agree to allow these new issues to be discussed at the due process hearing. If, after the resolution session, the school district still does not understand the nature of the problem in the parent's notice of

complaint, the LEA may rely on its insufficiency of notice claim. The goal of these new provisions is fairness: to be sure that a district is aware of a problem and has a chance to resolve it in a less formal manner before having to spend the time and resources for a due process hearing. The purpose is not to make parents go to another IEP meeting to explain an issue that has already reached an impasse with the district.

*Qualifications of Hearing Officers*

S. 1248 adds statutory requirements regarding qualifications of hearing officers. The committee does not intend that the phrase “professional interest that conflicts with the person’s objectivity” would exclude members of professional associations or exclude special educators from other school districts from serving as hearing officers provided that they meet the qualifications detailed in section 615(f)(3)(A). Similarly, these requirements should not exclude other individuals who have expertise in the area of special education, including parents of children with disabilities, from serving as hearing officers, as long as they are unbiased and have the appropriate qualifications to serve.

Under section 615(f)(3)(B), at the due process hearing, the party requesting the hearing may not raise issues that were not raised in the notice filed under subsection (b)(7), unless the other party agrees. It is also expected that the hearing officer will also use common sense and principles of fairness in determining whether a party is raising a new issue. This provision is not intended to preclude a party—particularly a parent and their child—from exercising their rights to a due process hearing under the law. This is to ensure that both parties have a clear understanding of the subject matter of the complaint and can adequately prepare to present their position to the hearing officer. The committee has heard of instances in which a party raises completely new issues at a due process hearing that were not in any way contained in a notice of a complaint. As a result, the other party is surprised at the due process hearing, and has not adequately prepared, which can result in a waste of time for both parties and for the hearing officer, as well as a significant expenditure of resources on both sides. The committee sees no value in keeping a party in the dark and forcing it to prepare for every possible complaint that could be made.

There is some concern that these new requirements would prevent a parent from being able to come to the due process hearing and raise new issues that were not raised in the complaint, because the parent did not understand they legally had other complaints, or because they did not properly articulate those complaints. However, section 615(f)(3)(C) makes clear that nothing prevents a parent from filing a new complaint with new issues. In addition, S. 1248 allows a parent to amend their original complaint in limited circumstances before a due process hearing occurs: with the written consent of the other party, or with the permission of the hearing officer. However, the school district must have the opportunity to resolve the amended complaint, and the timelines for holding a due process hearing would recommence. The committee wants to ensure that both parties have an understanding of the disputed issues, so that they can be prepared to have a meaningful due process hearing that will bring a fair resolution. The committee does not intend

that a school district use the sufficiency requirement in a strictly technical way to preclude a parent from discussing an issue at a due process hearing of which the district was fully aware.

*Timeline for requesting hearing*

Section 615(f)(3)(D) creates a new two year timeline for requesting a hearing on claims for reimbursed or ongoing compensatory education services. If the State has developed an explicit timeline for requesting a due process hearing either through statute or regulation, that State provision will apply. The bill also provides for exceptions to the timeline in limited instances. The committee does not intend that common law determinations of statutes of limitation override this specific directive or the specific State or regulatory timeline.

This new provision is not intended to alter the principle under IDEA that children may receive compensatory education services, as affirmed in *School Comm. of Burlington v. Department of Education of Massachusetts*, 471 U.S. 359 (1985) and *Florence County School District Four v. Carter*, 510 U.S. 7 (1993) and otherwise limited under section 612(a)(10)(C). First, the statute of limitations will bar consideration of claims where: (1) the allegation relates to conduct or services that are more than two years prior to the commencement of due process on the basis of that conduct or those services, or upon the unilateral placement of the child in a private school or with a private service provider, and (2) during that two year period, either (a) the services are not alleged to have been at cost or inappropriate, or (b) the conduct is not alleged to have been appropriate. In essence, where the issue giving rise to the claim is more than two years old and not ongoing, the claim is barred; where the conduct or services at issue are ongoing to the previous two years, the claim for compensatory education services may be made on the basis of the most recent conduct or services and the conduct or services that were more than two years old at the time of due process or the private placement. Second, the statute of limitations will bar consideration of claims for reimbursement of private school tuition or services where the child has not attended school with the public entity for more than two years. Simply put, if a child leaves a public school and the parent chooses to place the child in a private school, the parent must claim through due process that they are entitled to reimbursement for those services prior to the two year anniversary of that student's departure.

*Decision of hearing officer*

The committee has been made aware of cases in which a hearing officer has found that a school denied FAPE to a child with a disability based upon a mere procedural technicality, rather than an actual showing that the child's education was harmed by the procedural flaw. For example, because a school has failed to provide a parent with a notice of procedural safeguards for the third or fourth time in a school year, a hearing officer may have found a FAPE violation. The ramifications of this are great when considering that such a finding can subject a school district to the payment of attorneys' fees. The committee does not believe that the law intends such a result. Hearing officers should generally make



decisions based upon true substantive grounds, not mere technical flaws.

Section 615(f)(3)(F) directs hearing officers to make decisions on due process complaints on substantive grounds based upon a determination of whether the child in question received a free appropriate public education. This entails going beyond whether there was a mere technical flaw, and requires an inquiry into whether the alleged action or inaction affected the child's receipt of FAPE. The committee does not intend for this provision to be an invitation to local educational agencies to become lax in following the procedures under the law. The committee also acknowledges that there are procedural violations which can deny a child a free appropriate public education. For example, a school's failure to give a parent access to initial evaluation information to make an informed and timely decision about their child's education can amount to a FAPE violation. In these cases, the hearing officer may find a FAPE violation only if the procedural inadequacies compromised the child's right to an appropriate public education; seriously hampered the parents' opportunity to participate in the process; or caused a substantial deprivation of educational benefits.

The committee also believes that requiring that hearing officers possess a number of qualifications, such as having the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice, will help ensure that due process complaints are correctly decided under the law.

S. 1248 also contains a provision (section 615(f)(3)(G)) making it clear that nothing in section 615 shall be construed to affect a parent's right to file a complaint with the State educational agency, including complaints of procedural violations.

*Parents representing their children in civil actions*

The statutory language of IDEA makes clear that a parent has a right to file a due process complaint and to have the opportunity for a due process hearing. It is unquestioned that parents have the right to bring a complaint and participate in a due process hearing without an attorney.

However, there has been disagreement as to whether a parent may, in effect, "represent" their child in a civil action that results from an appeal of a due process hearing. The committee is aware of the current conflict between a number of federal circuit courts regarding this issue, and understands that some courts have decided this issue based upon a distinction between procedural and substantive claims brought by a parent.

Both Federal and State laws generally prevent a non-attorney parent from representing his or her child in a court proceeding, as these laws provide that a person can only represent himself or herself, and not proceed on behalf of their minor child. Moreover, it is well-settled law that a minor is disqualified from representing himself or herself in a civil action.

A parent who does not have the financial resources to hire an attorney, but yet does not meet the financial need criteria for court-appointed counsel, or who cannot find an attorney to take their case on a contingency basis, has no ability to protect their child's interests if they are disallowed from going to court. This seems par-

ticularly unfair if a school district, rather than the parent, appeals a due process hearing decision to State or Federal court.

It makes little sense if the parents who are explicitly permitted to invoke administrative remedies and to exhaust them could not be parties for purposes of bringing suit. IDEA relies upon the central role played by parents in assuring that their child with a disability receives a free appropriate public education.

Based on current statutory language and on the rich legislative history emphasizing the importance of parental involvement, the committee believes that parents have a right to represent their child in court, without a lawyer, for purposes of IDEA law, regardless of whether their claims involve procedural or substantive issues. Therefore, the committee has amended section 615(i)(2) to clarify that a parent of a child with a disability may represent the child in any action under this part in State or Federal court, without the assistance of an attorney. The committee makes clear that this provision applies only to civil actions brought under IDEA as a result of an appeal from a due process hearing decision. Further, the committee does not intend that this provision alter State laws or court determinations regarding parental rights or child custody issues.

#### *Timeline for appeals*

S. 1248 contains a new provision, section 615(i)(2)(B), which gives a party 90 days from the date of the decision of the hearing officer for appealing a due process hearing decision to State or federal district court, or if there is an explicit State time limitation set out by State statute or regulation, in such time as the State law allows. Again, the committee does not intend for common law to override the particularity of this provision.

#### *Provisions for administrative and judicial review*

Under section 615, the committee intends that parties to disputes exhaust available administrative remedies before proceeding to a judicial forum. For this reason the bill's provisions regarding the review of such disputes, including the timelines for filing complaints and procedural and substantive grounds, are applicable initially in the administrative forum provided section 615, as well as in a judicial forum that may be sought.

#### *Attorneys' fees*

The 1997 law does not allow the awarding of attorneys' fees relating to any IEP Team meeting, unless the meeting is convened as the result of an administrative proceeding or judicial action, or, at the State's discretion, for a mediation. S. 1248 makes clear (section 615(i)(3)(D)(iii)) that attorneys' fees cannot be awarded in connection with a resolution session between the parties pursuant to section 615(f)(1)(B). In addition, section 615(i)(3)(F) clarifies that a parent's attorney, as well as the parent, may be the one responsible for unreasonably protracting the final resolution of a controversy between the parties, and could therefore trigger the court's reduction of attorneys' fees to the parent.

*Discipline*

In response to concerns expressed by school administrators, teachers, and even parents, the committee has revised section 615(k) to make it simpler, easier to administer, and more fair to all students.

S. 1248 distinguishes three categories of disciplinary actions that a school district can take. The first is paragraph (1)(A), the 10-day rule, which the bill retains from current law. Under this category, a school may order a change of placement for a child who violates a code of student conduct to an appropriate interim educational setting, another setting, or suspension, for 10 consecutive school days or less, to the same extent that it would apply such a discipline measure to a child without a disability. No manifestation determination is necessary in order to take action in this first category.

Some have expressed concern about the language “violation of school code” or “violation of a code of student conduct” contained in section 615. However, the committee notes that the 1997 law uses a similar phrase, and does not intend for the language in S. 1248 to have a different meaning.

In the second category, if a school chooses to discipline a child for a violation of the school code for a period beyond 10 consecutive school days, then the school can apply the same disciplinary procedures that it would apply to a child without a disability, as long as the school has determined that the violation in question was not a manifestation of the child’s disability. However, if the child’s disability did cause the violation of the school code, the “stay put” rule applies. However, the school, working through the IEP team, could obtain the parent’s consent to remove the child for more than 10 consecutive school days for disciplinary reasons.

The third category, similar to the 1997 law, covers cases involving weapons or drugs, and also adds a new situation to this category: when a child has committed serious bodily injury upon another person. The definition of “serious bodily injury” is taken from 18 U.S.C. 1365(3)(h), and means bodily injury which involves a substantial risk of death; extreme physical pain; protracted and obvious disfigurement; or protracted loss or impairment of the function of a bodily member, organ, or mental faculty. If a child commits acts involving any of these three instances, a school can remove the child from the regular classroom setting for up to 45 school days, regardless of whether the child’s behavior was a manifestation of his or her disability. Because of the inherent and immediate dangers connected with this category of cases, school personnel need to retain the ability to take swift action to address these situations, to ensure the safety of all students, teachers, and other such personnel. Indeed, Congress recognized this when it passed the Gun Free Schools Act, which provides that a State wishing to receive federal education dollars must have in place a State law requiring the one year expulsion of a student found with a firearm at school. If the child’s behavior is determined not to be a manifestation of the disability, regular disciplinary consequences can be applied in addition to the 45 day removal, subject to section 612(a)(1). Even if the child’s behavior is later determined to be a manifestation of his disability, the committee believes it is critical

that schools have the flexibility to keep the child out of his regular setting for up to 45 days.

When a disability has been determined to result in the child's behavior, a school will not be able to apply the same long term disciplinary procedures applicable to all children, but it does have the opportunity to work with the parent and the IEP team to determine what appropriate actions should be taken to address the child's behavior. The committee encourages parents to work with school personnel and the IEP team in a cooperative and common sense way in determining the best course of action for the child that results in the child's continued right to receive a free appropriate public education, and a safe and secure classroom for all children. The committee believes that a child's right to receive a free appropriate public education does not have to conflict with a safe and secure classroom for all.

For other cases involving a less immediate threat to safety, but which would result in a disciplinary removal lasting beyond 10 consecutive school days, the committee believes that a school must conclude that a child's behavior was not a manifestation of their disability before being able to remove the child from their regular classroom setting for more than 10 consecutive school days. This is, in fact, what the 1997 law requires. The committee has simply restructured the language to clarify the law.

The committee has also clarified and revised the law regarding manifestation determinations. First, the bill makes clear that a school does not have to conduct a manifestation determination prior to taking a disciplinary action of 10 consecutive school days or less, or prior to a 45 day removal for cases involving weapons, drugs, or serious bodily injury. Second, the bill uses a more simplified, common sense procedure for schools to use in making the actual manifestation determination. Under the 1997 law, schools were forced to prove a negative: that a child's behavior was not a manifestation of his or her disability based upon a complicated set of factors. Many schools found this test to be confusing and unfair. S. 1248 directs a school to determine whether the child's behavior was a manifestation of his or her disability based upon two questions: (1) Was the conduct in question the result of the child's disability; and (2) did the conduct result from the failure to implement the IEP or to implement behavioral interventions as required under section 614(d)(3)(B)(i)? If the answer to either of these questions is yes, then the school must conclude that the child's conduct was indeed a manifestation of his or her disability.

S. 1248 retains the 1997 law's requirement that a local educational agency must promptly notify parents of a disciplinary action in regard to their child, but puts this notification requirement in a separate provision to highlight its importance.

The bill also clarifies what services must be provided to a child who is removed from his or her current placement for more than 10 consecutive school days. The child must continue to receive educational services pursuant to the FAPE requirement of section 612(a)(1), so that he or she can continue to participate in the general curriculum (although in another setting), and progress toward meeting the goals in the child's IEP. Further, the school must take other actions designed to address the behavior violation so that it does not recur. The child must receive behavioral intervention serv-

ices under section 614(d)(3)(B)(i), which applies to children whose behavior impedes their learning or that of others. The child should also receive a functional behavioral assessment, but only if they did not receive such assessment before the violation occurred. The committee believes that this modified language better tracks the language in section 614. The bill also states that the IEP team shall determine the child's alternative educational setting.

S. 1248 lists the situations in which a party may request a hearing regarding disciplinary decisions or proposed disciplinary actions. A parent who disagrees with any decision of the school district regarding a disciplinary action, placement, or a manifestation determination, may request a hearing, as can a local educational agency that believes that maintaining the child's current placement is substantially likely to result in injury to the child or others. At the hearing requested by the parent, the hearing officer will determine whether the local educational agency's decision was appropriate. In a hearing held at the local educational agency's request, the hearing officer may order a change in placement of a child with a disability to an interim alternative educational setting for not more than 45 days upon a determination that maintaining the current placement is substantially likely to result in injury to the child or others. This is to address situations such as when a school cannot make a unilateral change in the child's placement because his behavior was a manifestation of his disability: the school deems the child to be too dangerous to stay in a regular classroom, but has been unable to reach agreement with the parent as to an appropriate alternative placement for the child.

The bill also changes the stay put rule in the 1997 law. The bill requires that, during a parent's appeal under section 615(k)(1)(B), the child shall remain in the interim alternative educational setting chosen by the IEP team pending the hearing officer's decision or until the time period for the disciplinary action expires, whichever occurs first, unless the parent and public agency agree otherwise. However, the hearing must occur within 20 days of the hearing request. Under paragraph (4), the child stays in an interim setting as well in all other cases. The committee does not intend that a parent can get a child removed early from the 45 day placement for weapons, drugs, or serious bodily injury if the manifestation determination is reversed. However, if a parent contests facts surrounding the claim the child actually carried a weapon, brought drugs to school, or committed a serious bodily injury, then the child may be returned to his or her original placement if a hearing officer overturns the school district's decision. Similarly, if a parent successfully contests the provision of FAPE in the interim alternative educational setting chosen by the IEP team, the child's placement could be changed before the 45 day period expires.

The committee maintains its intent that children who have not yet been identified for IDEA should be afforded certain protections under the law. However, the committee has heard many concerns regarding the abuses resulting from the provision in the 1997 law affording these protections. For example, under current law, a school is deemed to have knowledge that a child has a disability based on a claim that the child's "behavior or performance demonstrates the need" for special education and related services, or because a teacher made a stray, isolated comment expressing "con-

cern about the behavior or performance of the child” to another teacher. The committee believes that these provisions as written have had the unintended consequence of providing a shield against the ability of a school district to be able to appropriately discipline a student. Therefore, S. 1248 revises this provision to ensure that schools can appropriately discipline students, while maintaining protections for students whom the school had valid reason to know had a disability. Under two revised provisions, a school will be deemed to know about a child’s disability if the child has engaged in a pattern of behavior that should have alerted school personnel that the child may need special education and related services; and when a teacher or other school personnel has expressed concern about a pattern of behavior to either the special education director, or to other administrative personnel. The committee also makes clear that a school will not be deemed to know that the child has a disability if the child’s parent has refused to allow an evaluation requested by the school under section 614.

*Transfer of parental rights at age of majority*

The committee encourages States exercising their option to allow the transfer of parental rights at the age of majority to notify parents and students a year in advance to help them get prepared for assuming exercise of procedural safeguards rights under this Act (see section 614(d)(1)(A)(i)(VIII)(cc)).

*Monitoring, technical assistance, and enforcement*

Since its predecessor’s passage in 1975, Federal monitoring and enforcement of IDEA has primarily focused on State and local process implementation of special education. This was consistent with the general legislative purpose of the original act, in that schools were failing to deliver adequate education services to children with disabilities.

The underlying premise of the law was to educate children in a manner equal to their nondisabled peers. Particularly since the 1997 reauthorization and the enactment of the No Child Left Behind Act in 2002, a policy consensus among advocates and policy makers has formed that the next IDEA reauthorization must shift from process accountability to student performance accountability.

The revision of section 616 represents a significant departure from past practice of Federal monitoring and enforcement of IDEA. For the first time, the statute provides the Secretary with clear authority to take action against a State when there has been a persistent lack of progress in the area of student achievement. The new focus on substantive performance indicators under section 616 contrasts with previous statutory obligations to collect data, that primarily addressed demographic issues. The purpose of these provisions is to shift the Federal monitoring and enforcement activities away from SEA and LEA administrative process issues that have historically driven compliance monitoring, to a system that primarily focuses on substantive performance of students with disabilities.

Section 616(a) requires the Secretary to monitor implementation of the Act through oversight and a system of indicators and to enforce the Act. It also requires States to monitor implementation of the act by LEAs and enforce the act. The subsection requires that

the primary focus of Federal and State monitoring activities shall be on improving educational results and functional outcomes for all children with disabilities, while ensuring compliance with program requirements, with a particular emphasis on requirements relating to improving educational results for children with disabilities. The bill provides a list of priority areas which the Secretary must monitor: the provision of a free appropriate public education in the least restrictive environment, transition services, State exercise of general supervisory authority, and overrepresentation of racial and ethnic groups in special education and related services, to the extent the overrepresentation is the result of inappropriate policies, procedures, and practices.

Using the performance indicators that States must establish under section 612(a)(15), the Secretary will assess the performance of States in the areas of assessments, drop-out rates, and graduation rates.

The bill also requires that, within one year after enactment, States must develop a State Compliance plan in collaboration with the Secretary. This plan must include benchmarks to measure continuous progress on the priority areas listed above, as well as a description of strategies the State will use to achieve the benchmarks. The committee believes that it is appropriate for States, rather than the Secretary alone, to develop benchmarks, since demographic and other factors can vary widely among States. States are encouraged to solicit the comments of parents of children with disabilities in the development of benchmarks.

Section 616(c) provides the Secretary with new authority to take a number of actions when there has been a lack of satisfactory progress in regard to a State's indicators and benchmarks, or non-compliance with the Act. If a State has failed to make satisfactory progress in meeting its indicators or has failed to meet its benchmarks for two consecutive years, the Secretary may direct the use of State level funds for technical assistance and/or withholding not less than 20 percent but not more than 50 percent of the State's funds for State administration and activities. If, after 5 years, the State has failed to meet its benchmarks or make satisfactory progress in improving educational results for children with disabilities pursuant to the State indicators, the Secretary must take one or more of the following actions: seek to recover funds under section 452 of the General Education Provisions Act (GEPA); withhold (after notice and an opportunity for a hearing) payments to the State; referral for appropriate enforcement action, including referral to the Department of Justice; suspend payments to a recipient, or suspend the authority of the recipient to obligate Federal funds.

In addition, the subsection provides that if, at any time, the Secretary determines that a State is not in substantial compliance, or there is a substantial failure to comply with any conditions of the LEA's or SEA's eligibility, the Secretary shall take one or more of the following actions: request that the State prepare a corrective action plan; impose special conditions on the State's grant; require the State to enter into a compliance agreement under section 457 of GEPA; recovery of funds under section 452 of GEPA; withholding (after notice and an opportunity for a hearing) any further payments to the State; referral for appropriate enforcement action, including referral to the Department of Justice; suspending pay-

ments to a recipient; or suspending the authority of the recipient to obligate Federal funds.

Finally, if at any time a State is in egregious noncompliance or is willfully disregarding the provisions of this Act, the Secretary may take any of the above-described actions, and in addition, may either institute a cease and desist action under GEPA, or refer the case to the Office of the Inspector General.

The committee has also added a new provision, Section 616(e), dealing with State and local monitoring. State educational agencies are required to monitor and enforce implementation of the act and to implement a system for monitoring the benchmarks in the State's compliance plan, and States must also require LEAs to monitor and enforce implementation. The subsection also requires the SEA to prohibit the LEA from treating funds under the act as local funds under section 613(a)(2)(C) for any fiscal year if the SEA determines that a LEA is not meeting the requirements of the act.

#### *Model paperwork forms*

The committee understands that the paperwork forms associated with the Act are greatly varied from State to State and district to district. A standard IEP in one State could be seven pages while in a neighboring State that same child's IEP would be eighteen pages. While some of this variance is related to State or local policy, most of the differences relate to confusion regarding what the act requires. Section 617(d) of the bill requires the Secretary to develop model forms for the IEP, IFSP, prior written notice, and procedural safeguards notice. Each of these model forms will help inform local educational agency efforts as they develop their own forms and will result in decreased paperwork burdens while still ensuring that all of the requirements of the act are met.

#### *Program information*

S. 1248 retains the important data collection requirements under Section 618, while making some minor revisions. First, States will be required to make this data available to the public, as well as the Secretary. Second, States will be required to provide the number and percentage of children in various categories. Third, States must collect information on the categories of gender, and, where appropriate, limited English proficiency status. Fourth, section 618 expands the information that must be collected in relation to certain disciplinary actions, due process complaints and hearings, and mediations. Finally, the bill contains a new provision ensuring that the data which is collected by States must be reported in a manner that does not result in the disclosure of data identifiable to individual children.

#### *Preschool grants*

The bill makes minor technical and conforming changes to the section 619 Preschool Grants program. Throughout S. 1248, the committee stresses the importance of intervening early with children to reduce the future impact of disabilities and improve academic and functional outcomes for children. The services provided for under section 619 can be an integral component to a State's system of early intervention services to children with disabilities. Such services should include a strong educational component that pro-



motes schools readiness. The committee encourages preschool special education programs to place more emphasis on pre-academic skills for young children with disabilities, especially pre-literacy, pre-numeracy, and language skills.

*Amendments to Part C of the Individuals with Disabilities Education Act*

The early years of a child's development lay the groundwork for future years. The services that infants and toddlers with disabilities and their families receive, in many cases, may help prevent the need for more costly services once a child reaches school age. Recognizing the importance of early identification and intervention, the committee continues to believe that the Part C program plays a vital role in assisting children with disabilities and their families. New provisions affecting the Part C program are designed to: (1) Ensure that a greater number of children who are in need of early intervention services receive them, (2) provide for a more seamless transition of services from birth through school age, and (3) ensure that programs appropriately prepare children for preschool and school.

*Services and personnel*

S. 1248 revises section 632(4)(E) to clarify that sign language and cued language services are included in the definition of early intervention services. In addition, section 632(4)(F) provides that teachers of the deaf and vision specialists, including ophthalmologists and optometrists, are qualified personnel who may provide early intervention services.

*Program eligibility and child find*

To ensure that disabled and developmentally delayed children receive early intervention services, section 635(a) includes a new definition of the term "developmental delay." At a minimum, a State's definition of developmental delay must now cover all infants and toddlers with a 35 percent or more delay in any single developmental area, or a 25 percent or more delay in two developmental areas. The committee believes for the few States requiring even greater levels of delay, as a requisite to receiving early intervention services, are short-changing many infants and toddlers and their families who would benefit from such services. The new definition of developmental delay ensures that more children in need of early intervention services will qualify for them.

Research on early childhood development demonstrates that infants and toddlers who have been abused or neglected are at increased risk of significant delays in language, cognition, and behavior. In fact, these children have rates of developmental delay approximately four to five times that found among children in the general population. One study found that more than half of over 200 children in foster care under the age of 31 months had language delays. Too many infants and toddlers who have been abused or neglected are falling through the cracks and are not receiving the early intervention services for which they may be eligible.

As there is a strong need for improving collaboration between the child welfare and Part C systems in order to provide early inter-

vention services to abused and neglected children, the bill requires States to develop policies to require referrals of all children under age 3 in a substantiated case of abuse or neglect for evaluation, and if appropriate, early intervention services. The bill also requires States to require referrals for all children who are born and identified as affected by illegal substance abuse, or withdrawal symptoms resulting from prenatal drug exposure. These changes provide an important enhancement of the State child find system and will help States identify infants and toddlers who are in need of Part C services.

*Transition from early intervention to preschool*

Throughout Part C, the committee emphasizes the importance of planning for and providing a smooth transition from Part C services to Part B services. To this end, the bill requires that Individualized Family Services Plans (IFSP) include a description of transition services for the child, and specifies that transition services are a part of the responsibilities of a service coordinator. Many children who receive effective early intervention may not need to receive special education services later, so the bill also recognizes exiting from early intervention and special education services as a goal and a part of transition planning. When applicable, steps for exiting from early intervention must be included in transition plans, and State policies and procedures must include exiting as a part of ensuring a smooth transition from the program.

*State flexibility for seamless zero to five program*

As another effort to ensure the smooth transition from the Part C program to the section 619 program, Part C includes a new provision, specifically section 635(b), that would give States the option to create a comprehensive and fluid system of services for special needs children birth to school age. States choosing to participate would have the option to commingle Part C and Part B funds in order to better serve families with children with special needs.

The committee feels that parents and families should have a choice about the type of program and services their young children receive. The committee has heard from parents of children with disabilities who would prefer to keep the same provider and services for their child, until school age, as transition between the Part C program (infants and toddlers) and the section 619 program (preschool) can be difficult or undesirable for some parents. To address this concern, the committee included a provision that would authorize States to create a seamless system for infants, toddlers and preschoolers with disabilities, giving parents the opportunity to continue services with the provider of their choice.

Under this provision, if a State participates in this flexibility option, the Governor will select which agency administers the birth to school age special needs program. When a family with a special needs child receiving services under Part C reaches the age of exit, parents have the option to waive a free appropriate public education (FAPE) and remain in the Part C program, provided the Part C program includes an educational component that promotes school readiness and incorporates pre-literacy, pre-numeracy and language skills. Although parents will have waived FAPE to continue services under the Part C program, parents will continue to

have all of the procedural safeguards and due process rights that are provided under the Part C program.

As a result of a parent's decision to forgo participating in the Part B program before their child reaches school age, parents are choosing to continue receiving services under Part C including, continuing to pay any fees associated with services for their child through the Part C program. Instead of developing an individualized education plan (IEP), the family's individualized family service plan (IFSP) plan will continue to be followed and educational goals will be added.

States that choose to offer this seamless program shall ensure that parents of children who are eligible under Part B for preschool services are made fully aware of the differences between the Part C program and the Part B program. Any explanation of these differences must include a description of the types of services, procedural safeguards and potential costs to parents associated with the two programs. The committee believes that in addition to being notified annually of these differences, as is required under the bill; parents should also be made aware of these differences at the conference between the lead agency and family that is convened at least 90 days prior to a child being eligible to receive preschool services.

States participating in the seamless 0-5 program shall also ensure that the Statewide system include referrals for evaluations for early intervention services of a child below the age of three who experience exposure to trauma or violence or both.

As this is a new initiative, the bill includes a requirement (section 665(f)) that the Secretary conduct a study on the effects of this seamless system.

#### *Nature of early intervention services*

In 1997, the last time IDEA was reauthorized, a provision was added to require that early intervention services be provided in natural environments, and that such services be provided in another setting only when early intervention could not be achieved satisfactorily in a natural environment. S. 1248 requires that early intervention be provided in a natural environment, unless a specific outcome cannot be met satisfactorily in a natural environment. The committee continues to believe that infants and toddlers with disabilities should be served in natural environments with their non-disabled peers to the maximum extent appropriate, but this change gives parents and service providers more flexibility in determining when it is or is not appropriate to serve children in settings other than natural environments.

Consistent with the bill's overall focus on achievement and accountability, new provisions have been added to Part C to make the IFSPs more specific and outcome-oriented. In order to increase accountability for the progress of infants and toddlers, IFSPs must now include measurable outcomes, as opposed to major outcomes. These measurable outcomes should include, as appropriate, pre-literacy and language skills. Including these skills on an IFSP recognizes the role that early intervention plays in building the foundations for academic success. In addition to existing IFSP requirements the bill requires that IFSPs now include information on the anticipated length and frequency of services. The committee also

specifies that, when a parent does not provide written consent for all services on an IFSP, that only those services for which consent was obtained will be provided.

*Interagency coordination*

Many agencies and programs are involved in the delivery of Part C services, and the service system functions best and serves children better when strong linkages and collaborations between agencies and programs are formed. To encourage these linkages, S. 1248 adds a representative from the State Medicaid Agency as a required member of the State Interagency Coordinating Council. Because Medicaid plays such an important role in funding Part C programs, the committee believes the participation of this agency is essential to improving services for infants and toddlers with disabilities. The bill removes the requirement that the Department of Education establish a Federal Interagency Coordinating Committee (FICC) because the committee does not believe that it has been effective in coordinating policy at the Federal level.

*Payor of last resort*

In order to clarify existing uncertainty regarding public agencies' obligations and responsibilities of ensuring provision of, and ultimate financial responsibility for, services within a State, the committee has made expenditure of administrative funds by a State under section 611 and part C contingent upon a State's certification that the agreements to establish these responsibilities within a State are current.

The committee further clarifies in section 612 and section 640 that if there are instances when a public agency initially fails to provide or pay for the special education and related services but is required to do so under a State's current system of arrangements, the local educational agency that did so is authorized to claim reimbursement from the public agency that failed to provide or pay for such services pursuant to the current agreement, and the public agency that initially failed to provide or pay for such services is required to meet its financial responsibilities.

*Amendments to part D of the Individuals with Disabilities Education Act*

S. 1248 significantly restructures and reorganizes the various programs and activities under part D in order to enhance their impact on States, school districts, principals, teachers, related services providers and parents' efforts to improve the academic and functional outcomes of children with disabilities.

*Subpart 1, "state personnel preparation and professional development grants"*

The committee is aware that the most significant variable within the school related to student achievement is highly qualified teachers. The committee is also aware that the shortage of highly qualified special education teachers has persisted for over two decades and is predicted to continue to increase as the demand for special educators continues to grow. Many special education students are often provided instruction by individuals who are either untrained in working with students with their particular disability or do not

have sufficient content knowledge in the subject they are teaching. For example, a student with autism might be taught by a teacher who has never been trained in how to provide instruction for students with autism, while another child with a disability may be receiving direct instruction in mathematics from a special education teacher who lacks competency in that subject. Ensuring that children with disabilities have access to teachers who possess the knowledge (of core content areas) and skills (to teach children with varying levels of aptitude) is particularly important in light of the fact that the accountability requirements in the No Child Left Behind Act include children with disabilities.

As noted earlier in this report, S. 1248 includes a definition of highly qualified as applied to special education teachers, which acknowledges that special education teachers' responsibilities vary widely. Given the shortage of special education teachers and the new definition of "highly qualified" special education teacher, the deadline to ensure that all special education teachers employed by public schools are highly qualified was extended by one year, specifically the end of the 2006–07 school year.

The committee is aware that, given the expectation to meet the 2006–07 deadline, States will need to strengthen their personnel preparation and personnel development activities and programs. As a result, the committee significantly changed the emphasis of the State Improvement Grant Program, by: re-designating it as the State Personnel Preparation and Professional Development Program (SPPDP), targeting all funding exclusively to personnel preparation and professional development, and placing a strong emphasis on supporting States' efforts to recruit, train and retain highly qualified special education teachers. The committee encourages States to coordinate their efforts under this subpart with their efforts under NCLB to ensure that both special and regular education teachers are highly qualified and possess the knowledge and skills to successfully educate children with disabilities.

In tandem with the emphasis on teachers and personnel preparation, under the SPPDP States are required to partner with institutions of higher education in the State. The committee intends for States to utilize the expertise of institutions of higher education throughout the State to ensure the provision of special education pre-service support and professional development. Furthermore, it is the intention of the committee that, as feasible, several institutions of higher education throughout the State participate in the grants, reflecting the geographic diversity of the State and ensuring the inclusion of the range of expertise in the various institutions of higher education.

Currently, the State Improvement Grant Program is a competitive grant program. Under S. 1248, priority in awarding SPPDP grants is to be given to those States with the greatest personnel shortages or those States that demonstrate the greatest difficulty in meeting the personnel standards outlined in section 612(a)(14) and the 2006–07 highly qualified special education teacher deadline.

In their applications, States must provide an assurance that they will carry out each of the personnel preparation and professional development activities outlined in their professional development plan (a plan that is based on an assessment of the State and local

needs related to preparation, ongoing training and professional development of personnel serving children with disabilities). This requirement is designed to ensure that the plan crafted by the State is directly tied to the activities the State will actually implement.

Although the SPPDP program remains a competitive program at current funding levels, S. 1248 includes a provision that would trigger the program into a formula grant program once the appropriation reaches \$100 million, so that every State may benefit from the program.

The committee does not intend to terminate the State Improvement Grants that are currently in effect. Therefore, the bill includes language that ensures that current grant recipients under the SIG program are permitted to finish out their grant cycle. However, nothing in this section would prohibit these recipients from submitting a revised plan to continue out their grant cycle in accordance with S. 1248.

*Subpart 2, scientifically based research, technical assistance, model demonstration projects and dissemination of information*

*Comprehensive plan*

The bill includes minor modifications to the requirement that the Department of Education develop a comprehensive plan for the various activities under Subpart 2. One of those modifications was the elimination of the requirement that Secretary, in developing a plan, consult with a laundry list of individuals. Rather, S. 1248 directs the Secretary to develop and implement the plan after receiving input from interested individuals with relevant experience. The committee intends that at the very least, these individuals include individuals with disabilities and experts in the education of students with disabilities.

*Technical assistance and demonstration projects*

The bill includes a number of changes to the technical assistance section of Part D. Notably, unlike current law, the Secretary is now required to support activities that include: positively addressing and changing the inappropriate behavior of students; improving the alignment and development of valid and reliable assessment methods, including alternative assessments, for assessing adequate yearly progress as defined under NCLB; providing information to both regular and special education teachers to address the different learning styles of children with disabilities; and providing information on effective transition from school to post-school settings. The bill also includes a heavy emphasis that technical assistance and demonstration projects be rooted in scientifically based research.

In light of the fact that the vast majority of children with disabilities are served in a school environment and that changes to instructional practice yield the greatest likelihood in improving academic and functional outcomes of students with disabilities, S. 1248 stipulates that as appropriate, priority should be given to those applications that propose to serve teachers and school personnel directly in the school environment or that strengthen the capacity of States and schools districts to improve instruction practices of personnel serving children with disabilities.

*Personnel development*

Under S. 1248, Personnel Development to Improve Services and Results for Children with Disabilities (section 664) has been expanded. S. 1248 contains two new program authorities, specifically a program for beginning special education teachers and a program to assist general educators in meeting the needs of children with disabilities. These improvements in the law are made in acknowledgement of the pressing personnel needs that States face in ensuring an adequate supply of highly qualified special education teachers, as well as general educators who are skilled in working with students with disabilities and related services personnel.

The committee intends that the activities of grant recipients under section 664 address the State and local personnel needs identified in the State plan under Subpart 1.

The committee recognizes that one of the personnel challenges faced by States is the retention of special educators who are new to the profession. The turnover rate of special education teachers in the first 3 years is exceptionally high—much higher than for beginning general education teachers. Annual attrition rates for special education teachers are 6 percent for those who leave the field entirely and an additional 7.4 percent who transfer to general education, according to the National Clearinghouse for Professions in Special Education. High turnover is costly both for school districts, which must repeatedly fill the same positions, and for students, who lose the advantage of being taught by experienced special education teachers.

As a result of the recognition of the attrition problem that challenges the special education profession, S. 1248 establishes the Beginning Special Educators Program in section 664(e) of the bill. The program supports adding a 5th year clinical learning opportunity to existing programs and professional development schools that provide high quality and on-going mentoring to new special education teachers so that they will remain in the field.

The second new program authority is designed to help ensure that general educators (including principals and administrators) have the skills, knowledge, and leadership training to improve results for children with disabilities in their schools and classrooms. Funding under the State Personnel Preparation and Professional Development Grants as well as this new program authority in section 664(f) will support general educators in developing needed skills to work with students with disabilities. However, the committee notes that funds available under NCLB should be the primary source of support for general educators in receiving training in working with students with disabilities.

Another aspect of the shortage of special education teachers is the shortage of special education faculty. The number of special education doctorates produced annually has decreased by 30 percent in the last 20 years. One third of special education faculty openings remain unfilled every year. Twenty percent of those positions have been eliminated, thus diminishing the nation's training and research infrastructure in special education. As a result of this steady decline in special education faculty, the bill retains the Leadership Preparation program under section 664(d).

*Studies and evaluations*

With the passage of the Education Sciences Reform Act of 2002 (ESRA), Congress noted the importance of separating research and evaluation functions from program implementation. As a result, the Institute of Education Sciences was created. All research and evaluations of federal education programs are to be conducted by the Institute. Requiring that evaluations and studies of federal programs are conducted by an entity other than the program office helps to ensure the non-biased, balanced evaluation of the effects of federal education programs.

In keeping with this emphasis on moving all research functions to the Institute, S. 1248 stipulates that the Director of the Institute of Education Sciences is responsible for carrying out the various studies and evaluations (including the national assessment) on the various activities carried out under IDEA. Although the bill grants authority over studies and evaluations to the Director of the Institute for Education Sciences, the committee expects the Director to engage in ongoing and substantive collaboration with the Assistant Secretary for Special Education and Rehabilitative Services in proposing priorities for all studies and evaluations authorized and conducted under this section.

*Study on ensuring accountability for students with significant disabilities*

The 1997 law required States to develop and implement alternate assessments for students unable to participate in regular assessments. Since 1997, many States have developed exemplary alternate assessment programs, while others continue to struggle with assessing children with significant disabilities. The committee believes the successful alignment of alternate assessments with State academic content and achievement standards (including as appropriate alternate achievement standards) is a necessary component to ensuring accountability for the performance of all children with disabilities, including those with significant disabilities. Therefore, S. 1248 includes a new comprehensive study, in section 665(c), on the issue of alternate assessments. The study should be designed to provide data on the types and effectiveness of existing alternate assessment and to improve the technical quality of these assessments. The committee intends that the findings of the study serve as a resource to States and local educational agencies in developing valid and reliable alternate assessment instruments and procedures in order to accurately measure student progress and outcomes specific to individualized instructional needs and to ensure accountability for such students.

*Activities to address different learning styles*

The committee is interested in professional development programs that prepare school personnel to use a neurodevelopment framework to recognize, understand, and manage students who struggle to find school success because of differences in learning. The committee is also interested in educational evaluations that provide a more in-depth profile of a student's neurodevelopmental strengths and weaknesses. Finally, the committee supports research that could determine the impact of such professional development and educational evaluation programs on student outcomes;



on economic benefits to special education service delivery through more effective pre-referral services, and finally, on teacher recruitment and retention.

*Subpart 3, supports to improve results for children with disabilities*

*Parent training and information centers*

The committee recognizes the critical role that parent training and information centers (PTIs) play in helping parents and schools work together to ensure that children with disabilities receive the educational and related services necessary to improve educational performance. The committee has made minor revisions to emphasize that PTIs should encourage parents and schools to work in the most cooperative and effective manner possible, to help children with disabilities meet developmental and functional goals, as well as challenging academic achievement goals that have been established for all children. In particular, the committee hopes that PTIs will encourage parents to explore and take advantage of alternative methods of dispute resolution, as well as inform parents of their rights and responsibilities under IDEA. The committee also envisions the involvement of PTIs in helping parents prepare for resolution sessions as now required under section 615(f)(1)(B) of the bill, in the hope that more disputes can be resolved before the parties must resort to a due process hearing.

Section 671(e) changes the 1997 law to ensure that the Secretary makes an award to at least one PTI in each State. If the Secretary makes multiple awards in a large State, those awardees must demonstrate that they will coordinate services and supports among themselves. In addition, the committee has limited the definition of PTI to only groups whose mission is to serve families of children and youth with a full range of disabilities. The use of other organizations with a narrower focus, operating with special governing committees, has proven to be unworkable and ineffective.

The committee heard extensively from Community Parent Resources Centers (CPRCs) that the Department of Education's awards to CPRCs are for a considerably shorter length of time than with PTIs. This has created an undue hardship for CPRCs, as they are forced to spend more of their time reapplying for grants, which takes time and resources away from their mission of serving underserved parents of children with disabilities. The committee encourages the Department to reexamine its contract practices with CPRCs, and consider increasing the length of its grants with these entities.

Section 673 limits technical assistance awards to parent organizations, as the existing system has proven itself to be an effective model for over 15 years. The national technical assistance system in place has the capacity to identify new research, best practices, and policies, and disseminate them to the entire network of parent centers. Parent-led technical assistance providers have credibility with PTIs, as they can understand the challenges of providing parent-to-parent support and have the personal expertise to address the needs and problems of PTIs.

The bill also requires the national technical assistance grantee to establish no fewer than 4 regional centers from PTIs and CPRCs receiving assistance under IDEA. These regional centers shall be

selected on the basis of the center's willingness to be a regional parent center; demonstrated expertise in delivering the required services; demonstrated capacity to deliver the activities; and a history of collaboration with other parent organizations. In addition, the national grantee must also develop collaborative agreements with geographically appropriate Regional Resource Centers.

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

The committee believes that the internet can be an important educational tool for students with cognitive disabilities and that developing internet literacy can assist students with cognitive disabilities in developing effective communication skills and increasing academic and functional skills.

The committee intends that the Secretary primarily support educational media activities that are appropriate for use in the classroom. It is critical that children with disabilities have full access to the various educational media that are used in school settings. Therefore, funds are available under this section for grants to caption and/or video describe television programs, videos, news, or other materials, as well as emerging technologies such as CDs, DVDs, video streaming and other forms of multimedia.

Congress has already addressed the broader need to expand media access for deaf or hard of hearing and blind or visually disabled persons in non-classroom settings. The Television Decoder Circuitry Act of 1990, requires all new television sets to contain a decoder chip that is capable of displaying closed captioned television transmissions. The Telecommunications Act of 1996 (along with a 1997 FCC rulemaking) also contains extensive requirements for the provision of closed captioning, mandating that most television programming be closed captioned by 2006, and requiring captioning of gradually increasing percentages of programming before that date. All program distributors, providers, and owners must comply with this Telecommunications Act closed captioning mandate. Under the terms of this mandate, 100 percent of new programming must be captioned by January 1, 2006, while 75 percent of non-exempt programming produced or aired before January 1, 1998 must be closed captioned by 2008. The FCC's limited exemptions under this rule include advertisements under 5 minutes in length, promotional and interstitial programming, limited late-night programming, and programming by networks that have not existed for at least 4 years. In addition, since 2000, 47 CFR section 79.2 has required all video programming distributors (including broadcasters, cable operators, and satellite television services) to make "emergency information" accessible to persons with hearing and vision disabilities. Under this rule, "emergency information" is considered information that helps to protect life, health, safety, or property—and can include information about immediate weather situations or other emergencies. In light of such steps that have already been taken to expand media access generally, the committee believes that the Department of Education should focus its resources under the Educational Media Services program on the goal of promoting full access for children with disabilities to educational materials used in the classroom. The bill will ensure that the Department focuses resources in this way by requiring the Secretary

to support video description, open captioning, and closed captioning of television programs, videos, or other materials that are appropriate for use in the classroom setting, and by only allowing support for news until September 30, 2006, when such services are not provided by the producer or distributor of such materials, or when those services have been fully funded by other sources.

Although open and closed captioning were developed specifically for the use of individuals who are deaf or hard of hearing, researchers studying means by which to increase literacy are exploring the possibility that captioning can also be used as an effective tool to assist children without disabilities who are not proficient readers. Research being conducted includes an examination of children for whom English is a second language, as well as children who are learning disabled. Various studies have indicated that captioning assists in the development of reading vocabulary and comprehension. These studies support a finding that captioning instructional materials also assists students who are not deaf and hard of hearing. The committee believes that captioning is an effective tool that can be used to promote acquisition of vocabulary and enhanced reading comprehension for all students in the classroom.

*Interim alternative educational settings, behavioral supports,  
and whole school interventions*

S. 1248 creates a new subpart (sections 681–85) which authorizes the Secretary to award competitive grants to establish or expand behavioral supports and whole school behavioral interventions activities. The program is aimed at improving services and ultimately, academic, social, and where appropriate, functional outcomes for children with behavioral and emotional disabilities, who represent 11 percent of America's youth.

Children with disabilities who also have significant social, emotional, and/or behavioral needs face the greatest challenges for our educators. Without effective interventions, these students are more likely to experience long-term negative outcomes, including vocational and mental health problems, throughout their lives. School personnel have identified a need for ongoing training to recognize and/or address the problems of these children.

According to the U.S. Department of Education, students with emotional disabilities have the lowest grade point average, fail more courses, are retained more, have the highest rate of absenteeism, and are more likely to drop out of school than any other group of students with disabilities. Approximately two-thirds of these children also have Attention Deficit/Hyperactivity Disorder. These students—and all others with behavioral challenges—need and deserve effective, research-based interventions to succeed in school and in life.

According to the Study of Personnel Needs in Special Education, over half of beginning teachers who serve primarily students with emotional disturbance are not fully certified for their positions, and the vast majority of regular education teachers receive little to no training in how to help special needs students with behavioral and emotional problems.

This program authorizes \$50 million to address the pressing need for well-trained teachers, administrators and support staff to help behaviorally-challenged students with disabilities to succeed

in school. These funds will go directly to local educational agencies, who may partner with other LEAs, community-based organizations with a proven record of helping children with disabilities with behavioral problems, and/or other mental health providers. The funds may be used for providing effective, research-based training for teachers, administrators, and support staff in positive behavioral interventions and classroom and student management techniques; providing early screening efforts for students at-risk for emotional and behavioral difficulties; attracting and retraining high-quality staff in interim alternative educational settings; promoting better coordination between schools, parents, juvenile courts, child welfare, organizations, primary care providers and mental health providers; reducing the staff-child ratio in interim alternative educational settings; providing counseling service in interim alternative educational settings; and allowing for behavioral transition services to help students reintegrate into their regular school settings; and more.

This provision also requires the Department of Education to maintain a website that is accessible to parents, teachers, and administrators that contains information on the best practices and supports available to help address the needs of these children. The committee hopes that this website will be user friendly and contain valuable, practical information about proven methods for helping children with disabilities who also have behavior problems succeed in school and in life.

Each organization or consortium of organizations receiving a grant under this subpart is required to submit an evaluation of the effectiveness of the activities supported by the grant. It is the committee's hope that the lessons learned from these evaluations will be analyzed and posted on the website so that all interested people can benefit from the reports.

#### TITLE II—AMENDMENTS TO THE REHABILITATION ACT OF 1973

With unemployment rates of adults with disabilities approaching 70 percent, the need to improve the transition of youth with disabilities from school to postsecondary education and employment is significant. With an increased focus on improved results in education, providing a successful transition to post-school employment or education is an essential measure of accountability for students with disabilities.

A 2003 General Accounting Office report states that poor linkages between schools and youth service providers and a lack of community work experience impedes the successful transition of youth. Without the involvement of agencies that support youth with disabilities, the responsibility for transition is left to special education teachers who may not have the capacity or training to access the necessary community resources.

The major Federal program that can assist youth with their postsecondary transition is the Vocational Rehabilitation (VR) program under the Rehabilitation Act of 1973, as administered by the Department of Education. The involvement of the VR program in transition provides students with disabilities and special education teachers with assistance, training, and access to community resources that can be critical to success. However, many youth with disabilities who are eligible for VR services while in high school do

not access them because they lack knowledge of the program or the program does not have the capacity to serve all those who are eligible.

To improve and expand the provision of vocational rehabilitation service to students with disabilities during their transition years, Title II of S. 1248 makes certain amendments to the Rehabilitation Act. The committee adds definitions of the terms “student with a disability” and “students with disabilities” to clarify the meaning of the terms in the Rehabilitation Act. For the purposes of that Act, a student with a disability is an individual with a disability attending an elementary or secondary school who is not younger than 14 and not older than 21; who has been determined to be eligible for assistance under section 102(a) of the Rehabilitation Act; is eligible for, and is receiving, special education under part B of the Individuals with Disabilities Education Act or is an individual with a disability, for purposes of section 504 of the Rehabilitation Act.

To improve planning and coordination, the section 203(a) of the bill amends section 101(a)(15) of the Rehabilitation Act to require States to address the needs of students with disabilities as a part of the State’s comprehensive Statewide assessment of vocational rehabilitation needs and to describe the methods to be used to expand and improve services to students with disabilities, including the coordination of services designed to facilitate the transition of such students to post-secondary education or employment.

Section 203(b) of the bill adds a new paragraph to section 101(a) of the Rehabilitation Act to require each State to assure that it has implemented the strategies developed as part of its assessment and planning process for expanded transition services. The bill establishes a trigger to target \$50 million for the expanded transition services beginning in the first year that the appropriation under section 100(b) exceeds the FY2004 appropriation by \$100 million. States would be required to use these targeted funds to carry out programs or activities to improve and expand services that facilitate student transition, improve the achievement of post-school goals, support training and technical assistance to personnel, support outreach activities, and to provide vocational guidance, career exploration services, and job search skills to students with disabilities.

The committee intends that students with disabilities served with targeted funds provided under new section 110A of the Rehabilitation Act be subject to the “order of selection” requirement in section 101(a)(5) as are other eligible individuals served with funds under section 100(b). However, the committee expects that States would implement a separate order of selection based on the State agency’s ability to serve all eligible students with disabilities with the targeted funds available under section 110A.

Under current law State VR agencies may provide consultative and technical assistance services to assist educational agencies in planning for the transition of students with disabilities from school to post-school activities. In a transition services expansion year, Section 204 would expand the authorized activities under the services to groups authority to also include the provision of training and technical assistance of local educational agency personnel and VR State agency personnel responsible for the planning and provision of services to students with disabilities.

Section 204 also authorizes State VR agencies to provide services to groups of IDEA and “504 students” to assist them in their transition from school to post-school activities. Although the committee believes that most of these students would be eligible for VR services, the new provision would allow the State agency to provide group services for these students without having to determine their eligibility under section 102(a). For example, the State agency could use its Title I funds to provide a career exploration or job seeking skills workshop for a group of IDEA and 504 students without the burden of requiring that an eligibility determination be made for each of the students who wishes to participate in the group.

Section 205 of the bill amends the program’s evaluation standards and performance indicators in section 106 of the Rehabilitation Act to require that they include measures of the program’s performance with respect to the transition of to the post-school activities, and the achievement of the post-school goal, of students with disabilities served under the program.

#### TITLE III—NATIONAL CENTER FOR SPECIAL EDUCATION RESEARCH

As previously mentioned, with the passage of the Education Sciences Reform Act of 2002, Congress noted the importance of separating research and evaluation functions from program implementation. As a result, S. 1248 moves research authority on special education issues from the Office of Special Education Programs to the Institute of Education Sciences (IES). As all other education research is to be conducted by IES, the committee believes it is important that special education research be conducted by IES as well.

The committee wishes to note that unlike most other education research, which is conducted by the National Center for Education Research, S. 1248 establishes a specific center just for special education research, specifically the National Center for Special Education Research. The bill further stipulates that the Special Education Research Center be headed by a Commissioner who has a high level of experience in the fields of research, and the education of children with disabilities. The bill also requires the Commissioner to collaborate with the Assistant Secretary for Special Education and Rehabilitative Services in developing a research plan. This requirement is consistent with the committee’s expectation that special education and early intervention research will continue to be closely linked with the functions of the Office of Special Education and Rehabilitative Services. The committee intends for the Secretary to ensure continued and substantive collaboration between the Center and the Office of Special Education and Rehabilitative Services.

The committee expects the Center’s research plan to support research that addresses the early intervention, special education, and transition needs of children with disabilities and their families so that State and local agencies may be better equipped to serve these children and their families.

One of the reasons research is moved from the OSEP to IES is to improve the overall quality and rigor of special education research and to ensure that such research be held to the same high

standards of validity and reliability that govern all other research at the Department of Education.

The committee intends that the Commissioner conduct research regarding children with significant disabilities. However, the committee acknowledges that conducting research on the needs of students with significant disabilities often requires the use of a broad range of research designs and methodologies, including single subject designs and rigorous qualitative research. The Commissioner is expected to examine and take into account the methodological challenges of research on students with significant disabilities in carrying out the research responsibilities of the Center.

On the issue of disseminating research conducted by IES, the committee expects the Department to disseminate the research findings of the Center for Special Education Research through the programs of technical assistance administered by the Department, including through the systems of technical assistance and dissemination, model demonstrations, parent training and information centers, and community parent resource centers established under Part D of the Act. The committee also encourages linkages between the Center and other programs conducting disability research, such as the National Institute on Disability and Rehabilitation Research, and the University Centers for Excellence in Developmental Disabilities Education, Research, and Service established by P.L. 106-402, the Developmental Disabilities Assistance and Bill of Rights Act of 2000.

Finally, the committee wishes to highlight that S. 1248 requires the Secretary of Education to take the appropriate steps necessary to ensure an orderly transition of special education research from OSEP to IES. Furthermore, the bill stipulates that the Secretary continue research awards that were made under OSEP, prior to the new law going into effect, in order to ensure that existing research grants are not adversely impacted by the transition. The committee expects the Secretary to provide information to the committee regarding the progress of the transition of research activities from OSEP to IES.

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

Title IV of S. 1248 establishes a Commission to study, evaluate, and make appropriate recommendations to the Congress and the Secretary on universal design and accessibility of curriculum and instructional materials and outlines the purpose of the Commission.

#### VI. COST ESTIMATE

Due to time constraints the Congressional Budget Office estimate was not included in the report. When received by the committee, it will appear in the Congressional Record at a later time.

#### VII. REGULATORY IMPACT STATEMENT

The committee has determined that there will be no increase in the regulatory burden imposed by this bill.

### VIII. APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

S. 1248 improves State grant programs and reauthorizes related support programs that assist in providing a free appropriate public education to children with disabilities; amends the Rehabilitation Act of 1973 to improve and expand the provision of vocational rehabilitation services to students with disabilities during their transition years; moves research authority on special education programs from the Office of Special Education Programs to the Institute of Education Sciences; and establishes a Commission to study, evaluate, and make recommendations regarding universal design and the accessibility of curriculum and instructional materials. As such, S. 1248 has no application to the legislative branch.

### IX. SECTION-BY-SECTION ANALYSIS

Section 1 of the bill provides that the title of the Act is the “Individuals with Disabilities Education Improvement Act of 2003.”

Section 2 provides that the legislation is organized into four titles: title I, Amendments to the Individuals with Disabilities Education Act; title II, Amendments to the Rehabilitation Act of 1973; title III the National Center for Special Education Research; and title IV, the Commission on Universal Design and the Accessibility of Curriculum and Instructional Materials.

Section 101 of the bill amends the current provisions of the Individuals with Disabilities Education Act as follows.

#### *Part A*

Section 601 contains the short title of the Act, the Table of Contents, the findings, and the purposes.

Section 602 defines key terms used in this title, including: Assistive Technology Device, Assistive Technology Service, Child with a Disability, Core Academic Subject, Educational Service Agency, Elementary School, Equipment, Excess Costs, Free Appropriate Public Education, Highly Qualified Special Education Teacher, Consultative Services, Indian, Indian Tribe, Individualized Education Program, Individualized Family Service Plan, Infant or Toddler with a Disability, Institution of Higher Education, Limited English Proficiency, Local Educational Agency, Native Language, Nonprofit, Outlying Area, Parent, Parent Organization, Parent Training and Information Center, Related Services, Secondary School, Secretary, Special Education, Specific Learning Disability, State, State Educational Agency, Supplementary Aids and Services, and Transition Services.

Section 603 authorizes the Office of Special Education Programs headed by a Director who is selected by the Secretary and also authorizes the Secretary to accept the work of volunteers in carrying out the Act.

Section 604 denies a State immunity under the Eleventh Amendment to the Constitution of the United States for violating this Act. This section also provides for remedies for a violation and for an effective date for the provision with respect to violations.

Section 605 authorizes the acquisition of equipment and construction of necessary facilities, and provides that any construction must meet specified accessibility standards.



Section 606 directs each recipient of funds under this act to make positive efforts to employ individuals with disabilities in programs assisted under this Act.

Section 607 includes requirements for prescribing regulations, issuing policy letters by the Department of Education, and the publication of correspondence from the Department of Education describing interpretations of this Act.

Section 608 requires States receiving funds under this Act to ensure that any State rules, regulations and policies relating to this Act conform to the purposes of this Act and to identify in writing to its local educational agencies and the Secretary any rule, regulation, or policy as a State-imposed requirement that is not required by this Act and Federal regulations. State rules, regulations and policies under this Act shall support reform designed to enable children with disabilities to meet State student academic achievement standards.

Section 609 requires the Comptroller General to conduct a review of the Federal, State, and local requirements relating to the education of children with disabilities to determine which requirements result in excessive paperwork and to make strategic proposals for reducing paperwork burdens on teachers.

#### *Part B*

Section 611(a) authorizes the Secretary to provide grants to the States and outlying areas and funds to the Secretary of the Interior to provide special education and related services to children with disabilities and specifies the maximum amount available for awarding grants.

Section 611(b) requires a reserve from funds appropriated under subsection (i) to provide assistance to the outlying areas and to provide each freely associated State that meets relevant requirements a grant equal to the amount it received under this part in FY2003.

Section 611(c) specifies the proportion of funds to be provided to the Secretary of the Interior.

Section 611(d) includes the allotment formula for making part B grants to States based on an initial allotment of the State's FY1999 grant with 85 percent of remaining funds distributed on population, 15 percent of remaining funds distributed on poverty and certain limitations on how much States' grants can increase from one year to the next.

Section 611(e) specifies the States' use of part B funds, including the use of funds for State administration and other State-level activities. State reserves for administration are limited to the greater of the amount reserved for FY2003 or \$800,000 increased by inflation for subsequent years. State reserves for other State-level activities are linked to percentages of the overall grant for FY2004 and FY2005, with reserves thereafter through FY2009 increased by inflation. States must also reserve 2 percent of their State grant (less the amount reserved for State administration) to establish a risk pool, or fund an existing risk pool, to provide funds to LEAs serving high-need children with disabilities.

Section 611(f) specifies the allotment formula for subgrants to LEAs, which is similar to the State grants formula.

Section 611(g) contains definitions of "average per-pupil expenditure" and "State" applicable to this section.

Section 611(h) addresses the use of funds provided to the Secretary of the Interior for the education of children with disabilities living on reservations or enrolled in elementary or secondary schools for Indian children operated or funded by the Secretary of the Interior.

Section 611(i) authorizes the appropriation of such sums as may be necessary for the purpose of carrying out part B, except for section 619, which authorizes services for preschool children with disabilities ages 3 to 5.

Section 612(a) describes the policies and procedures that a State must have in effect to be eligible for receipt of funds under part B of the Act, including policies and procedures relating to: Free Appropriate Public Education; Child Find; Individualized Education Program; Least Restrictive Environment; Procedural Safeguards; Evaluation; Confidentiality; Transition from part C to Preschool Programs; Children in Private Schools; State Education Agency Responsible for General Supervision; Obligations Relating to and Methods for Ensuring Services, including designation of financial responsibility; Procedural Requirement Relating to LEA Eligibility; Personnel Standards; Performance Goals and Indicators (including provisions to align IDEA with the No Child Left Behind Act (NCLBA)); Participation in Assessments (including provisions to align IDEA with the NCLBA); Supplementation of State, Local and other Federal Funds; Maintenance of State Financial Support; Public Participation; State Advisory Panel; Supervision and Expulsion Rates; and Accessibility Standards for Instructional Materials.

Section 612(b) lists the additional requirements under section 613(a) that a State Education Agency must meet if it provides a free appropriate public education or direct services to children with disabilities.

Section 612(c) includes conditions under which States are required to submit amended policies and procedures to the Secretary, and the Secretary's responsibilities under this section.

Section 612(d) describes what actions the Secretary must take in approving a State's eligibility, and before making a final determination that a State is not eligible.

Section 612(e) provides that nothing in the IDEA permits a State to reduce medical and other assistance available, or to alter eligibility, under Titles V and XIX of the Social Security Act (Maternal and Child Health Services and Medicaid) with respect to the provision of a free appropriate public education for children with disabilities within the State.

Section 612(f) directs the Secretary to arrange for the provision of special education to children with disabilities in private schools if, in 1983, a State was prohibited by State law from providing that education.

Section 613(a) sets out the local eligibility requirements under part B. The section provides that to be eligible for any fiscal year, an LEA must demonstrate to the satisfaction of the SEA that its policies, procedures, and programs are consistent with the State policies and procedures described under section 612; and that the LEA uses its part B funds in accordance with the specified requirements of this section; meets the personnel development requirements; and provides the SEA with information to enable that agency to carry out its duties under this part. The section permits LEAs

to treat as local funds a portion of their part B grant for the purposes of meeting non-supplanting and maintenance of effort requirements. The section also permits LEAs to use the part B funds for various specified purposes, such as early intervention services and case management and administration. The section addresses the treatment of charter schools and the disabled children that they serve under part B, including equitable provision of on-site services and funding to such schools.

Section 613(b) includes conditions under which LEAs are required to submit amended policies and procedures to the SEA, and the SEA's responsibilities under this section.

Section 613(c) provides that if the SEA determines that an LEA or a State agency is not eligible under this section, it must notify that agency of its determination and provide the agency with reasonable notice and an opportunity for a hearing.

Section 613(d) provides that if an eligible LEA or State agency is failing to comply with any requirement under section 613(a), the SEA shall not make any further payments to that agency until it comes into compliance.

Section 613(e) sets out conditions under which an SEA may require an LEA to establish its eligibility jointly with another LEA, and describes the conditions under which an educational service agency and a charter school would be exempted from this section.

Section 613(f) permits an LEA to use up to 15 percent of its annual part B allotment for early intervening services for children who have not been identified as needing special education but who need additional academic and behavioral support to succeed in school.

Section 613(g) requires the SEA to use the payments that otherwise would have been available to an LEA or State agency to provide special education and related services directly to children with disabilities for whom the agency is responsible, if the SEA determines the existence of one or more specified situations.

Section 613(h) requires any State agency that desires to receive a subgrant for any fiscal year under part B to demonstrate to the satisfaction of the SEA that the agency meets the conditions described in the section.

Section 613(i) permits States to require LEAs to include in a disabled child's records information about disciplinary action taken against the child to the same extent that such information is included in the records of other children.

Section 613(j) permits States that pay at least 80 percent of non-Federal special education costs to treat portions of Federal funds as general funds to support educational purposes described in the Elementary and Secondary Education Act of 1965 and for other education-related purposes.

Section 614(a) sets out requirements relating to initial evaluations (as requested by the child's parents, the LEA, the SEA, or another State agency), parental consent and refusal or failure to consent (in which case the LEA is not considered in violation of the requirement to provide FAPE), and reevaluations (which shall occur not more frequently than once a year but at least every 3 years, unless the parent and the LEA agree that more frequent or less frequent reevaluations are needed).

Section 614(b) includes requirements for procedures relating to providing notice to parents about evaluations, and conducting evaluations, including that an LEA shall not be required to consider a severe discrepancy between achievement and intellectual ability in determining whether a child has a specific learning disability.

Section 614(c) includes additional requirements relating to evaluating and reevaluating a child's eligibility under part B; reviewing existing evaluation data, obtaining parental consent for reevaluations, actions to take if additional data are not needed, and evaluations before changing eligibility (except that such evaluation is not required if eligibility is to be changed because of graduation or the age of eligibility for FAPE has been exceeded).

Section 614(d) includes definitions of "individual education program" (IEP), which includes the child's current levels of performance, measurable annual goals, the measurement of progress on these goals, the special education and related services to be provided, an explanation if the child is not to be educated with non-disabled children, accommodations that will be provided for assessments, and post-IDEA goals and transition services when the child reaches the age of 14. The section defines the "IEP Team"; which develops and re-evaluates the IEP and which includes the child's parent, at least one special education teacher and one regular education teacher (if the child participates in the regular classroom environment), LEA representative, other individuals with special expertise, and the child (if appropriate). Not all team members need to attend all IEP meetings if there is agreement among the parent, the LEA, and the team member in question. The section requires that an IEP be in effect at the beginning of each school year for each child with a disability and requires LEAs to ensure that the IEP team reviews each IEP periodically, but not less than annually, and revises the IEP, as appropriate. The section permits the LEA to offer the option of a 3-year IEP when a child with a disability reaches the age of 18. Finally, the section includes provisions relating to children with disabilities in adult prisons.

Section 614(e) requires that each SEA or LEA ensure that the parents of each disabled child are members of any group that makes decisions on the educational placement of their child.

Section 614(f) permits alternative means of holding IEP meetings, such as video conferencing and conference calls, if the parent and the LEA agree.

Section 615(a) provides that any SEA, State agency, or LEA that receives part B funds must establish and maintain procedures to assure that children with disabilities and their parents are guaranteed procedural safeguards with respect to the provision of a free appropriate public education.

Section 615(b) requires that procedural safeguards include: Parental opportunity to examine all records on their child, to participate in meetings, and to obtain an independent educational evaluation of the child; procedures to protect the rights of the child whenever the parents are not known, cannot be located after reasonable efforts, or the child is a State ward, including appointing a surrogate parent for the child; written prior notice to the parents, provided in their native language, unless it is clearly not feasible to do so, whenever the LEA proposes to initiate or change or refuses to initiate or change the identification, evaluation, or educational

placement of the child or the provision of a free appropriate public education to the child; an opportunity for mediation and to present complaints; procedures that require either party, or the attorney representing a party, to provide due process complaint notice, including information about the child, contact information in the case of homeless child, the problem, and a proposed resolution known and available at the time; a requirement that a party may not have a due process hearing until the party or the attorney representing the party files the required notice; a requirement that the LEA send a prior written notice in response to a parent's due process complaint notice if the LEA has not sent such a prior written notice to the parent regarding the subject matter of the complaint; and procedures that require the SEA to develop a model form to assist parents in filing a complaint and due process complaint notice.

Section 615(c) describes the content of the prior written notice provided by the LEA and requirements regarding the due process complaint notice.

Section 615(d) describes the content and timing of the procedural safeguards notice given to the parents.

Section 615(e) requires SEAs or LEAs to make mediation available to parties to a dispute, but provides that it is voluntary for both parties, is not used to deny or delay a parent's right to a due process hearing under section 615(f), or to deny any other rights afforded under part B, and is conducted by a qualified and impartial mediator who is trained in effective mediation techniques. The section allows LEAs to establish procedures to offer to parents and schools who choose not to use the mediation process, an opportunity to meet with a disinterested party under contract with a parent training and information center, community parent resource center, or other alternative dispute resolution entity to explain the benefits of mediation and encourage its use. The subsection also requires the State to maintain a list of qualified mediators, requires the State to bear the cost of the mediation process, requires that each session in the mediation process shall be scheduled in a timely manner and shall be held in a convenient location, requires that an agreement reached by the parties shall be set forth in a written mediation agreement that is enforceable in court, and requires that mediation discussions shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding. The parties to a mediation may be required to sign a confidentiality pledge.

Section 615(f) requires that whenever a complaint has been received, the parents or LEA involved in the complaint must have an opportunity for an impartial due process hearing conducted by the SEA or LEA. The subsection requires that prior to the opportunity for a due process hearing, the LEA shall convene a meeting with the parents and the IEP team where the parents shall discuss their complaint and the LEA is provided the opportunity to resolve the complaint. The subsection requires the disclosure of evaluations and recommendations prior to a due process hearing. The subsection also requires that the hearing officer conducting the hearing meet certain requirements; the party requesting the due process hearing shall not be allowed to raise issues at the hearing that were not raised in the notice required by section 615(b)(7) unless

the other party agrees; nothing shall be construed to preclude a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed; and that the decision of the hearing officer be made on substantive grounds based on a determination of whether the child received a free appropriate public education, except that in certain cases involving procedural violations, a hearing officer may find that a child did not receive a free appropriate public education. Nothing is to be construed to preclude a hearing officer from ordering an LEA to comply with the procedural requirements of section 615. The subsection contains a two-year time limit on the request for a due process hearing with certain exceptions.

Section 615(g) provides that any party aggrieved by a due process hearing conducted by the LEA may appeal the decision to the SEA.

Section 615(h) lists the procedural safeguards rights that are available to any party to a due process hearing or an appeal, including the right to a written, or, at the option of the parents, electronic verbatim record of the hearing and electronic findings of fact and decisions.

Section 615(i) provides that any party aggrieved by the findings and decision in a hearing under section 615(f) or (k) or in section 615(g) has the right to bring a civil action in a State court or in a District Court of the United States without regard to the amount in question. The party bringing the action shall have 90 days from the date of the decision of the hearing officer to bring the action or, if there is an explicit State time limitation, such time as the State law allows. This subsection permits the award of attorneys' fees with certain exceptions, lists the considerations for reducing attorneys' fees, and also provides that a parent of a child with a disability may represent their own child in court.

Section 615(j) provides that, except as provided in 615(k)(4), the child must remain in the current educational setting while any proceedings conducted under this section are pending. However, if the child is applying for initial admission to a public school, the child shall, with the consent of the parents be placed in the public school program until completion of the proceedings.

Section 615(k) provides for the authority of school personnel to order a change in placement for a child with a disability who violates a code of student conduct for ten school days. If a change in placement exceeding ten school days is sought and the behavior is not a manifestation of the child's disability, the relevant disciplinary procedures applicable to children without disabilities may be applied. With certain exceptions, within ten school days of a decision to change the placement of a child with a disability, the IEP team shall determine if the behavior in question was a manifestation of the child's disability. The subsection provides that where a child with a disability carries or possesses a weapon to or at a school, school premises, or a school function, or knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school, or at a school function, or has committed serious bodily injury upon another person while at school or at a school function, school personnel may remove the student to an interim alternative educational setting for not more than 45 school days, regardless of whether the behavior is deter-

mined to be a manifestation of the child's disability. The subsection provides for notification of the parents, and the continuation of services. The subsection provides that the alternative educational setting shall be determined by the IEP team. Appeals of decisions regarding disciplinary action, placement or the manifestation determination are provided for the parent, or LEA where the LEA believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others. In addition, the hearing officer has the authority to determine whether an action was appropriate and to order a change in placement to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the child's current placement is substantially likely to result in injury to the child or to others. The subsection also includes provisions on the placement of a child with a disability during appeals, protections for children not yet eligible for special education and related services, referral to and action by law enforcement and judicial authorities, and definitions. The terms for which definitions are provided are "controlled substance," "illegal drug," "weapon," and "serious bodily injury."

Section 615(l) maintains the rights available under the Constitution, the Americans with Disabilities Act, title V of the Rehabilitation Act and other Federal laws protecting the rights of children with disabilities and includes an exhaustion provision.

Section 615(m) allows the State to provide for the transfer of rights from the parent to the child with a disability when the child reaches the age of majority under State law, unless the child has been found to be incompetent under State law. This subsection also contains a special rule allowing the State to establish procedures for appointing the parents of a child to represent the educational interests of the child when the child is determined not to have the ability to provide informed consent with respect to his or her educational program.

Section 615(n) allows the parent of a child with a disability to elect to receive the notices required under section 615 by electronic mail if the public agency makes the option available.

Section 616(a) requires the Secretary to monitor implementation of the Act through oversight and a system of indicators, to enforce the Act, and to require States to monitor implementation of the Act by LEAs and enforce the Act. The subsection requires that the primary focus of Federal and State monitoring activities shall be on improving educational results and functional outcomes for all children with disabilities, while ensuring compliance with program requirements, with a particular emphasis on requirements relating to improving educational results for children with disabilities. In addition, monitoring priorities are provided as well as permissive areas of review.

Section 616(b) requires the Secretary to implement and administer a system of required indicators that measure the progress of the States in improving their performance. This system includes a review, using the performance indicators established under section 612(a)(15), of the performance of children with disabilities on assessments, dropout rates, and graduation rates, and comparing their performance with the performance and rates for all children. Based on this review and a review of the State's compliance plan,

the Secretary is required to assess the State's progress in improving educational results for children with disabilities. Not later than one year after enactment, each State must have a compliance plan in place that is developed in collaboration with, and approved by, the Secretary and includes benchmarks to measure progress, and strategies to achieve the benchmarks. In addition, the subsection requires the Secretary to review the data collection and analysis capacity of States and provide technical assistance to improve the capacity of the State to meet the data collection requirements.

Section 616(c) requires the Secretary to examine relevant State information and data annually to determine whether the State is making satisfactory progress toward improving educational results and is in compliance with the Act. If the Secretary determines that a State failed to make satisfactory progress or failed to meet the benchmarks for two consecutive years, the Secretary must notify the State and take action by directing the use of State level funds for technical assistance and/or withholding not less than 20 percent but not more than 50 percent of the State's funds for State administration and activities. The Secretary is required by this subsection to take additional action if at the end of the fifth year after approval of the compliance plan the Secretary determined that a State failed to meet the benchmarks in the State compliance plan and make satisfactory progress in improving educational results of children with disabilities in keeping with the described indicators. This action shall be one or more of the following: seeking to recover funds under section 452 of the General Education Provisions Act (GEPA); withholding (after notice and an opportunity for a hearing) payments to the State; referral for appropriate enforcement action, including referral to the Department of Justice; suspending payments to a recipient, or suspending the authority of the recipient to obligate Federal funds. In addition, the subsection provides that if, at any time, the Secretary determines that a State is not in substantial compliance, or there is a substantial failure to comply with any conditions of the LEA's or SEA's eligibility, the Secretary shall take one or more of the following actions: request that the State prepare a corrective action plan; impose special conditions on the State's grant; require the State to enter into a compliance agreement under section 457 of GEPA; recovery of funds under section 452 of GEPA; withholding (after notice and an opportunity for a hearing) any further payments to the State; referral for appropriate enforcement action, including referral to the Department of Justice; suspending payments to a recipient; or suspending the authority of the recipient to obligate Federal funds. If the Secretary determines that a State is in egregious noncompliance or is willfully disregarding the provisions of the Act, the Secretary may take one or more of the actions described regarding substantial noncompliance and, in addition, may institute a cease and desist action under section 456 of GEPA and/or refer the case to the Office of the Inspector General. The subsection requires the Secretary to report to Congress within 30 days of taking enforcement action regarding egregious noncompliance or substantial noncompliance. If the Secretary withholds payments as an enforcement action, the subsection provides that the Secretary may determine that the withholding be limited to programs or projects affected by the failure or that the SEA shall not make further payments to certain LEAs



or State agencies. The subsection provides for judicial review with the appropriate U.S. court of appeals if a State is dissatisfied with the Secretary's final action regarding State eligibility and for review by the U.S. Supreme Court. Finally, the subsection provides that the findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive but the court may remand to the Secretary for further evidence.

Section 616(d) provides rules regarding situations involving children with disabilities who are incarcerated in adult prisons where there is divided State agency responsibility and the Secretary finds failure to substantially comply with the Act.

Section 616(e) requires the SEA to monitor and enforce implementation of the Act and implement a system of monitoring the benchmarks in the State's compliance plan and requires LEAs to monitor and enforce implementation. The subsection also requires the SEA to prohibit the LEA from treating funds under the Act as local funds under section 613(a)(2)(C) for any fiscal year if the SEA determines that a LEA is not meeting the requirements of the Act.

Section 617 describes the responsibilities of the Secretary under part B, including: arranging for the provision of technical assistance to the States; the issuance of rules and regulations to the extent necessary to ensure compliance with part B; confidentiality; the hiring of personnel to conduct data collection and evaluation activities; and the publishing and wide distribution of a model IEP form, a model IFSP form, a model form of notice of procedural safeguards, and a model of prior written notice.

Section 618 describes the program information that each State receiving part B funds and the Secretary of the Interior must provide to the Secretary each year, including the number and percentages of children by gender, limited English proficiency receiving FAPE, the number of disciplinary actions, the number of due process complaints, the number of hearings requested, and the number of mediations held. The section permits the Secretary to provide technical assistance to States to ensure compliance with data collection and reporting requirements. The section also requires each State to collect and examine data each year to determine if significant disproportionality based on race is occurring in the identification and placement of children with disabilities, and provides that if a situation is identified, the State must review and revise, if necessary, its policies, practices, and procedures.

Section 619(a) directs the Secretary to make grants to assist States to provide special education and related services, in accordance with part B, to children with disabilities aged three through five and, at the State's discretion, to 2-year-old children with disabilities who will turn three during the school year.

Section 619(b) provides that a State is eligible for a grant under section 619 if it has established its eligibility under section 612 and it makes a free appropriate public education available to all children with disabilities, aged 3 through 5, residing in its jurisdiction.

Section 619(c) includes the allotment formula for the Preschool Grants program, which first provides States with grant amounts received for FY1997 and then distributes 85 percent of remaining funds based on total population ages 3 to 5 and 15 percent of remaining funds based on children ages 3 to 5 living in poverty, with certain limitations on minimum and maximum grants.

Section 619(d) describes the general amount of Preschool Grant funds that may be retained by the State, which is 25 percent of a State's grant for FY1997, annually adjusted by the rate of inflation or the rate of increase in the State's grant (whichever is less).

Section 619(e) specifies the use of Preschool Grant funds for State administration, including use of funds for administering part C services for infants and toddlers with disabilities, if the SEA is the lead agency for part C.

Section 619(f) specifies the use of Preschool Grant funds for other State-level activities, including early intervention services for children eligible under this section who previously received services under part C.

Section 619(g) provides for subgrants to LEAs, which involves initial grants based on 1997 amounts, with 85 percent of remaining funds distributed based on public and private school enrollment and 15 percent based on numbers of children living in poverty.

Section 619(h) provides that part C of this Act does not apply to any child with a disability receiving a free appropriate public education in accordance with part B, with Preschool Grant funds.

Section 619(i) includes a special definition of "State" for purposes of allocating funds under the Preschool Grants program.

Section 619(j) authorizes such sums as may be necessary for carrying out section 619.

### *Part C*

Section 631(a) lists the Congressional findings relating to part C.

Section 631(b) outlines the policy of the United States to provide financial assistance to enhance the State's capacity to provide quality early intervention services and expand and improve existing early intervention services.

Section 632 defines the key terms used in this part, including "at-risk infant or toddler", "developmental delay," "early intervention services," and "infant or toddler with a disability" (including, at State discretion, children with disabilities eligible for services under section 619 who had previously received services under part C).

Section 633 authorizes the Secretary to make grants to the States to assist them in implementing and maintaining a statewide system of early intervention services for infants and toddlers with disabilities and their families.

Section 634 establishes the criteria each State must meet to be eligible for a grant under this part including: adoption of a policy that appropriate early intervention services are available to all infants and toddlers with disabilities and their families in the State (including Indian infants and toddlers with disabilities and their families living on an Indian reservation within the State); and provision of a statewide system of early intervention services which meets the requirements of section 635.

Section 635(a) establishes the minimum components for a statewide system of early intervention services including: a definition of developmental delay (with specified minimum percentage delays); a timely, comprehensive, multidisciplinary evaluation of each infant or toddler; an Individualized Family Service Plan (IFSP) in accordance with section 636; a comprehensive child find system consistent with part B; a public awareness program; a central director; a com-

prehensive system of personnel development; policies and procedures relating to personnel standards; a single line of responsibility for the administration and supervision of the statewide program; a policy pertaining to contracting with service providers; a procedure for reimbursement of funds; procedural safeguards; a system for compiling data; a State interagency coordinating council that meets the requirements of section 641; and a policy for ensuring that early intervention services are provided in natural environments unless a specific outcome for the infant or toddler cannot be satisfactorily met in such an environment.

Section 635(b) permits the State to establish a policy whereby parents of children with disabilities eligible under section 619 may choose to continue early intervention services through the Part C program. The policy is jointly developed and implemented by the SEA and the part C lead agency (if other than the SEA). The services must include an educational component-provided in accordance with the IFSP-that promotes school readiness and incorporates pre-literacy, language, and numeracy skills. Parents must provide written consent for their child to continue to receive services through the Part C program. The policy must not affect the right of any child to receive FAPE under part B of IDEA.

Section 636(a) requires the statewide system to provide for each infant or toddler with a disability, and each family, to receive: a multidisciplinary assessment; a family-directed assessment; and a written IFSP developed by a multidisciplinary team, including the parents.

Section 636(b) requires the IFSP be evaluated once a year and requires that every six months the family receive a review of the plan.

Section 636(c) requires the IFSP to be developed within a reasonable time after the assessment, and provides that, with parental consent, early intervention services may commence prior to the completion of the assessment.

Section 636(d) directs that the individualized family service plan be in writing and details what it must contain, including the infant's or toddler's current state of development, available family resources, measurable outcomes, early interventions needed to meet the child's and the family's needs, the environment in which services will be delivered, frequency and duration of services, and transition to preschool or other appropriate services.

Section 636(e) requires that parents receive a full explanation of the IFSP and that informed written consent be obtained from the parents before implementation of the IFSP, and permits the delivery of only those services for which consent has been given.

Section 637(a) requires that each State desiring to receive a grant under this part submit an application to the Secretary at the time and in the manner required by the Secretary, and describes the information required to be in the application.

Section 637(b) lists the assurances that the State must include in its application to the Secretary.

Section 637(c) provides that the Secretary may not disapprove a State's application without first determining, after notice and opportunity for a hearing, that the application fails to comply with the requirements of this section.

Section 637(d) provides that if a State already has on file with the Secretary policies and procedures that demonstrate that it meets any requirement of part C, the Secretary shall treat the State as meeting that requirement for purposes of receiving a grant under part C.

Section 637(e) provides that an application submitted by a State in accordance with section 637 shall remain in effect until the State submits to the Secretary such modifications it determines necessary.

Section 637(f) provides that the Secretary may only require a State to modify its application based on an amendment to the Act, issuance of Federal regulations under the Act, new Federal or the State's highest court interpretation of the Act, or an official finding of State noncompliance with Federal law or regulations.

Section 638 lists the allowable uses of funds under part C, including providing direct services for infants and toddlers with disabilities and the families of those children.

Section 639(a) details the minimum procedural safeguards a State shall have in place.

Section 639(b) provides that during the pendency of any proceeding or action involving a complaint by the parents, the infant or toddler shall continue to receive the early intervention services currently being delivered, or if applying for initial services, shall receive the services not in dispute.

Section 640(a) provides that funds under part C may not be used to pay for services which would have been paid for by another source, including any medical program administered by the Department of Defense, but for the enactment of part C, except to prevent a delay in the provision of early intervention services pending reimbursement from the agency which has ultimate responsibility for the payment.

Section 640(b) details obligations related to and methods of ensuring services, including establishing financial responsibility for services and requires consistency with the designations of financial responsibility made under Part B.

Section 640(c) prohibits the State from reducing medical or other assistance available or from altering eligibility under title V of the Social Security Act (relating to maternal and child health) or under title XIX of the Social Security Act (relating to Medicaid for infants or toddlers with disabilities) within the State.

Section 641(a) requires each State wishing to receive funds under this part to establish an interagency coordinating council with the membership outlined in this section appointed by the Governor.

Section 641(b) prescribes the composition of the Council, including: 20% parent members; 20% service provider members; and at least one member representing the State legislature, personnel preparation, each of the State agencies providing or paying for early intervention services; and other members selected by the Governor.

Section 641(c) requires the council to meet at least quarterly, and to conduct meetings that have been publicly announced and are open and accessible to the general public.

Section 641(d) allows the council, subject to the approval of the Governor, to use funds under this part to conduct hearings and fo-

rums, reimburse council members for necessary expenses related to attending meetings, hire staff, and for other purposes.

Section 641(e) describes the functions of the council.

Section 641(f) prohibits any member of the council from voting on any matter that would give the appearance of a conflict of interest.

Section 642 provides that sections 616, 617, and 618 shall, to the extent not inconsistent with part C, apply to the program authorized under this part.

Section 643(a) allows the Secretary to reserve up to one percent of the funds from the appropriation for payment to the outlying areas, and exempts those funds from the provisions of P.L. 95-134.

Section 643(b) directs the Secretary to make payments of 1.25 percent of the amount available to the States to the Secretary of the Interior for distribution to Indian tribes and includes the methods of allocation, allowable uses of funds, and reporting requirements.

Section 643(c) describes the manner in which the remaining part C funds will be distributed to the States; namely, each State shall receive a grant in proportion to the number of all infants and toddlers in the State, except (if funds are sufficient) no State shall receive a grant that is less than the greater of  $\frac{1}{2}$  percent of funds available for part C State grants or \$500,000.

Section 643(d) allows the Secretary to reallocate any funds refused by a State to the remaining States.

Section 643(e) provides for State bonus grants.

Section 644 authorizes an appropriation of such sums as may be necessary to carry out part C for each of the fiscal years 2004 through 2009.

#### *Part D*

Section 650 sets out congressional findings in support of national activities to improve the education of children with disabilities.

#### *Part D—Subpart 1*

Section 651(a) sets out the purpose of this subpart, which is to assist SEAs to reform and improve their systems of personnel preparation and professional development for staff serving children with disabilities.

Section 651(b) provides a definition of “personnel” for this subpart.

Section 651(c) requires that the Secretary make competitive grants to SEAs to carry out activities described in the State plan (as specified in section 653) when appropriations for this subpart are less than \$100 million. The Secretary may give priority to States with the greatest personnel needs. Grants are to be no greater than \$4 million or less than \$500,000 (or \$80,000 for outlying areas).

Section 651(d) requires the Secretary (if the appropriation for this subpart is at least \$100 million) to distribute funds by formula to all States that qualify based on each State’s proportion of the total amount for States under the part B grants-to-States program, except that no State grant shall be less than the greater of  $\frac{1}{2}$  percent of the total amount available under this subsection or \$500,000.

Section 651(e) requires the Secretary to make continuation awards to any State that received a multi-year award under this part, prior to the enactment of the Individuals with Disabilities Education Improvement Act.

Section 652(a) limits an SEA's grant period to not less than 1 year or more than 5 years.

Section 652(b) requires the SEA to form partnerships with LEAs and other relevant State agencies or entity and lists other permitted grant partners.

Section 653(a) requires SEAs seeking a grant under this subpart to submit an application to the Secretary according to the Secretary's requirements. The application is to include a plan for assessing and addressing State and local personnel preparation and development needs.

Section 653(b) contains required elements of the State plan, including descriptions of partnership agreements, coordination with other resources, alignment with State applications and plans under sections 1111 and 2112 of the Elementary and Secondary Education Act of 1965, strategies to address professional development and personnel needs, and how highly qualified personnel will be recruited and retained, and how strategies will be assessed.

Section 653(c) requires the Secretary to use a panel of experts to evaluate grant applications under this subpart.

Section 653(d) requires State grantees to submit annual performance reports to the Secretary.

Section 654(a) requires SEAs receiving grants under this subpart to support activities related to the State plan. These activities must include one or more of the following: support related to mentoring, team teaching, reduced class schedule and case loads, intensive professional development; integration of technology to improve special education and related services; training to improve teacher knowledge about instructional practices to meet the academic and developmental needs of children with disabilities; training to improve working with parents of children with disabilities; training related to development and implementation of better IEPs; developing and implementing strategies to recruit and retain highly qualified teachers; strategies to provide innovative professional development programs; and training to improve quality of early intervention personnel.

Section 654(b) lists other permitted activities that grants can support, such as reforming teacher certification, creating alternative State certification, promoting professional growth, reforming tenure systems, promoting cross-State certification reciprocity, developing and delivering intensive professional development programs, developing merit based performance systems, supporting the use of challenging State academic content standards, and coordinating with teacher recruitment, placement, and retention centers established under section 2113(c)(18) of the Elementary and Secondary Education Act of 1965.

Section 654(c) requires SEAs to award contracts or subcontracts for carrying out the State plan to LEAs, institutions of higher education, parent training and information centers, or community parent resource centers, as appropriate. In addition, SEAs may award contracts and subcontracts to other appropriate public and private entities, such as the lead State agency for part C.

Section 654(d) requires SEAs to use at least 75 percent of grant funds under this subpart for activities listed in section 654(a) and not more than 25 percent of grant funds for section 654(b) activities.

Section 654(e) determines that P.L. 95–134, permitting grant consolidation to the outlying areas, shall not apply to funds received under this subpart.

Section 655 authorizes to be appropriated such sums as may be necessary to carry out this subpart for fiscal years 2004 through 2009.

*Part D—Subpart 2*

Section 660 states the purpose of this subpart regarding the funding of scientifically based research, technical assistance, model demonstration projects, and information dissemination.

Section 661(a) requires the Secretary to develop and implement a comprehensive plan of research carried out under this subpart (except for research undertaken by the National Center for Special Education Research—created by title III of the bill).

Section 661(b) lists entities eligible to apply for grants, contracts, or cooperative agreements under this subpart, including SEAs, LEAs, and institutions of higher education.

Section 661(c) requires the Secretary to reserve at least 1 percent of funds made available for this subpart, subpart 3 and under subpart 4 for outreach to Historically Black Colleges and Universities and to institutions with minority enrollments of 25 percent or more.

Section 661(d) enumerates priorities for grants, contracts, and cooperative agreements under this subpart, under subpart 3, and under subpart 4.

Section 661(e) lists responsibilities for applicants for and recipients of grants, contracts, and cooperative agreements under this subpart, subpart 3 and under subpart 4.

Section 661(f) details requirements that the Secretary must abide by when managing applications under this subpart, including the use of a standing panel of experts to evaluate applications for funding over \$75,000.

Section 661(g) permits the Secretary to use funds made available for this subpart, for subpart 3, and for subpart 4 to evaluate activities carried out under this subpart.

Section 661(h) specifies minimal amounts that the Secretary must provide each fiscal year to address the needs of children with deaf-blindness (\$12,832,000), to address post-high school educational needs of individuals with deafness (\$4 million), and to address the needs of children with or at risk of developing emotional disturbance (\$4 million). These amount may be ratably reduced if overall appropriations for sections, this subpart, subpart 3, and Part E of the Education Sciences Reform Act are less than \$130 million.

Section 661(i) prohibits an SEA or LEA from receiving support for research limited solely to children ages 3 to 5 if the SEA or LEA is not eligible for a grant under section 619(b).

Section 662 requires the Secretary to coordinate research supported under this subsection with research carried out by the Na-

tional Center for Special Education Research (created under title III of the bill).

Section 663(a) requires the Secretary to award grants or enter into contracts or cooperative agreements to provide technical assistance, carry out model demonstration projects, disseminate information, and implement scientifically based research.

Section 663(b) lists required activities that the Secretary must support, including those addressing inappropriate behavior of children with disabilities, improving assessments and evaluation methods, providing information on differing learning styles, disseminating innovations, and applying scientifically based research to facilitate systemic changes in services for children with disabilities.

Section 663(c) lists additional activities that may be carried out under this section.

Section 663(d) requires that the Secretary balance efforts supported under this section across ages and disabilities.

Section 663(e) permits the Secretary to support projects linking States to technical assistance resources.

Section 663(f) requires eligible entities to submit an application according to the Secretary's specifications to receive funding under this section.

Section 664(a) enumerates various purposes and objectives for grants, contracts, and cooperative agreements related to improving services and results for children with disabilities through personnel development, such as ensuring that all special education teachers are highly qualified and encouraging increased focus on academic content in programs that prepare special education teachers.

Section 664(b) requires the Secretary to support activities for improving the preparation of personnel serving children with high-incidence and low-incidence disabilities and lists activities that may be carried out under this subsection, such as support for collaborative personnel preparation; for innovative programs for recruiting, retaining, and evaluating highly qualified teachers; and for promoting transferability of teacher and administrator licensure and certification across jurisdictions.

Section 664(c) authorizes the Secretary to support activities that benefit children with low-incidence disabilities. "Low-incidence disability" is defined as hearing or visual impairment, simultaneous hearing and visual impairment, significant cognitive impairment, and other impairments requiring a small number of highly specialized personnel to ensure early intervention or FAPE.

Section 664(d) authorizes the Secretary to support activities to improve special education leadership.

Section 664(e) authorizes the Secretary to support activities to enhance the training of beginning special education teachers.

Section 664(f) authorizes the Secretary to support personnel preparation for general educators who work with special education teachers in providing services for children with disabilities.

Section 664(g) requires eligible entities seeking support under this section to submit an application according to the Secretary's specifications.

Section 664(h) requires the Secretary, in selecting applicants under this section, to consider proposed projects' impacts on personnel needs identified by the States; and to give preference to institutions of higher education that are, for example, educating gen-



eral education personnel to meet the needs of children with disabilities in integrated settings.

Section 664(i) requires that applicants must ensure that individuals receiving assistance under proposed projects must either serve children with disabilities for one year for every year of assistance or repay some portion of that assistance.

Section 664(j) permits the Secretary to include scholarships as part of projects supported under this section.

Section 664(k) authorizes to be appropriated such sums as may be necessary to carry out this section for fiscal years 2004 through 2009.

Section 665(a) requires the Secretary to delegate the responsibility for carrying out this section, except for subsections (d) and (f), to the Director of the Institute for Education Sciences. In addition, the Secretary is directed to assess the implementation of this Act.

Section 665(b) requires the Secretary to carry out a national assessment of activities carried out with Federal funds under this Act and to provide an interim report 3 years after the date of enactment of the bill and a final report 5 years after the date of enactment.

Section 665(c) requires the Secretary to conduct a national study or studies of alternative assessments for children with significant disabilities.

Section 665(d) requires the Secretary to provide an annual report to Congress.

Section 665(e) outlines authorized topics for objective studies, evaluations, and assessments under this section.

Section 665(f) requires the Secretary to study and report to Congress on the extent to which States adopt seamless “zero to five” option described in Sec. 635(c).

Section 665(g) authorizes the Secretary to reserve ½ percent of amounts appropriated for parts B and C of the Act (up to a maximum of \$40 million—annually adjusted for inflation) to carry out this section and stipulates that not more than \$3 million shall be available for the national study of alternative assessments under subsection (c).

#### *Part D—Subpart 3*

Section 670 provides purposes for this subpart with respect to improving results for children with disabilities through parent training and technology and media research, development, and demonstration.

Section 671(a) permits the Secretary to award grants and enter into contracts and cooperative agreements with parent organizations to support parent training and information centers.

Section 671(b) lists required activities that centers must carry out, such as providing training and information needed by parents of children with disabilities, assisting parents to better understand the nature of their children’s disabilities and their children’s needs, assisting parents to resolve disputes, and helping parents and children with disabilities understand their rights and responsibilities under the Act.

Section 671(c) permits centers to provide information to teachers and other professionals to improve results for children with disabilities.

Section 671(d) lists application requirements for assistance under this section.

Section 671(e) requires the Secretary to make at least 1 grant in each State for a statewide center and requires multiple awards in large States, but only if centers coordinate services.

Section 671(f) requires boards of directors of each center to meet at least quarterly to review the center's activities and requires a written review by the board of prior fiscal year activities for any center requesting a continuation award.

Section 671(g) defines "parental organization" as used under this section.

Section 672(a) permits the Secretary to award grants and enter into contracts and cooperative agreements with local parent organizations to support parent training and information centers to provide training and information to under-served parents, such as low-income parents, parents with limited English proficiency, and parents with disabilities.

Section 672(b) lists required activities to be provided by each community parent resource center.

Section 672(c) defines "local parent organization" as used in this section.

Section 673(a) permits the Secretary to make an award to 1 parent organization receiving assistance under section 671 to provide technical assistance for other parent training and information centers receiving assistance under sections 671 and 672.

Section 673(b) authorizes technical assistance activities that the Secretary may provide to the center receiving support under this section, including effective national coordination of training efforts, promoting the use of technology, strategies for reaching under-served populations, and promoting alternative dispute resolution methods.

Section 673(c) requires the award recipient to establish at least 4 regional centers from among centers receiving assistance under sections 671 and 672 for carrying out activities authorized under subsection (b).

Section 673(d) requires collaboration with the regional centers.

Section 674(a) requires the Secretary to award grants and enter into contracts and cooperative agreements with eligible entities to support technology development, demonstration, utilization, and media services.

Section 674(b) authorizes technology development and dissemination and utilization activities supported under this section, including research on and promotion of innovative technologies and research, development, and demonstration of technology using universal design features.

Section 674(c) requires the Secretary to support educational media activities designed to be of educational value to children with disabilities and for classroom use; to provide video description, open captioning, or news (only until September 30, 2006); distribution of media-related materials; and free educational materials for visually impaired and print disabled elementary and secondary school students.

Section 674(d) requires eligible entities interested in assistance under this section to submit an application based on the Secretary's specifications.

Section 674(e) authorizes appropriations of such sums as may be necessary to carry out this section for fiscal years 2004 through 2009.

Section 675(a) requires the Secretary, through the rulemaking process, to promulgate an Instructional Materials Accessibility Standard (no later than 180 days after enactment) for publishers and for State adoption under section 612(a)(22) related to instructional materials for blind persons and others with print disabilities.

Section 675(b) requires the Secretary to establish (within 2 years of the date of enactment) a National Instructional Materials Access Center to coordinate the acquisition and distribution of instructional material prepared according to the standard described in subsection (a). The section authorizes the appropriation of such sums as may be necessary to carry out the provisions of this subsection.

Section 676 authorizes the appropriation of such sums as may be necessary to carry out sections 671, 672, 673, and 663 for fiscal years 2004 through 2009.

*Part D—Subpart 4*

Section 681 outlines the purpose of this subpart to improve interim alternative settings, in-school behavioral supports, and whole school interventions to foster safe learning environments for all students.

Section 682 defines "eligible entity" in this subsection to be an LEA or a consortium of an LEA with another LEA, a community-based organization, an institution of higher education, a mental health provider, or an educational service agency.

Section 683 authorizes the Secretary to make competitive grants to eligible entities to establish or expand behavioral supports and whole school behavioral interventions based on effective, research-based practices or improve interim alternative educational settings.

Section 684 requires entities receiving assistance under this subpart to submit annual outcome evaluations to the Secretary and requires the Secretary to make available information on best practices derived from these activities on the Department's website.

Section 685 authorizes to be appropriated to carry out this subpart \$50 million for fiscal year 2004 and such sums as may be necessary for the next 5 fiscal years.

TITLE II—AMENDMENTS TO THE REHABILITATION ACT OF 1973

Title II of the bill amends the Rehabilitation Act of 1973 as follows:

Section 201 amends section 2(a) of the Rehabilitation Act of 1973 by adding a finding.

Section 202 amends section 7 of the Rehabilitation Act of 1973 by adding definitions of "student with a disability," "students with disabilities," and the term "transition services expansion year."

Section 203(a) modifies assessment requirements under State plan provisions for annual goals and reports of progress by adding students with disabilities to the groups for which needs must be assessed and by adding a requirement that States describe strategies

to improve and expand vocational rehabilitation services for students with disabilities.

Section 203(b) adds a requirement that the State plan include an assurance that the strategies to meet the vocational rehabilitation needs of students with disabilities are developed and implemented and that designated funds will be used to carry out programs or activities to improve and expand these services. The section also describes the transition services to be provided to students with disabilities.

Section 204 modifies the provisions for transition services for students with disabilities and for consultation and technical assistance to SEAs and LEAs regarding planning for the transition of students with disabilities from school to post-school activities.

Section 205 adds to requirements for standards and indicators measures of performance regarding the transition to post-school activities and achievement of post-school goals of students with disabilities.

Section 206 requires each State, in a transition services expansion year, to reserve from its allotment an amount calculated by the Commissioner for expanded transition services defined by the provisions added by section 203 and section 204 of this Act, specifies the formula for the Commissioner to calculate each State's required reservation and provides the total amount to be reserved by the States to be \$50 million.

Section 207 makes a conforming amendment to the title of the Rehabilitation Act.

#### TITLE III—NATIONAL CENTER FOR SPECIAL EDUCATION RESEARCH

Section 301(a) of Title III of the bill amends the Education Sciences Reform Act of 2002 by redesignating part E as part F and inserting as follows after part D:

##### *Part E*

Section 175(a) establishes the National Center for Special Education Research.

Section 175(b) outlines the mission of the Center, including to sponsor research to expand knowledge of the needs of children with disabilities, to improve services supported by IDEA, and to evaluate the implementation of IDEA.

Section 176 requires that the Center is to be headed by a Commissioner for Special Education Research.

Section 177(a) enumerates research activities that the Center may carry out.

Section 177(b) requires the Commissioner to ensure activities conducted by the Center meet high standards.

Section 177(c) requires the Commissioner to propose to the Director of the Institute of Education Sciences a research plan developed in collaboration with the Assistant Secretary for Special Education and Rehabilitative Services.

Section 177(d) permits the Director to award grants or enter into contracts or cooperative agreements with eligible entities.

Section 177(e) requires an eligible entity desiring to receive support under this part to submit an application according to the Director's specifications.

Section 177(f) requires the Center to synthesize and disseminate findings and results from research it conducts or supports and to assist the Director in preparing the Institute's biennial report.

Section 177(f) authorizes appropriation of such sums as may be necessary to carry out this part for fiscal years 2004 through 2009.

Section 301(b) of title III of the bill provides conforming amendments to other statutes.

Section 301(c) of title III of the bill provides transition provisions for the orderly transition and implementation of this part and requires the Secretary to continue awards made under section 672 of IDEA as were in effect the day before the date of enactment.

Section 301(d) of title III of the bill provides an effective date for subsections (a) and (b) of October 1, 2004 and provides that section 672 (as it was in effect on the day prior to the day of enactment of the bill) shall remain in effect until September 30, 2004.

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

Section 401(a) establishes a Commission to study, evaluate, and make appropriate recommendations to the Congress and the Secretary on universal design and accessibility of curriculum and instructional materials and outlines the purpose of the Commission.

Section 401(b) determines the number of members of the Commission appointed by the Majority Leader and the Minority Leader of the Senate, the Speaker of the House and the Minority Leader of the House, the Secretary, and the Registrar of Copyrights. The section requires that all members be appointed based on their technical qualifications, expertise, and knowledge and requires that members represent certain groups, such as publishers of instructional materials, elementary and secondary teachers, and advocates for children with disabilities. Finally the section specifies certain requirements for the Commission, such as when members are to be appointed, period of service, when the initial meeting is to occur, and the selection of a chairperson and vice chairperson.

Section 401(c) enumerates the duties of the Commission.

Section 401(d) requires the Commission to hold public hearings.

Section 401(e) requires the Commission to provide the Secretary and the Congress an interim and final report.

Section 401(f) enumerates the powers of the Commission.

Section 401(g) provides that the Commission is terminated 90 days after submitting its final report.

Section 401(h) authorizes to be appropriated \$750,000 for fiscal year 2004 and such sums as may be necessary for fiscal year 2005 to carry out the provisions of this section. Any funds appropriated under this authorization are to remain available until expended without fiscal year limitation.

#### X. CHANGES IN EXISTING LAW

In compliance with rule XXVI paragraph 12 of the Standing Rules of the Senate, the following provides a print of the statute or the part or section thereof to be amended or replaced (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

## Individuals with Disabilities Education Act

\* \* \* \* \*

### SEC. 601. SHORT TITLE; TABLE OF CONTENTS; FINDINGS; PURPOSES.

[(a) SHORT TITLE.—This Act may be cited as the “Individuals with Disabilities Education Act”.

[(b) TABLE OF CONTENTS.—The table of contents for 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.

#### 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. Withholding and judicial review.
- [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. Federal Interagency Coordinating Council.
- [Sec. 645. Authorization of appropriations.

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

##### SUBPART 1—STATE PROGRAM IMPROVEMENT GRANTS FOR CHILDREN WITH DISABILITIES

- [Sec. 651. Findings and purpose.
- [Sec. 652. Eligibility and collaborative process.
- [Sec. 653. Applications.
- [Sec. 654. Use of funds.
- [Sec. 655. Minimum State grant amounts.
- [Sec. 656. Authorization of appropriations.

##### SUBPART 2—COORDINATED RESEARCH, PERSONNEL PREPARATION, TECHNICAL ASSISTANCE, SUPPORT, AND DISSEMINATION OF INFORMATION

- [Sec. 661. Administrative provisions.

CHAPTER 1—IMPROVING EARLY INTERVENTION, EDUCATIONAL, AND TRANSITIONAL SERVICES AND RESULTS FOR CHILDREN WITH DISABILITIES THROUGH COORDINATED RESEARCH AND PERSONNEL PREPARATION

- 【Sec. 671. Findings and purpose.
- 【Sec. 672. Research and innovation to improve services and results for children with disabilities.
- 【Sec. 673. Personnel preparation to improve services and results for children with disabilities.
- 【Sec. 674. Studies and evaluations.

CHAPTER 2—IMPROVING EARLY INTERVENTION, EDUCATIONAL, AND TRANSITIONAL SERVICES AND RESULTS FOR CHILDREN WITH DISABILITIES THROUGH COORDINATED TECHNICAL ASSISTANCE, SUPPORT, AND DISSEMINATION OF INFORMATION

- 【Sec. 681. Findings and purposes.
- 【Sec. 682. Parent training and information centers.
- 【Sec. 683. Community parent resource centers.
- 【Sec. 684. Technical assistance for parent training and information centers.
- 【Sec. 685. Coordinated technical assistance and dissemination.
- 【Sec. 686. Authorization of appropriations.
- 【Sec. 687. Technology development, demonstration, and utilization, and media services.

【(c) FINDINGS.—The Congress finds the following:

【(1) Disability is a natural part of the human experience and in no way diminishes the right of individuals to participate in or contribute to society. Improving educational results for children with disabilities is an essential element of our national policy of ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities.

【(2) Before the date of the enactment of the Education for All Handicapped Children Act of 1975 (Public Law 94–142)—

【(A) the special educational needs of children with disabilities were not being fully met;

【(B) more than one-half of the children with disabilities in the United States did not receive appropriate educational services that would enable such children to have full equality of opportunity;

【(C) 1,000,000 of the children with disabilities in the United States were excluded entirely from the public school system and did not go through the educational process with their peers;

【(D) there were many children with disabilities throughout the United States participating in regular school programs whose disabilities prevented such children from having a successful educational experience because their disabilities were undetected; and

【(E) because of the lack of adequate services within the public school system, families were often forced to find services outside the public school system, often at great distance from their residence and at their own expense.

【(3) Since the enactment and implementation of the Education for All Handicapped Children Act of 1975, this Act has been successful ensuring children with disabilities and the families of such children access to a free appropriate public education and in improving educational results for children with disabilities.

【(4) However, the implementation of this Act has been impeded by low expectations, and an insufficient focus on apply-

ing replicable research on proven methods of teaching and learning for children with disabilities.

【(5) Over 30 years of research and experience has demonstrated that the education of children with disabilities can be made more effective by—

【(A) having high expectations for such children and ensuring their access in the general curriculum to the maximum extent possible;

【(B) strengthening the role of parents and ensuring that families of such children have meaningful opportunities to participate in the education of their children at school and at home;

【(C) coordinating this Act with other local, educational service agency, State, and Federal school improvement efforts in order to ensure that such children benefit from such efforts and that special education can become a service for such children rather than a place where they are sent:

【(D) providing appropriate special education and related services and aids and supports in the regular classroom to such children, whenever appropriate;

【(E) supporting high-quality, intensive professional development for all personnel who work with such children in order to ensure that they have the skills and knowledge necessary to enable them—

【(i) to meet developmental goals and, to the maximum extent possible, those challenging expectations that have been established for all children; and

【(ii) to be prepared to lead productive, independent, adult lives, to the maximum extent possible;

【(F) providing incentives for whole-school approaches and pre-referral intervention to reduce the need to label children as disabled in order to address their learning needs; and

【(G) focusing resources on teaching and learning while reducing paperwork and requirements that do not assist in improving educational results.

【(6) While States, local educational agencies, and educational service agencies are responsible for providing an education for all children with disabilities, it is in the national interest that the Federal Government have a role in assisting State and local efforts to educate children with disabilities in order to improve results for such children and to ensure equal protection of the law.

【(7)(A) The Federal Government must be responsive to the growing needs of an increasingly more diverse society. A more equitable allocation of resources is essential for the Federal Government to meet its responsibility to provide an equal educational opportunity for all individuals.

【(B) America's racial profile is rapidly changing. Between 1980 and 1990, the rate of increase in the population for white Americans was 6 percent, while the rate of increase for racial and ethnic minorities was much higher: 53 percent for Hispanics, 13.2 percent for African-Americans, and 107.8 percent for Asians.



[(C) By the year 2000, this Nation will have 275,000,000 people, nearly one of every three of whom will be either African-American, Hispanic, Asian-American, or American Indian.

[(D) Taken together as a group, minority children are comprising an ever larger percentage of public school students. Large-city school populations are overwhelmingly minority, for example: for fall 1993, the figure for Miami was 84 percent; Chicago, 89 percent; Philadelphia, 78 percent; Baltimore, 84 percent; Houston, 88 percent; and Los Angeles, 88 percent.

[(E) Recruitment efforts within special education must focus on bringing larger numbers of minorities into the profession in order to provide appropriate practitioner knowledge, role models, and sufficient manpower to address the clearly changing demography of special education.

[(F) The limited English proficient population is the fastest growing in our Nation, and the growth is occurring in many parts of our Nation. In the Nation's 2 largest school districts, limited English proficient students make up almost half of all students initially entering school at the kindergarten level. Studies have documented apparent discrepancies in the levels of referral and placement of limited English proficient children in special education. The Department of Education has found that services provided to limited English proficient students often do not respond primarily to the pupil's academic needs. These trends pose special challenges for special education in the referral, assessment, and services for our Nation's students from non-English language backgrounds.

[(8)(A) Greater efforts are needed to prevent the intensification of problems connected with mislabeling and high dropout rates among minority children with disabilities.

[(B) More minority children continue to be served in special education than would be expected from the percentage of minority students in the general school population.

[(C) Poor African-American children are 2.3 times more likely to be identified by their teacher as having mental retardation than their white counterpart.

[(D) Although African-Americans represent 16 percent of elementary and secondary enrollments, they constitute 21 percent of total enrollments in special education.

[(E) The drop-out rate is 68 percent higher for minorities than for whites.

[(F) More than 50 percent of minority students in large cities drop out of school.

[(9)(A) The opportunity for full participation in awards for grants and contracts; boards of organizations receiving funds under this Act; and peer review panels; and training of professionals in the area of special education by minority individuals, organizations, and historically black colleges and universities is essential if we are to obtain greater success in the education of minority children and disabilities.

[(B) In 1993, of the 915,000 college and university professors, 4.9 percent were African-American and 2.4 percent were Hispanic. Of the 2,940,000 teachers, prekindergarten through high school, 6.8 percent were African-American and 4.1 percent were Hispanic.

[(C) Students from minority groups comprise more than 50 percent of K–12 public school enrollment in seven States yet minority enrollment in teacher training programs is less than 15 percent in all but six States.

[(D) As the number of African-American and Hispanic students in special education increases, the number of minority teachers and related service personnel produced in our colleges and universities continues to decrease.

[(E) Ten years ago, 12 percent of the United States teaching force in public elementary and secondary schools were members of a minority group. Minorities comprised 21 percent of the national population at that time and were clearly under-represented then among employed teachers. Today, the elementary and secondary teaching force is 13 percent minority, while one-third of the students in public schools are minority children.

[(F) As recently as 1991, historically black colleges and universities enrolled 44 percent of the African-American teacher trainees in the Nation. However, in 1993, historically black colleges and universities received only 4 percent of the discretionary funds for special education and related services personnel training under this Act.

[(G) While African-American students constitute 28 percent of total enrollment in special education, only 11.2 percent of individuals enrolled in preservice training programs for special education are African-American.

[(H) In 1986–87, of the degrees conferred in education at the B.A., M.A., and Ph.D. levels, only 6, 8, and 8 percent, respectively, were awarded to African-American or Hispanic students.

[(10) Minorities and underserved persons are socially disadvantaged because of the lack of opportunities in training and educational programs, undergirded by the practices in the private sector that impede their full participation in the mainstream of society.

[(d) PURPOSES.—The purpose of this title are—

[(1)(A) to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living;

[(B) to ensure that the rights of children with disabilities and parents of such children are protected; and

[(C) to assist States, localities, educational service agencies, and Federal agencies to provide for the education of all children with disabilities;

[(2) to assist States in the implementation of a statewide, comprehensive, coordinated, multidisciplinary, interagency system of early intervention services for infants and toddlers with disabilities and their families;

[(3) to ensure that educators and parents have the necessary tools to improve educational results for children with disabilities by supporting systemic-change activities; coordinated research and personnel preparation; coordinated technical assist-

ance, dissemination, and support; and technology development and media services; and

[(4) to assess, and ensure the effectiveness of, efforts to educate children with disabilities.

**[SEC. 602. DEFINITIONS.**

**[Except as otherwise provided, as used in this Act:**

**[(1) ASSISTIVE TECHNOLOGY DEVICE.—**The term “assistive technology device” means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of a child with a disability.

**[(2) ASSISTIVE TECHNOLOGY SERVICE.—**The term “assistive technology service” means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. Such term includes—

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

**[(B)** purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by such child;

**[(C)** selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing of assistive technology devices;

**[(D)** coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

**[(E)** training or technical assistance for such child, or, where appropriate, the family of such child; and

**[(F)** training or technical assistance for professionals (including individuals providing education and rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of such child.

**[(3) CHILD WITH A DISABILITY.—**

**[(A) IN GENERAL.—**The term “child with a disability” means a child—

**[(i)** with mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (hereinafter referred to as “emotional disturbance”), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and

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

**[(B) CHILD AGED 3 THROUGH 9.—**The term “child with a disability” for a child aged 3 through 9 may, at the discretion of the State and the local education agency, include a child—

**[(i)** experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive

development, communication development, social or emotional development, or adaptive development; and  
 [(ii) who, by reason thereof, needs special education and related services.

[(4) EDUCATIONAL SERVICE AGENCY.—The term “educational service agency”—

[(A) means a regional public multiservice agency—

[(i) authorized by State law to develop, manage, and provide services or programs to local educational agencies; and

[(ii) recognized as an administrative agency for purposes of the provision of special education and related services provided within public elementary and secondary schools of the State; and

[(B) includes any other public institution or agency having administrative control and direction over a public elementary or secondary school.

[(5) ELEMENTARY SCHOOL.—The term “elementary school” means a nonprofit institutional day or residential school that provides elementary education, as determined under State law.

[(6) EQUIPMENT.—The term “equipment” includes—

[(A) machinery, utilities, and built-in equipment and any necessary enclosures or structures to house such machinery, utilities, or equipment; and

[(B) all other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture; printed, published, and audio-visual instructional materials; telecommunications, sensory, and other technological aids and devices; and books, periodicals, documents, and other related materials.

[(7) EXCESS COSTS.—The term “excess costs” means those costs that are in excess of the average annual per-student expenditure in a local educational agency during the preceding school year for an elementary or secondary school student, as may be appropriate, and which shall be computed after deducting—

[(A) amounts received—

[(i) under part B of this title;

[(ii) under part A of title I of the Elementary and Secondary Education Act of 1965; or

[(iii) under part A of title VII of that Act; and

[(B) any State or local funds expended for programs that would qualify for assistance under any of those parts.

[(8) FREE APPROPRIATE PUBLIC EDUCATION.—The term “free appropriate public education” means special education and related services that—

[(A) have been provided at public expense, under public supervision and direction, and without charge;

[(B) meet the standards of the State educational agency;

[(C) include an appropriate preschool, elementary, or secondary school education in the State involved; and

[(D) are provided in conformity with the individualized education program required under section 614(d).

[(9) INDIAN.—The term “Indian” means an individual who is a member of an Indian tribe.

[(10) INDIAN TRIBE.—The term “Indian tribe” means any Federal or State Indian tribe, band, rancheria, pueblo, colony, or community, including any Alaska Native village or regional village corporation (as defined in or established under the Alaska Native Claims Settlement Act).

[(11) INDIVIDUALIZED EDUCATION PROGRAM.—The term “individualized education program” or “IEP” means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with section 614(d).

[(12) INDIVIDUALIZED FAMILY SERVICE PLAN.—The term “individualized family service plan” has the meaning given such term in section 636.

[(13) INFANT OR TODDLER WITH A DISABILITY.—The term “infant or toddler with a disability” has the meaning given such term in section 632.

[(14) INSTITUTION OF HIGHER EDUCATION.—The item “institution of higher education”—

[(A) has the meaning given that term in section 1201(a) of the Higher Education Act of 1965; and

[(B) also includes any community college receiving funding from the Secretary of the Interior under the Tribally Controlled Community College Assistance Act of 1978.

[(15) LOCAL EDUCATIONAL AGENCY.—

[(A) The term “local educational agency” means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools.

[(B) The term includes—

[(i) an educational service agency, as defined in paragraph (4); and

[(ii) any other public institution or agency having administrative control and direction of a public elementary or secondary school.

[(C) The term includes an elementary or secondary school funded by the Bureau of Indian Affairs, but only to the extent that such inclusion makes the school eligible for programs for which specific eligibility is not provided to the school in another provision of law and the school does not have a student population that is smaller than the student population of the local educational agency receiving assistance under this Act with the smallest student population, except that the school shall not be subject to the jurisdiction of any State educational agency other than the Bureau of Indian Affairs.

[(16) NATIVE LANGUAGE.—The term “native language”, when used with reference to an individual of limited English proficiency, means the language normally used by the individual,

or in the case of a child, the language normally used by the parents of the child.

[(17) NONPROFIT.—The term “nonprofit”, as applied to a school, agency, organization, or institution, means a school, agency, organization, or institution owned and operated by one or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

[(18) OUTLYING AREA.—The term “outlying area” means the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

[(19) PARENT.—The term “parent”—

[(A) includes a legal guardian; and

[(B) except as used in sections 615(b)(2) and 639(a)(5), includes an individual assigned under either of those sections to be a surrogate parent.

[(20) PARENT ORGANIZATION.—The term “parent organization” has the meaning given that term in section 682(g).

[(21) PARENT TRAINING AND INFORMATION CENTER.—The term “parent training and information center” means a center assisted under section 682 or 683.

[(22) RELATED SERVICES.—The term “related services” means transportation, and such developmental, corrective, and other supportive services (including speech-language pathology and audiology services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions in children.

[(23) SECONDARY SCHOOL.—The term “secondary school” means a nonprofit institutional day or residential school that provides secondary education, as determined under State law, except that it does not include any education beyond grade 12.

[(24) SECRETARY.—The term “Secretary” means the Secretary of Education.

[(25) SPECIAL EDUCATION.—The term “special education” means specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability, including—

[(A) instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and

[(B) instruction in physical education.

[(26) SPECIFIC LEARNING DISABILITY.—

[(A) IN GENERAL.—The term “specific learning disability” means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which disorder may manifest itself in imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations.

[(B) DISORDERS INCLUDED.—Such term includes such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

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

[(27) STATE.—The term “State” means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and each of the outlying areas.

[(28) STATE EDUCATIONAL AGENCY.—The term “State educational agency” means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law.

[(29) SUPPLEMENTARY AIDS AND SERVICES.—The term “supplementary aids and services” means, aids, services, and other supports that are provided in regular education classes or other education-related settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with section 612(a)(5).

[(30) TRANSITION SERVICES.—The term “transition services” means a coordinated set of activities for a student with a disability that—

[(A) is designed within an outcome-oriented process, which promotes movement from school to post-school activities, including post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

[(B) is based upon the individual student’s needs, taking into account the student’s preferences and interests; and

[(C) includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation.

**[SEC. 603. OFFICE OF SPECIAL EDUCATION PROGRAMS.**

[(a) ESTABLISHMENT.—There shall be, within the Office of Special Education and Rehabilitative Services in the Department of Education, an Office of Special Education Programs, which shall be the principal agency in such Department of administering and carrying out this Act and other programs and activities concerning the education of children with disabilities.

[(b) DIRECTOR.—The Office established under subsection (a) shall be headed by a Director who shall be selected by the Secretary and shall report directly to the Assistant Secretary for Special Education and Rehabilitative Services.

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

**ISEC. 604. ABROGATION OF STATE SOVEREIGN IMMUNITY.**

[(a) IN GENERAL.—A State shall not be immune under the eleventh amendment to the Constitution of the United States from suit in Federal court for a violation of this Act.

[(b) REMEDIES.—In a suit against a State for a violation of this Act, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as those remedies are available for such a violation in the suit against any public entity other than a State.

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

**ISEC. 605. ACQUISITION OF EQUIPMENT; CONSTRUCTION OR ALTERATION OF FACILITIES.**

[(a) IN GENERAL.—If the Secretary determines that a program authorized under this Act would be improved by permitting program funds to be used to acquire appropriate equipment, or to construct new facilities or alter existing facilities, the Secretary is authorized to allow the use of those funds for those purposes.

[(b) COMPLIANCE WITH CERTAIN REGULATIONS.—Any construction of new facilities or alteration of existing facilities under subsection (a) shall comply with the requirements of—

[(1) appendix A of part 36 of title 28, Code of Federal Regulations (commonly known as the “Americans with Disabilities Accessibility Guidelines for Buildings and Facilities”); or

[(2) appendix A of part 101–19.6 of title 41, Code of Federal Regulations (commonly known as the “Uniform Federal Accessibility Standards”).

**ISEC. 606. EMPLOYMENT OF INDIVIDUALS WITH DISABILITIES.**

[(The Secretary shall ensure that each recipient of assistance under this Act makes positive efforts to employ and advance in employment qualified individuals with disabilities in programs assisted under this Act.

**ISEC. 607. REQUIREMENTS FOR PRESCRIBING REGULATIONS.**

[(a) PUBLIC COMMENT PERIOD.—The Secretary shall provide a public comment period of at least 90 days on any regulation proposed under part B or part C of this Act on which an opportunity for public comment is otherwise required by law.

[(b) PROTECTIONS PROVIDED TO CHILDREN.—The Secretary may not implement, or publish in final form, any regulation prescribed pursuant to this Act that would procedurally or substantively lessen the protections provided to children with disabilities under this Act, as embodied in regulations in effect on July 20, 1983 (particularly as such protections relate to parental consent to initial evaluation or initial placement in special education, lease restrictive environment, related services, timelines, attendance of evaluation personnel at individualized education program meetings, or qualifications of personnel), except to the extent that such regulation reflects the clear and unequivocal intent of the Congress in legislation.

[(c) POLICY LETTERS AND STATEMENTS.—The Secretary may not, through policy letters or other statements, establish a rule that is required for compliance with, and eligibility under, this part with-



out following the requirements of section 553 of title 5, United States Code.

[(d) CORRESPONDENCE FROM DEPARTMENT OF EDUCATION DESCRIBING INTERPRETATIONS OF THIS PART.—

[(1) IN GENERAL.—The Secretary shall, on a quarterly basis, publish in the Federal Register, and widely disseminate to interested entities through various additional forms of communication, a list of correspondence from the Department of Education received by individuals during the previous quarter that describes the interpretations of the Department of Education of this Act or the regulations implemented pursuant to this Act.

[(2) ADDITIONAL INFORMATION.—For each item of correspondence published in a list under paragraph (1), the Secretary shall identify the topic addressed by the correspondence and shall include such other summary information as the Secretary determines to be appropriate.

[(e) ISSUES OF NATIONAL SIGNIFICANCE.—If the Secretary receives a written request regarding a policy, question, or interpretation under part B of this Act, and determines that it raises an issue of general interest or applicability of national significance to the implementation of part B, the Secretary shall—

[(1) include a statement to that effect in any written response;

[(2) widely disseminate that response to State educational agencies, local educational agencies, parent and advocacy organizations, and other interested organizations, subject to applicable laws relating to confidentiality of information; and

[(3) not later than one year after the date on which the Secretary responds to the written request, issue written guidance on such policy, question, or interpretation through such means as the Secretary determines to be appropriate and consistent with law, such as a policy memorandum, notice of interpretation, or notice of proposed rulemaking.

[(f) EXPLANATION.—Any written response by the Secretary under subsection (e) regarding a policy, question, or interpretation under part B of this Act shall include an explanation that the written response—

[(1) is provided as informal guidance and is not legally binding; and

[(2) represents the interpretation by the Department of Education of the applicable statutory or regulatory requirements in the context of the specific facts presented.]

## **PART A—GENERAL PROVISIONS**

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

(a) **SHORT TITLE.**—*This Act may be cited as the “Individuals with Disabilities Education Act”.*

(b) **TABLE OF CONTENTS.**—*The table of contents for 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. *Report to Congress.*
- 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 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.*

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

(1) *Disability is a natural part of the human experience and in no way diminishes the right of individuals to participate in or contribute to society. Improving educational results for children with disabilities is an essential element of our national policy of ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities.*

(2) *Before the date of the enactment of the Education for All Handicapped Children Act of 1975 (Public Law 94-142), the educational needs of millions of children with disabilities were not being fully met because—*

(A) *the children did not receive appropriate educational services;*

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

(C) *undiagnosed disabilities prevented the children from having a successful educational experience; or*

(D) *a lack of adequate resources within the public school system forced families to find services outside the public school system.*

(3) *Since the enactment and implementation of the Education for All Handicapped Children Act of 1975, this Act has been successful in ensuring children with disabilities and the families of such children access to a free appropriate public education and in improving educational results for children with disabilities.*

(4) *However, the implementation of this Act has been impeded by low expectations, and an insufficient focus on applying replicable research on proven methods of teaching and learning for children with disabilities.*

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

(A) *having high expectations for such children and ensuring their access to the general education curriculum in the regular classroom to the maximum extent possible in order to—*

(i) *meet developmental goals and, to the maximum extent possible, the challenging expectations that have been established for all children; and*

(ii) *be prepared to lead productive and independent adult lives, to the maximum extent possible;*

(B) *strengthening the role and responsibility of parents and ensuring that families of such children have meaningful opportunities to participate in the education of their children at school and at home;*

(C) *coordinating this Act with other local, educational service agency, State, and Federal school improvement efforts, including improvement efforts under the Elementary and Secondary Education Act of 1965, in order to ensure that such children benefit from such efforts and that special education can become a service for such children rather than a place where they are sent;*

*(D) providing appropriate special education and related services, and aids and supports in the regular classroom, to such children, whenever appropriate;*

*(E) supporting high-quality, intensive preservice preparation and professional development for all personnel who work with children with disabilities in order to ensure that such personnel have the skills and knowledge necessary to improve the academic achievement and functional performance of children with disabilities, including the use of scientifically based instructional practices, to the maximum extent possible;*

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

*(G) focusing resources on teaching and learning while reducing paperwork and requirements that do not assist in improving educational results; and*

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

*(6) While States, local educational agencies, and educational service agencies are primarily responsible for providing an education for all children with disabilities, it is in the national interest that the Federal Government have a supporting role in assisting State and local efforts to educate children with disabilities in order to improve results for such children and to ensure equal protection of the law.*

*(7) A more equitable allocation of resources is essential for the Federal Government to meet its responsibility to provide an equal educational opportunity for all individuals.*

*(8) Parents and schools should be given expanded opportunities to resolve their disagreements in positive and constructive ways.*

*(9) Teachers, schools, local educational agencies, and States should be relieved of irrelevant and unnecessary paperwork burdens that do not lead to improved educational outcomes.*

*(10)(A) The Federal Government must be responsive to the growing needs of an increasingly more diverse society.*

*(B) America's ethnic profile is rapidly changing. In the year 2000, 1 of every 3 persons in the United States was a member of a minority group or was limited English proficient.*

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

*(D) With such changing demographics, recruitment efforts for special education personnel should focus on increasing the participation of minorities in the teaching profession.*

*(11)(A) The limited English proficient population is the fastest growing in our Nation, and the growth is occurring in many parts of our Nation.*

*(B) Studies have documented apparent discrepancies in the levels of referral and placement of limited English proficient children in special education.*

(C) *This poses a special challenge for special education in the referral of, assessment of, and services for, our Nation's students from non-English language backgrounds.*

(12)(A) *Greater efforts are needed to prevent the intensification of problems connected with mislabeling and high dropout rates among minority children with disabilities.*

(B) *More minority children continue to be served in special education than would be expected from the percentage of minority students in the general school population.*

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

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

(E) *Studies have found that schools with predominately Caucasian students and teachers have placed disproportionately high numbers of their minority students into special education.*

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

(B) *The opportunity for minority individuals, organizations, and Historically Black Colleges and Universities to participate fully in awards for grants and contracts, boards of organizations receiving funds under this Act, and peer review panels, and in the training of professionals in the area of special education is essential if we are to obtain greater success in the education of minority children with disabilities.*

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

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

(1)(A) *to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for employment, further education, and independent living;*

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

(C) *to assist States, localities, educational service agencies, and Federal agencies to provide for the education of all children with disabilities;*

(2) *to assist States in the implementation of a Statewide, coordinated, multidisciplinary, interagency system of early intervention services for infants and toddlers with disabilities and their families;*

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

(4) to assess, and ensure the effectiveness of, efforts to educate children with disabilities.

**SEC. 602. DEFINITIONS.**

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

(1) **ASSISTIVE TECHNOLOGY DEVICE.**—*The term “assistive technology device” means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of a child with a disability. The term does not include a medical device that is surgically implanted, or the post-surgical maintenance, programming, or replacement of such device, or an external device connected with the use of a surgically implanted medical device (other than the costs of performing routine maintenance and monitoring of such external device at the same time the child is receiving other services under this Act).*

(2) **ASSISTIVE TECHNOLOGY SERVICE.**—*The term “assistive technology service” means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. Such term includes—*

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

(B) *purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by such child;*

(C) *selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing of assistive technology devices;*

(D) *coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;*

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

(F) *training or technical assistance for professionals (including individuals providing education and rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of such child.*

(3) **CHILD WITH A DISABILITY.**—

(A) **IN GENERAL.**—*The term “child with a disability” means a child—*

(i) *with mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (hereinafter referred to as ‘emotional disturbance’), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and*

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

(B) **CHILD AGED 3 THROUGH 9.**—*The term “child with a disability” for a child aged 3 through 9 (or any subset of that age range, including ages 3 through 5), may, at the*

discretion of the State and the local educational agency, include a child—

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

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

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

(5) **EDUCATIONAL SERVICE AGENCY.**—The term “educational service agency”—

(A) means a regional public multiservice agency—

(i) authorized by State law to develop, manage, and provide services or programs to local educational agencies; and

(ii) recognized as an administrative agency for purposes of the provision of special education and related services provided within public elementary schools and secondary schools of the State; and

(B) includes any other public institution or agency having administrative control and direction over a public elementary school or secondary school.

(6) **ELEMENTARY SCHOOL.**—The term “elementary school” means a nonprofit institutional day or residential school that provides elementary education, as determined under State law.

(7) **EQUIPMENT.**—The term “equipment” includes—

(A) machinery, utilities, and built-in equipment, and any necessary enclosures or structures to house such machinery, utilities, or equipment; and

(B) all other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture; printed, published, and audio-visual instructional materials; telecommunications, sensory, and other technological aids and devices; and books, periodicals, documents, and other related materials.

(8) **EXCESS COSTS.**—The term “excess costs” means those costs that are in excess of the average annual per-student expenditure in a local educational agency during the preceding school year for an elementary school or secondary school student, as may be appropriate, and which shall be computed after deducting—

(A) amounts received—

(i) under part B of this title;

(ii) under part A of title I of the Elementary and Secondary Education Act of 1965; and

(iii) under parts A and B of title III of that Act; and

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

(9) **FREE APPROPRIATE PUBLIC EDUCATION.**—The term “free appropriate public education” means special education and related services that—

(A) have been provided at public expense, under public supervision and direction, and without charge;

(B) meet the standards of the State educational agency;

(C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and

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

(10) **HIGHLY QUALIFIED.**—The term “highly qualified” means the following:

(A) **ALL SPECIAL EDUCATION TEACHERS.**—When used with respect to any public elementary school or secondary school special education teacher teaching in a State, means that the teacher holds at least a bachelor’s degree and that—

(i) the teacher has obtained full State certification as a special education teacher through a State-approved special education teacher preparation program (including certification obtained through alternative routes to certification) or other comparably rigorous methods, or passed the State teacher special education licensing examination, and holds a license to teach in the State as a special education teacher, except that when used with respect to any teacher teaching in a public charter school, the term means that the teacher meets the requirements set forth in the State’s public charter school law;

(ii) the teacher has not had certification or licensure requirements waived on an emergency, temporary, or provisional basis; and

(iii) the teacher demonstrates knowledge of special education and the teaching skills necessary to teach children with disabilities.

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

(C) **NEW MIDDLE SCHOOL AND SECONDARY SCHOOL SPECIAL EDUCATION TEACHERS.**—When used with respect to a special education middle school or secondary school teacher who is new to the profession, means that the teacher has demonstrated a high level of competency in each of the academic subjects in which the teacher teaches by—

(i) passing a rigorous State academic subject test in each of the academic subjects in which the teacher teaches (which may consist of a passing level of performance on a State-required certification or licensing test or tests in each of the academic subjects in which the teacher teaches); or

(ii) successful completion, in each of the academic subjects in which the teacher teaches, of an academic



major, graduate degree, coursework equivalent to an undergraduate academic major, or advanced certification or credentialing.

(D) **VETERAN SPECIAL EDUCATION TEACHERS.**—When used with respect to an elementary school, middle school, or secondary school special education teacher who is not new to the profession, means that the teacher has—

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

(ii) has demonstrated competence in all the academic subjects in which the teacher teaches based on a high objective uniform State standard of evaluation for special education teachers that—

(I) is set by the State for both grade-appropriate academic subject matter knowledge and special education teaching skills;

(II) is aligned with challenging State academic content and student academic achievement standards and developed in consultation with special education teachers, core content specialists, teachers, principals, and school administrators;

(III) provides objective, coherent information about the teachers' attainment of knowledge of core content knowledge in the academic subjects in which a teacher teaches;

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

(V) takes into consideration, but is not based primarily on, the time the teacher has been teaching in the academic subject;

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

(VII) may involve multiple objective measures of teacher competency.

(E) **TEACHERS PROVIDING CONSULTATIVE SERVICES.**—

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

(ii) **CONSULTATIVE SERVICES.**—As used in clause (i), the term “consultative services” means services that adjust the learning environment, modify instructional methods, adapt curricula, use positive behavior supports and interventions, and select and implement appropriate accommodations to meet the needs of individual children.

(F) **EXCEPTION.**—Notwithstanding subparagraphs (B) through (D), when used with respect to a special education teacher who teaches more than 1 subject, primarily to middle school and secondary school-aged children with signifi-

*cant cognitive disabilities, means that the teacher has demonstrated subject knowledge and teaching skills in reading, mathematics, and other areas of the basic elementary school curriculum by—*

*(i) passing a rigorous State test (which may consist of passing a State-required certification or licensing test or tests in those areas); or*

*(ii) demonstrating competency in all the academic subjects in which the teacher teaches, based on a high objective uniform State standard as described in subparagraph (D)(ii).*

(11) **INDIAN.**—*The term “Indian” means an individual who is a member of an Indian tribe.*

(12) **INDIAN TRIBE.**—*The term “Indian tribe” means any Federal or State Indian tribe, band, rancheria, pueblo, colony, or community, including any Alaska Native village or regional village corporation (as defined in or established under the Alaska Native Claims Settlement Act).*

(13) **INDIVIDUALIZED EDUCATION PROGRAM.**—*The term “individualized education program” or “IEP” means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with section 614(d).*

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

(15) **INFANT OR TODDLER WITH A DISABILITY.**—*The term “infant or toddler with a disability” has the meaning given such term in section 632.*

(16) **INSTITUTION OF HIGHER EDUCATION.**—*The term “institution of higher education”—*

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

*(B) also includes any community college receiving funding from the Secretary of the Interior under the Tribally Controlled College or University Assistance Act of 1978.*

(17) **LIMITED ENGLISH PROFICIENT.**—*The term “limited English proficient” has the meaning given the term in section 9101(25) of the Elementary and Secondary Education Act of 1965.*

(18) **LOCAL EDUCATIONAL AGENCY.**—

*(A) The term “local educational agency” means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary schools or secondary schools.*

*(B) The term includes—*

*(i) an educational service agency, as defined in paragraph (5); and*

*(ii) any other public institution or agency having administrative control and direction of a public elementary school or secondary school.*

(C) *The term includes an elementary school or secondary school funded by the Bureau of Indian Affairs, but only to the extent that such inclusion makes the school eligible for programs for which specific eligibility is not provided to the school in another provision of law and the school does not have a student population that is smaller than the student population of the local educational agency receiving assistance under this Act with the smallest student population, except that the school shall not be subject to the jurisdiction of any State educational agency other than the Bureau of Indian Affairs.*

(19) **NATIVE LANGUAGE.**—*The term “native language”, when used with respect to an individual of limited English proficiency, means the language normally used by the individual, or in the case of a child, the language normally used by the parents of the child.*

(20) **NONPROFIT.**—*The term “nonprofit”, as applied to a school, agency, organization, or institution, means a school, agency, organization, or institution owned and operated by 1 or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.*

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

(22) **PARENT.**—*The term “parent”—*

*(A) includes a legal guardian; and*

*(B) except as used in sections 615(b)(2) and 639(a)(5), includes an individual assigned under either of those sections to be a surrogate parent.*

(23) **PARENT ORGANIZATION.**—*The term “parent organization” has the meaning given such term in section 671(g).*

(24) **PARENT TRAINING AND INFORMATION CENTER.**—*The term “parent training and information center” means a center assisted under section 671 or 672.*

(25) **RELATED SERVICES.**—*The term “related services” means transportation, and such developmental, corrective, and other supportive services (including speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, school health services, counseling services, including rehabilitation counseling, orientation and mobility services, travel training instruction, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions in children. The term does not include a medical device that is surgically implanted, or the post-surgical maintenance, programming, or replacement of such device, or an external device connected with the use of a surgically implanted medical device (other than the costs of performing routine maintenance and monitoring of such external device at the same time the child is receiving other services under this Act).*

(26) *SECONDARY SCHOOL.*—The term “secondary school” means a nonprofit institutional day or residential school that provides secondary education, as determined under State law, except that it does not include any education beyond grade 12.

(27) *SECRETARY.*—The term “Secretary” means the Secretary of Education.

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

(A) instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and

(B) instruction in physical education.

(29) *SPECIFIC LEARNING DISABILITY.*—

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

(B) *DISORDERS INCLUDED.*—Such term includes such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

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

(30) *STATE.*—The term “State” means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and each of the outlying areas.

(31) *STATE EDUCATIONAL AGENCY.*—The term “State educational agency” means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary schools and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law.

(32) *SUPPLEMENTARY AIDS AND SERVICES.*—The term “supplementary aids and services” means aids, services, and other supports that are provided in regular education classes or other education-related settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with section 612(a)(5).

(33) *TRANSITION SERVICES.*—The term “transition services” means a coordinated set of activities for a child with a disability (as defined in paragraph (3)(A)) that—

(A) is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child’s movement from school to post-school activities, including post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

(B) is based on the individual child's needs, taking into account the child's strengths, preferences, and interests; and

(C) includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation.

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

(a) *ESTABLISHMENT.*—There shall be, within the Office of Special Education and Rehabilitative Services in the Department of Education, an Office of Special Education Programs, which shall be the principal agency in such Department for administering and carrying out this Act and other programs and activities concerning the education of children with disabilities.

(b) *DIRECTOR.*—The Office established under subsection (a) shall be headed by a Director who shall be selected by the Secretary and shall report directly to the Assistant Secretary for Special Education and Rehabilitative Services.

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

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

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

(b) *REMEDIES.*—In a suit against a State for a violation of this Act, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as those remedies are available for such a violation in the suit against any public entity other than a State.

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

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

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

(b) *COMPLIANCE WITH CERTAIN REGULATIONS.*—Any construction of new facilities or alteration of existing facilities under subsection (a) shall comply with the requirements of—

(1) appendix A of part 36 of title 28, Code of Federal Regulations (commonly known as the “Americans with Disabilities Accessibility Guidelines for Buildings and Facilities”); or

(2) appendix A of subpart 101–19.6 of title 41, Code of Federal Regulations (commonly known as the “Uniform Federal Accessibility Standards”).

**SEC. 606. EMPLOYMENT OF INDIVIDUALS WITH DISABILITIES.**

The Secretary shall ensure that each recipient of assistance under this Act makes positive efforts to employ and advance in employ-

ment qualified individuals with disabilities in programs assisted under this Act.

**SEC. 607. REQUIREMENTS FOR PRESCRIBING REGULATIONS.**

(a) *IN GENERAL.*—In carrying out the provisions of this Act, the Secretary shall issue regulations under this Act only to the extent that such regulations are necessary to ensure that there is compliance with the specific requirements of this Act.

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

(1) violates or contradicts any provision of this Act; and

(2) procedurally or substantively lessens the protections provided to children with disabilities under this Act, as embodied in regulations in effect on July 20, 1983 (particularly as such protections related to parental consent to initial evaluation or initial placement in special education, least restrictive environment, related services, timelines, attendance of evaluation personnel at individualized education program meetings, or qualifications of personnel), except to the extent that such regulation reflects the clear and unequivocal intent of the Congress in legislation.

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

(d) *POLICY LETTERS AND STATEMENTS.*—The Secretary may not issue policy letters or other statements (including letters or statements regarding issues of national significance) that—

(1) violate or contradict any provision of this Act; or

(2) establish a rule that is required for compliance with, and eligibility under, this Act without following the requirements of section 553 of title 5, United States Code.

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

(1) such response is provided as informal guidance and is not legally binding;

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

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

(f) *CORRESPONDENCE FROM DEPARTMENT OF EDUCATION DESCRIBING INTERPRETATIONS OF THIS ACT.*—

(1) *IN GENERAL.*—The Secretary shall, on a quarterly basis, publish in the Federal Register, and widely disseminate to interested entities through various additional forms of communication, a list of correspondence from the Department of Education received by individuals during the previous quarter that describes the interpretations of the Department of Education of this Act or the regulations implemented pursuant to this Act.

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

(A) identify the topic addressed by the correspondence and shall include such other summary information as the Secretary determines to be appropriate; and

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

**SEC. 608. STATE ADMINISTRATION.**

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

(1) ensure that any State rules, regulations, and policies relating to this Act conform to the purposes of this Act; and

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

(b) *SUPPORT AND FACILITATION.*—State rules, regulations, and policies under this Act shall support and facilitate local educational agency and school-level systemic reform designed to enable children with disabilities to meet the challenging State student academic achievement standards.

**SEC. 609. REPORT TO CONGRESS.**

The Comptroller General shall conduct a review of Federal, State, and local requirements relating to the education of children with disabilities to determine which requirements result in excessive paperwork completion burdens for teachers, related services providers, and school administrators, and shall report to Congress not later than 18 months after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2003 regarding such review along with strategic proposals for reducing the paperwork burdens on teachers.

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

**[SEC. 611. AUTHORIZATION; ALLOTMENT; USE OF FUNDS; AUTHORIZATION OF APPROPRIATIONS.**

**[(a) GRANTS TO STATES.—**

**[(1) PURPOSE OF GRANTS.—**The Secretary shall make grants to States and the outlying areas, and provide funds to the Secretary of the Interior, to assist them to provide special education and related services to children with disabilities in accordance with this part.

**[(2) MAXIMUM AMOUNTS.—**The maximum amount of the grant a State may receive under this section for any fiscal year is—

**[(A) the number of children with disabilities in the State who are receiving special education and related services—**

**[(i) aged 3 through 5 if the State is eligible for a grant under section 619; and**

**[(ii) aged 6 through 21; multiplied by**

[(B) 40 percent of the average per-pupil expenditure in public elementary and secondary schools in the United States.

[(b) OUTLYING AREAS AND FREELY ASSOCIATED STATES.—

[(1) FUNDS RESERVED.—From the amount appropriated for any fiscal year under subsection (j), the Secretary shall reserve not more than one percent, which shall be used—

[(A) to provide assistance to the outlying areas in accordance with their respective populations of individuals aged 3 through 21; and

[(B) for fiscal years 1998 through 2001, to carry out the competition described in paragraph (2), except that the amount reserved to carry out that competition shall not exceed the amount reserved for fiscal year 1996 for the competition under part B of this Act described under the heading “SPECIAL EDUCATION” in Public Law 104–134.

[(2) LIMITATION FOR FREELY ASSOCIATED STATES.—

[(A) COMPETITIVE GRANTS.—The Secretary shall use funds described in paragraph (1)(B) to award grants, on a competitive basis, to Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the freely associated States to carry out the purposes of this part.

[(B) AWARD BASIS.—The Secretary shall award grants under subparagraph (A) on a competitive basis, pursuant to the recommendations of the Pacific Region Educational Laboratory in Honolulu, Hawaii. Those recommendations shall be made by experts in the field of special education and related services.

[(C) ASSISTANCE REQUIREMENTS.—Any freely associated State that wishes to receive funds under this part shall include, in its application for assistance—

[(i) information demonstrating that it will meet all conditions that apply to States under this part;

[(ii) an assurance that, notwithstanding any other provision of this part, it will use those funds only for the direct provision of special education and related services to children with disabilities and to enhance its capacity to make a free appropriate public education available to all children with disabilities;

[(iii) the identity of the source and amount of funds, in addition to funds under this part, that it will make available to ensure that a free appropriate public education is available to all children with disabilities within its jurisdiction; and

[(iv) such other information and assurances as the Secretary may require.

[(D) TERMINATION OF ELIGIBILITY.—Notwithstanding any other provision of law, the freely associated States shall not receive any funds under this part for any program year that begins after September 30, 2001.

[(E) ADMINISTRATIVE COSTS.—The Secretary may provide not more than five percent of the amount reserved for grants under this paragraph to pay the administrative costs of the Pacific Region Educational Laboratory under subparagraph (B).



[(3) LIMITATION.—An outlying area is not eligible for a competitive award under paragraph (2) unless it receives assistance under paragraph (1)(A).

[(4) SPECIAL RULE.—The provisions of Public Law 95–134, permitting the consolidation of grants by the outlying areas, shall not apply to funds provided to those areas or to the freely associated States under this section.

[(5) ELIGIBILITY FOR DISCRETIONARY PROGRAMS.—The freely associated States shall be eligible to receive assistance under subpart 2 of part D of this Act until September 30, 2001.

[(6) DEFINITION.—As used in this subsection, the term “freely associated States” means the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

[(c) SECRETARY OF THE INTERIOR.—From the amount appropriated for any fiscal year under subsection (j), the Secretary shall reserve 1.226 percent to provide assistance to the Secretary of the Interior in accordance with subsection (i).

[(d) ALLOCATIONS TO STATES.—

[(1) IN GENERAL.—After reserving funds for studies and evaluations under section 674(e), and for payments to the outlying areas and the Secretary of the Interior under subsections (b) and (c), the Secretary shall allocate the remaining amount among the States in accordance with paragraph (2) or subsection (e), as the case may be.

[(2) INTERIM FORMULA.—Except as provided in subsection (e), the Secretary shall allocate the amount described in paragraph (1) among the States in accordance with section 611(a)(3), (4), and (5) and (b)(1), (2), and (3) of this Act, as in effect prior to the enactment of the Individuals with Disabilities Education Act Amendments of 1997, except that the determination of the number of children with disabilities receiving special education and related services under such section 611(a)(3) may, at the State’s discretion, be calculated as of the last Friday in October or as of December 1 of the fiscal year for which the funds are appropriated.

[(e) PERMANENT FORMULA.—

[(1) ESTABLISHMENT OF BASE YEAR.—The Secretary shall allocate the amount described in subsection (d)(1) among the States in accordance with this subsection for each fiscal year beginning with the first fiscal year for which the amount appropriated under subsection (j) is more than \$4,924,672,200.

[(2) USE OF BASE YEAR.—

[(A) DEFINITION.—As used in this subsection, the term “base year” means the fiscal year preceding the first fiscal year in which this subsection applies.

[(B) SPECIAL RULE FOR USE OF BASE YEAR AMOUNT.—If a State received any funds under this section for the base year on the basis of children aged 3 through 5, but does not make a free appropriate public education available to all children with disabilities aged 3 through 5 in the State in any subsequent fiscal year, the Secretary shall compute the State’s base year amount, solely for the purpose of calculating the State’s allocation in that subsequent year under paragraph (3) or (4), by subtracting the amount allo-

cated to the State for the base year on the basis of those children.

[(3) INCREASE IN FUNDS.—If the amount available for allocations to States under paragraph (1) is equal to or greater than the amount allocated to the States under this paragraph for the preceding fiscal year, those allocations shall be calculated as follows:

[(A)(i) Except as provided in subparagraph (B), the Secretary shall—

[(I) allocate to each State the amount it received for the base year;

[(II) allocate 85 percent of any remaining funds to States on the basis of their relative populations of children aged 3 through 21 who are of the same age as children with disabilities for whom the State ensures the availability of a free appropriate public education under this part; and

[(III) allocate 15 percent of those remaining funds to States on the basis of their relative populations of children described in subclause (II) who are living in poverty.

[(ii) For the purpose of making grants under this paragraph, the Secretary shall use the most recent population data, including data on children living in poverty, that are available and satisfactory to the Secretary.

[(B) Notwithstanding subparagraph (A), allocations under this paragraph shall be subject to the following:

[(i) No State's allocation shall be less than its allocation for the preceding fiscal year.

[(ii) No State's allocation shall be less than the greatest of—

[(I) the sum of—

[(aa) the amount it received for the base year; and

[(bb) one third of one percent of the amount by which the amount appropriated under subsection (j) exceeds the amount appropriated under this section for the base year;

[(II) the sum of—

[(aa) the amount it received for the preceding fiscal year; and

[(bb) that amount multiplied by the percentage by which the increase in the funds appropriated from the preceding fiscal year exceeds 1.5 percent; or

[(III) the sum of—

[(aa) the amount it received for the preceding fiscal year; and

[(bb) that amount multiplied by 90 percent of the percentage increase in the amount appropriated from the preceding fiscal year.

[(iii) Notwithstanding clause (ii), no State's allocation under this paragraph shall exceed the sum of—

[(I) the amount it received for the preceding fiscal year; and

[(II) that amount multiplied by the sum of 1.5 percent and the percentage increase in the amount appropriated.

[(C) If the amount available for allocations under this paragraph is insufficient to pay those allocations in full, those allocations shall be ratably reduced, subject to subparagraph (B)(i).

[(4) DECREASE IN FUNDS.—If the amount available for allocations to States under paragraph (1) is less than the amount allocated to the States under this section for the preceding fiscal year, those allocations shall be calculated as follows:

[(A) If the amount available for allocations is greater than the amount allocated to the States for the base year, each State shall be allocated the sum of—

[(i) the amount it received for the base year; and

[(ii) an amount that bears the same relation to any remaining funds as the increase the State received for the preceding fiscal year over the base year bears to the total of all such increases for all States.

[(B)(i) If the amount available for allocations is equal to or less than the amount allocated to the States for the base year, each State shall be allocated the amount it received for the base year.

[(ii) If the amount available is insufficient to make the allocations described in clause (i), those allocations shall be ratably reduced.

[(f) STATE-LEVEL ACTIVITIES.—

[(1) GENERAL.—

[(A) Each State may retain not more than the amount described in subparagraph (B) for administration and other State-level activities in accordance with paragraphs (2) and (3).

[(B) For each fiscal year, the Secretary shall determine and report to the State educational agency an amount that is 25 percent of the amount the State received under this section for fiscal year 1997, cumulatively adjusted by the Secretary for each succeeding fiscal year by the lesser of—

[(i) the percentage increase, if any, from the preceding fiscal year in the State's allocation under this section; or

[(ii) the rate of inflation, as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

[(C) A State may use funds it retains under subparagraph (A) without regard to—

[(i) the prohibition on commingling of funds in section 612(a)(18)(B); and

[(ii) the prohibition on supplanting other funds in section 612(a)(18)(C).

[(2) STATE ADMINISTRATION.—

[(A) For the purpose of administering this part, including section 619 (including the coordination of activities under this part with, and providing technical assistance to,

other programs that provide services to children with disabilities)—

[(i) each State may use not more than twenty percent of the maximum amount it may retain under paragraph (1)(a) for any fiscal year or \$500,000 (adjusted by the cumulative rate of inflation since fiscal year 1998, as measured by the percentage increase, if any, in the Consumer Price Index For All Urban Consumers, [published by the Bureau of Labor Statistics of the Department of Labor), whichever is greater; and

[(ii) each outlying area may use up to five percent of the amount it receives under this section for any fiscal year or \$35,000, whichever is greater.

[(B) Funds described in subparagraph (A) may also be used for the administration of part C of this Act, if the State educational agency is the lead agency for the State under that part.

[(3) OTHER STATE-LEVEL ACTIVITIES.—Each State shall use any funds it retains under paragraph (1) and does not use for administration under paragraph (2) for any of the following:

[(A) Support and direct services, including technical assistance and personnel development and training.

[(B) Administrative costs of monitoring and complaint investigation, but only to the extent that those costs exceed the costs incurred for those activities during fiscal year 1985.

[(C) To establish and implement the mediation process required by section 615(e), including providing for the costs of mediators and support personnel.

[(D) To assist local educational agencies in meeting personnel shortages.

[(E) To develop a State Improvement Plan under subpart 1 of part D.

[(F) Activities at the State and local levels to meet the performance goals established by the State under section 612(a)(16) and to support implementation of the State Improvement Plan under subpart 1 of part D if the State receives funds under that subpart.

[(G) To supplement other amounts used to develop and implement a Statewide coordinated services system designed to improve results for children and families, including children with disabilities and their families, but not to exceed one percent of the amount received by the State under this section. This system shall be coordinated with and, to the extent appropriate, build on the system of coordinated services developed by the State under part C of this Act.

[(H) For subgrants to local educational agencies for the purposes described in paragraph (4)(A).

[(4)(A) SUBGRANTS TO LOCAL EDUCATIONAL AGENCIES FOR CAPACITY—BUILDING AND IMPROVEMENT.—In any fiscal year in which the percentage increase in the State's allocation under this section exceeds the rate of inflation (as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, pub-

lished by the Bureau of Labor Statistics of the Department of Labor), each State shall reserve, from its allocation under this section, the amount described in subparagraph (B) to make subgrants to local educational agencies, unless that amount is less than \$100,000, to assist them in providing direct services and in making systemic change to improve results for children with disabilities through one or more of the following:

[(i) Direct services, including alternative programming for children who have been expelled from school, and services for children in correctional facilities, children enrolled in State-operated or State-supported schools, and children in charter schools.

[(ii) Addressing needs or carrying out improvement strategies identified in the State's Improvement Plan under subpart 1 of part D.

[(iii) Adopting promising practices, materials, and technology, based on knowledge derived from education research and other sources.

[(iv) Establishing, expanding, or implementing inter-agency agreements and arrangements between local educational agencies and other agencies or organizations concerning the provision of services to children with disabilities and their families.

[(v) Increasing cooperative problem-solving between parents and school personnel and promoting the use of alternative dispute resolution.

[(B) MAXIMUM SUBGRANT.—For each fiscal year, the amount referred to in subparagraph (A) is—

[(i) the maximum amount the State was allowed to retain under paragraph (1)(A) for the prior fiscal year, or for fiscal year 1998, 25 percent of the State's allocation for fiscal year 1997 under this section; multiplied by

[(ii) the difference between the percentage increase in the State's allocation under this section and the rate of inflation, as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

[(5) REPORT ON USE OF FUNDS.—As part of the information required to be submitted to the Secretary under section 612, each State shall annually describe—

[(A) how amounts retained under paragraph (1) will be used to meet the requirements of this part;

[(B) how those amounts will be allocated among the activities described in paragraphs (2) and (3) to meet State priorities based on input from local educational agencies; and

[(C) the percentage of those amounts, if any, that will be distributed to local educational agencies by formula.

[(g) SUBGRANTS TO LOCAL EDUCATIONAL AGENCIES.—

[(1) SUBGRANTS REQUIRED.—East State that receives a grant under this section for any fiscal year shall distribute any funds it does not retain under subsection (f) (at least 75 percent of the grant funds) to local educational agencies in the State that have established their eligibility under section 613, and to

State agencies that received funds under section 614A(a) of this Act for fiscal year 1997, as then in effect, and have established their eligibility under section 613, for use in accordance with this part.

**[(2) ALLOCATIONS TO LOCAL EDUCATIONAL AGENCIES.—**

**[(A) INTERIM PROCEDURE.—**For each fiscal year for which funds are allocated to States under subsection (d)(2), each State shall allocate funds under paragraph (1) in accordance with section 611(d) of this Act, as in effect prior to the enactment of the Individuals with Disabilities Education Act Amendments of 1997.

**[(B) PERMANENT PROCEDURE.—**For each fiscal year for which funds are allocated to States under subsection (e), each State shall allocate funds under paragraph (1) as follows:

**[(i) BASE PAYMENTS.—**The State shall first award each agency described in paragraph (1) the amount that agency would have received under this section for the base year, as defined in subsection (e)(2)(A), if the State had distributed 75 percent of its grant for that year under section 611(d), as then in effect.

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

**[(I) allocate 85 percent of any remaining funds to those agencies on the basis of the relative numbers of children enrolled in public and private elementary and secondary schools within the agency's jurisdiction; and**

**[(II) allocate 15 percent of those remaining funds to those agencies in accordance with their relative numbers of children living in poverty, as determined by the State educational agency.**

**[(3) FORMER CHAPTER 1 STATE AGENCIES.—**

**[(A) To the extent necessary, the State—**

**[(i) shall use funds that are available under subsection (f)(1)(A) to ensure that each State agency that received fiscal year 1994 funds under subpart 2 of part D of chapter 1 of title I of the Elementary and Secondary Education Act of 1965 receives, from the combination of funds under subsection (f)(1)(A) and funds provided under paragraph (1) of this subsection, an amount equal to—**

**[(I) the number of children with disabilities, aged 6 through 21, to whom the agency was providing special education and related services on December 1 of the fiscal year for which the funds were appropriated, subject to the limitation in subparagraph (B); multiplied by**

**[(II) the per-child amount provided under such subpart for fiscal year 1994; and**

**[(ii) may use those funds to ensure that each local educational agency that received fiscal year 1994 funds under that subpart for children who had transferred from a State-operated or State-supported school or program assisted under that subpart receives, from**

the combination of funds available under subsection (f)(1)(A) and funds provided under paragraph (1) of this subsection, an amount for each such child, aged 3 through 21 to whom the agency was providing special education and related services on December 1 of the fiscal year for which the funds were appropriated, equal to the per-child amount the agency received under that subpart for fiscal year 1994.

[(B) The number of children counted under subparagraph (A)(i)(I) shall not exceed the number of children aged 3 through 21 for whom the agency received fiscal year 1994 funds under subpart 2 of part D of chapter 1 of title I of the Elementary and Secondary Education Act of 1965.

[(4) REALLOCATION OF FUNDS.—If a State educational agency determines that a local educational agency is adequately providing a free appropriate public education to all children with disabilities residing in the area served by that agency with State and local funds, the State educational agency may reallocate any portion of the funds under this part that are not needed by that local agency to provide a free appropriate public education to other local educational agencies in the State that are not adequately providing special education and related services to all children with disabilities residing in the areas they serve.

[(h) DEFINITIONS.—For the purpose of this section—

[(1) the term “average per-pupil expenditure in public elementary and secondary schools in the United States” means—

[(A) without regard to the source of funds—

[(i) the aggregate current expenditures, during the second fiscal year preceding the fiscal year for which the determination is made (or, if satisfactory data for that year are not available, during the most recent preceding fiscal year for which satisfactory data are available) of all local educational agencies in the 50 States and the District of Columbia); plus

[(ii) any direct expenditures by the State for the operation of those agencies; divided by

[(B) the aggregate number of children in average daily attendance to whom those agencies provided free public education during that preceding year; and

[(2) the term “State” means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

[(i) USE OF AMOUNTS BY SECRETARY OF THE INTERIOR.—

[(1) PROVISION OF AMOUNTS FOR ASSISTANCE.—

[(A) IN GENERAL.—The Secretary of Education shall provide amounts to the Secretary of the Interior to meet the need for assistance for the education of children with disabilities on reservations aged 5 to 21, inclusive, enrolled in elementary and secondary schools for Indian children operated or funded by the Secretary of the Interior. The amount of such payment for any fiscal year shall be equal to 80 percent of the amount allotted under subsection (c) for that fiscal year.

【(B) CALCULATION OF NUMBER OF CHILDREN.—In the case of Indian students aged 3 to 5, inclusive, who are enrolled in programs affiliated with the Bureau of Indian Affairs (hereafter in this subsection referred to as “BIA”) schools and that are required by the States in which such schools are located to attain or maintain State accreditation, and which schools have such accreditation prior to the date of enactment of the Individuals with Disabilities Education Act Amendments of 1991, the school shall be allowed to count those children for the purpose of distribution of the funds provided under this paragraph to the Secretary of the Interior. The Secretary of the Interior shall be responsible for meeting all of the requirements of this part for these children, in accordance with paragraph (2).

【(C) ADDITIONAL REQUIREMENT.—With respect to all other children aged 3 to 21, inclusive, on reservations, the State educational agency shall be responsible for ensuring that all of the requirements of this part are implemented.

【(2) SUBMISSION OF INFORMATION.—The Secretary of Education may provide the Secretary of the Interior amounts under paragraph (1) for a fiscal year only if the Secretary of the Interior submits to the Secretary of Education information that—

【(A) demonstrates that the Department of the Interior meets the appropriate requirements, as determined by the Secretary of Education, of sections 612 (including monitoring and evaluation activities) and 613;

【(B) includes a description of how the Secretary of the Interior will coordinate the provision of services under this part with local educational agencies, tribes and tribal organizations, and other private and Federal service providers;

【(C) includes an assurance that there are public hearings, adequate notice of such hearings, and an opportunity for comment afforded to members of tribes, tribal governing bodies, and affected local school boards before the adoption of the policies, programs, and procedures described in subparagraph (A);

【(D) includes an assurance that the Secretary of the Interior will provide such information as the Secretary of Education may require to comply with section 618;

【(E) includes an assurance that the Secretary of the Interior and the Secretary of Health and Human Services have entered into a memorandum of agreement, to be provided to the Secretary of Education, for the coordination of services, resources, and personnel between their respective Federal, State, and local offices and with State and local educational agencies and other entities to facilitate the provision of services to Indian children with disabilities residing on or near reservations (such agreement shall provide for the apportionment of responsibilities and costs including, but not limited to, child find, evaluation, diagnosis, remediation, or therapeutic measures, and (where appropriate) equipment and medical or personal supplies as needed for a child to remain in school or a program); and



[(F) includes an assurance that the Department of the Interior will cooperate with the Department of Education in its exercise of monitoring and oversight of this application, and any agreements entered into between the Secretary of the Interior and other entities under this part, and will fulfill its duties under this part.

Section 616(a) shall apply to the information described in this paragraph.

**[(3) PAYMENTS FOR EDUCATION AND SERVICES FOR INDIAN CHILDREN WITH DISABILITIES AGED 3 THROUGH 5.—**

**[(A) IN GENERAL.—**With funds appropriated under subsection (j), the Secretary of Education shall make payments to the Secretary of the Interior to be distributed to tribes or tribal organizations (as defined under section 4 of the Indian Self-Determination and Education Assistance Act) or consortia of the above to provide for the coordination of assistance for special education and related services for children with disabilities aged 3 through 5 on reservations served by elementary and secondary schools for Indian children operated or funded by the Department of the Interior. The amount of such payments under subparagraph (B) for any fiscal year shall be equal to 20 percent of the amount allotted under subsection (c).

**[(B) DISTRIBUTION OF FUNDS.—**The Secretary of the Interior shall distribute the total amount of the payment under subparagraph (A) by allocating to each tribe or tribal organization an amount based on the number of children with disabilities ages 3 through 5 residing on reservations as reported annually, divided by the total of those children served by all tribes or tribal organizations.

**[(C) SUBMISSION OF INFORMATION.—**To receive a payment under this paragraph, the tribe or tribal organization shall submit such figures to the Secretary of the Interior as required to determine the amounts to be allocated under subparagraph (B). This information shall be compiled and submitted to the Secretary of Education.

**[(D) USE OF FUNDS.—**The funds received by a tribe or tribal organization shall be used to assist in child find, screening, and other procedures for the early identification of children aged 3 through 5, parent training, and the provision of direct services. These activities may be carried out directly or through contracts or cooperative agreements with the BIA, local educational agencies, and other public or private nonprofit organizations. The tribe or tribal organization is encouraged to involve Indian parents in the development and implementation of these activities. The above entities shall, as appropriate, make referrals to local, State, or Federal entities for the provision of services or further diagnosis.

**[(E) BIENNIAL REPORT.—**To be eligible to receive a grant pursuant to subparagraph (A), the tribe or tribal organization shall provide to the Secretary of the Interior a biennial report of activities undertaken under this paragraph, including the number of contracts and cooperative agreements entered into, the number of children contacted and

receiving services for each year, and the estimated number of children needing services during the 2 years following the one in which the report is made. The Secretary of the Interior shall include a summary of this information on a biennial basis in the report to the Secretary of Education required under this subsection. The Secretary of Education may require any additional information from the Secretary of the Interior.

[(F) PROHIBITIONS.—None of the funds allocated under this paragraph may be used by the Secretary of the Interior for administrative purposes, including child count and the provision of technical assistance.

[(4) PLAN FOR COORDINATION OF SERVICES.—The Secretary of the Interior shall develop and implement a plan for the coordination of services for all Indian children with disabilities residing on reservations covered under this Act. Such plan shall provide for the coordination of services benefiting these children from whatever source, including tribes, the Indian Health Service, other BIA divisions, and other Federal agencies. In developing the plan, the Secretary of the Interior shall consult with all interested and involved parties. It shall be based on the needs of the children and the system best suited for meeting those needs, and may involve the establishment of cooperative agreements between the BIA, other Federal agencies, and other entities. The plan shall also be distributed upon request to States, state and local educational agencies, and other agencies providing services to infants, toddlers, and children with disabilities, to tribes, and to other interested parties.

[(5) ESTABLISHMENT OF ADVISORY BOARD.—To meet the requirements of section 612(a)(21), the Secretary of the Interior shall establish, not later than 6 months after the date of the enactment of the Individuals with Disabilities Education Act Amendments of 1997, under the BIA, an advisory board composed of individuals involved in or concerned with the education and provision of services to Indian infants, toddlers, children, and youth with disabilities, including Indians with disabilities, Indian parents or guardians of such children, teachers, service providers, State and local educational officials, representatives of tribes or tribal organizations, representatives from State Interagency Coordinating Councils under section 641 in States having reservations, and other members representing the various divisions and entities of the BIA. The chairperson shall be selected by the Secretary of the Interior. The advisory board shall—

[(A) assist in the coordination of services within the BIA and with other local, State, and Federal agencies in the provision of education for infants, toddlers, and children with disabilities;

[(B) advise and assist the Secretary of the Interior in the performance of the Secretary's responsibilities described in this subsection;

[(C) develop and recommend policies concerning effective inter- and intra-agency collaboration, including modifications to regulations and the elimination of barriers to inter- and intra-agency programs and activities;

[(D) provide assistance and disseminate information on best practices, effective program coordination strategies, and recommendations for improved educational programming for Indian infants, toddlers, and children with disabilities; and

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

[(6) ANNUAL REPORTS.—

[(A) IN GENERAL.—The advisory board established under paragraph (5) shall prepare and submit to the Secretary of the Interior and to the Congress an annual report containing a description of the activities of the advisory board for the preceding year.

[(B) AVAILABILITY.—The Secretary of the Interior shall make available to the Secretary of Education the report described in subparagraph (A).

[(j) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this part, other than section 619, there are authorized to be appropriated such sums as may be necessary.

**[SEC. 612. STATE ELIGIBILITY.]**

[(a) IN GENERAL.—A State is eligible for assistance under this part for a fiscal year if the State demonstrates to the satisfaction of the Secretary that the State has in effect policies and procedures to ensure that it meets each of the following conditions:

[(1) FREE APPROPRIATE PUBLIC EDUCATION.—

[(A) IN GENERAL.—A free appropriate public education is available to all children with disabilities residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school.

[(B) LIMITATION.—The obligation to make a free appropriate public education available to all children with disabilities does not apply with respect to children:

[(i) aged 3 through 5 and 18 through 21 in a State to the extent that its application to those children would be inconsistent with State law or practice, or the order of any court, respecting the provision of public education to children in those age ranges; and

[(ii) aged 18 through 21 to the extent that State law does not require that special education and related services under this part be provided to children with disabilities who, in the educational placement prior to their incarceration in an adult correctional facility:

[(I) were not actually identified as being a child with a disability under section 602(3) of this Act; or

[(II) did not have an individualized education program under this part.

[(2) FULL EDUCATIONAL OPPORTUNITY GOAL.—The State has established a goal of providing full education opportunity to all children with disabilities and a detailed timetable for accomplishing that goal.

[(3) CHILD FIND.—

[(A) IN GENERAL.—All children with disabilities residing in the State, including children with disabilities attending

private schools, regardless of the severity of their disabilities, and who are in need of special education, and related services, are identified, located, and evaluated and a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services.

[(B) CONSTRUCTION.—Nothing in this Act requires that children be classified by their disability so long as each child who has a disability listed in section 602 and who, by reason of that disability, needs special education and related services is regarded as a child with a disability under this part

[(4) INDIVIDUALIZED EDUCATION PROGRAM.—An individualized education program, or an individualized family service plan that meets the requirements of section 636(d), is developed, reviewed, and revised for each child with a disability in accordance with section 614(d).

[(5) LEAST RESTRICTIVE ENVIRONMENT.—

[(A) IN GENERAL.—To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

[(B) ADDITIONAL REQUIREMENT.—

[(i) IN GENERAL.—If the State uses a funding mechanism by which the State distributes State funds on the basis of the type of setting in which a child is served, the funding mechanism does not result in placements that violate the requirements of subparagraph (A).

[(ii) ASSURANCE.—If the state does not have policies and procedures to ensure compliance with clause (i), the State shall provide the Secretary an assurance that it will revise the funding mechanism as soon as feasible to ensure that such mechanism does not result in such placements.

[(6) PROCEDURAL SAFEGUARDS.—

[(A) IN GENERAL.—Children with disabilities and their parents are afforded the procedural safeguards required by section 615.

[(B) ADDITIONAL PROCEDURAL SAFEGUARDS.—Procedures to ensure that testing and evaluation materials and procedures utilized for the purposes of evaluation and placement of children with disabilities will be selected and administered so as not to be racially or culturally discriminatory. Such materials or procedures shall be provided and administered in the child's native language or mode of communications, unless it clearly is not feasible to do so, and no single procedure shall be the sole criterion for determining an appropriate educational program for a child.

[(7) EVALUATION.—Children with disabilities are evaluated in accordance with subsections (a) through (c) of section 614.

[(8) CONFIDENTIALITY.—Agencies in the State comply with section 671(c) (relating to the confidentiality of records and information).

[(9) TRANSITION FROM PART C TO PRESCHOOL PROGRAMS.—Children participating in early-intervention programs assisted under part C, and who will participate in preschool programs assisted under this part, experience a smooth and effective transition to those preschool programs in a manner consistent with section 637(a)(8). By the third birthday of such a child, an individualized education program or, if consistent with sections 614(d)(2)(B) and 636(d), an individualized family service plan, has been developed and is being implemented for the child. The local educational agency will participate in transition planning conferences arranged by the designated lead agency under section 637(a)(8).

[(10) CHILDREN IN PRIVATE SCHOOLS.—

[(A) CHILDREN ENROLLED IN PRIVATE SCHOOLS BY THEIR PARENTS.—

[(i) IN GENERAL.—To the extent consistent with the number and location of children with disabilities in the State who are enrolled by their parents in private elementary and secondary schools, provision is made for the participation of those children in the program assisted or carried out under this part by providing for such children special education and related services in accordance with the following requirements, unless the Secretary has arranged for services to those children under subsection (f):

[(I) Amounts expended for the provision of those services by a local educational agency shall be equal to a proportionate amount of Federal funds made available under this part.

[(II) Such services may be provided to children with disabilities on the premises of private, including parochial, schools, to the extent consistent with law.

[(ii) CHILD-FIND REQUIREMENT.—The requirements of paragraph (3) of this subsection (relating to child find) shall apply with respect to children with disabilities in the State who are enrolled in private, including parochial, elementary and secondary schools.

[(B) CHILDREN PLACED IN, OR REFERRED TO, PRIVATE SCHOOLS BY PUBLIC AGENCIES.—

[(i) IN GENERAL.—Children with disabilities in private schools and facilities are provided special education and related services, in accordance with an individualized education program, at no cost to their parents, if such children are placed in, or referred to, such schools or facilities by the State or appropriate local educational agency as the means of carrying out the requirements of this part or any other applicable law requiring the provision of special education and

related services to all children with disabilities within such State.

[(ii) STANDARDS.—In all cases described in clause (i), the State educational agency shall determine whether such schools and facilities meet standards that apply to State and local educational agencies and that children so served have all the rights they would have if served by such agencies.

[(C) PAYMENT FOR EDUCATION OF CHILDREN ENROLLED IN PRIVATE SCHOOLS WITHOUT CONSENT OF OR REFERRAL BY THE PUBLIC AGENCY.—

[(i) IN GENERAL.—Subject to subparagraph (A), this part does not require a local educational agency to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made a free appropriate public education available to the child and the parents elected to place the child in such private school or facility.

[(ii) REIMBURSEMENT FOR PRIVATE SCHOOL PLACEMENT.—If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private elementary or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made a free appropriate public education available to the child in a timely manner prior to that enrollment.

[(iii) LIMITATION ON REIMBURSEMENT.—The cost of reimbursement described in clause (ii) may be reduced or denied—

[(I) if—

[(aa) at the most recent IEP meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP Team that they were rejecting the placement proposed by the public agency to provide a free appropriate public education to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or

[(bb) 10 business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information described in division (aa);

[(II) if, prior to the parents' removal of the child from the public school, the public agency informed the parents, through the notice requirements described in section 615(b)(7), of its intent to evaluate the child (including a statement of the purpose

of the evaluation that was appropriate and reasonable), but the parents did not make the child available for such evaluation; or

[(III) upon a judicial finding of unreasonableness with respect to actions taken by the parents.

[(iv) EXCEPTION.—Notwithstanding the notice requirement in clause (iii)(I), the cost of reimbursement may not be reduced or denied for failure to provide such notice if—

[(I) the parent is illiterate and cannot write in English;

[(II) compliance with clause (iii)(I) would likely result in physical or serious emotional harm to the child;

[(III) the school prevented the parent from providing such notice; or

[(IV) the parents had not received notice, pursuant to section 615, of the notice requirement in clause (iii)(I).

[(11) STATE EDUCATIONAL AGENCY RESPONSIBLE FOR GENERAL SUPERVISION.—

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

[(i) the requirements of this part are met; and

[(ii) all educational programs for children with disabilities in the State, including all such programs administered by any other State or local agency—

[(I) are under the general supervision of individuals in the State who are responsible for educational programs for children with disabilities; and

[(II) meet the educational standards of the State educational agency.

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

[(C) EXCEPTION.—Notwithstanding subparagraphs (A) and (B), the Governor (or another individual pursuant to State law), consistent with State law, may assign to any public agency in the State the responsibility of ensuring that the requirements of this part are met with respect to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons.

[(12) OBLIGATIONS RELATED TO AND METHODS OF ENSURING SERVICES.—

[(A) ESTABLISHING RESPONSIBILITY FOR SERVICES.—The Chief Executive Officer or designee of the officer shall ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each public agency described in subparagraph (B) and the State educational agency, in order to ensure that all services described in subparagraph (B)(i) that are needed to ensure a

free appropriate public education are provided, including the provision of such services during the pendency of any dispute under clause (iii). Such agreement or mechanism shall include the following:

[(i) AGENCY FINANCIAL RESPONSIBILITY.—An identification of, or a method for defining, the financial responsibility of each agency for providing services described in subparagraph (B)(i) to ensure a free appropriate public education to children with disabilities, provided that the financial responsibility of each public agency described in subparagraph (B), including the State Medicaid agency and other public insurers of children with disabilities, shall precede the financial responsibility of the local educational agency (or the State agency responsible for developing the child's IEP).

[(ii) CONDITIONS AND TERMS OF REIMBURSEMENT.—The conditions, terms, and procedures under which a local educational agency shall be reimbursed by other agencies.

[(iii) INTERAGENCY DISPUTES.—Procedures for resolving interagency disputes (including procedures under which local educational agencies may initiate proceedings) under the agreement or other mechanism to secure reimbursement from other agencies or otherwise implement the provisions of the agreement or mechanism.

[(iv) COORDINATION OF SERVICES PROCEDURES.—Policies and procedures for agencies to determine and identify the interagency coordination responsibilities of each agency to promote the coordination and timely and appropriate delivery of services described in subparagraph (B)(i).

[(B) OBLIGATION OF PUBLIC AGENCY.—

[(i) IN GENERAL.—If any public agency other than an educational agency is otherwise obligated under Federal or State law, or assigned responsibility under State policy or pursuant to subparagraph (A), to provide or pay for any services that are also considered special education or related services (such as, but not limited to, services described in sections 602(1) relating to assistive technology devices, 602(2) relating to assistive technology services, 602(22) relating to related services, 602(29) relating to supplementary aids and services, and 602(30) relating to transition services) that are necessary for ensuring a free appropriate public education to children with disabilities within the State, such public agency shall fulfill that obligation or responsibility, either directly or through contract or other arrangement.

[(ii) REIMBURSEMENT FOR SERVICES BY PUBLIC AGENCY.—If a public agency other than an educational agency fails to provide or pay for the special education and related services described in clause (i), the local educational agency (or State agency responsible for de-



veloping the child's IEP) shall provide or pay for such services to the child. Such local educational agency or State agency may then claim reimbursement for the services from the public agency that failed to provide or pay for such services and such public agency shall reimburse the local educational agency or State agency pursuant to the terms of the interagency agreement or other mechanism described in subparagraph (A)(i) according to the procedures established in such agreement pursuant to subparagraph (A)(ii).

[(C) SPECIAL RULE.—The requirements of subparagraph (A) may be met through—

[(i) state statute or regulation;

[(ii) signed agreements between respective agency officials that clearly identify the responsibilities of each agency relating to the provision of services; or

[(iii) other appropriate written methods as determined by the Chief Executive Officer of the State or designee of the officer.

[(13) PROCEDURAL REQUIREMENTS RELATING TO LOCAL EDUCATIONAL AGENCY ELIGIBILITY.—The State educational agency will not make a final determination that a local educational agency is not eligible for assistance under this part without first affording that agency reasonable notice and an opportunity for a hearing.

[(14) COMPREHENSIVE SYSTEM OF PERSONNEL DEVELOPMENT.—The State has in effect, consistent with the purposes of this Act and with section 635(a)(8), a comprehensive system of personnel development that is designed to ensure an adequate supply of qualified special education, regular education, and related services personnel that meets the requirements for a State improvement plan relating to personnel development in subsections (b)(2)(B) and (c)(3)(D) of section 653.

[(15) PERSONNEL STANDARDS.—

[(A) IN GENERAL.—The State educational agency has established and maintains standards to ensure that personnel necessary to carry out this part are appropriately and adequately prepared and trained.

[(B) STANDARDS DESCRIBED.—Such standards shall—

[(i) be consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services;

[(ii) to the extent the standards described in subparagraph (A) are not based on the highest requirements in the State applicable to a specific profession or discipline, the State is taking steps to require retraining or hiring of personnel that meet appropriate professional requirements in the State; and

[(iii) allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulations, or written policy, in meeting the requirements of this part to be used to assist

in the provision of special education and related services to children with disabilities under this part.

[(C) POLICY.—In implementing this paragraph, a state may adopt a policy that includes a requirement that local educational agencies in the State make an ongoing good-faith effort to recruit and hire appropriately and adequately trained personnel to provide special education and related services to children with disabilities, including, in a geographic area of the State where there is a shortage of such personnel, the most qualified individuals available who are making satisfactory progress toward completing applicable course work necessary to meet the standards described in subparagraph (B)(i), consistent with State law, and the steps described in subparagraph (B)(ii) within three years.

[(16) PERFORMANCE GOALS AND INDICATORS.—The State—

[(A) has established goals for the performance of children with disabilities in the State that—

[(i) will promote the purposes of this Act, as stated in section 601(d); and

[(ii) are consistent, to the maximum extent appropriate, with other goals and standards for children established by the State;

[(B) has established performance indicators the State will use to assess progress toward achieving those goals that, at a minimum, address the performance of children with disabilities on assessments, drop-out rates, and graduation rates;

[(C) will, every two years, report to the Secretary and the public on the progress of the State, and of children with disabilities in the State, toward meeting the goals established under subparagraph (A); and

[(D) based on its assessment of that progress, will revise its State improvement plan under subpart 1 of part D as may be needed to improve its performance, if the State receives assistance under that subpart.

[(17) PARTICIPATION IN ASSESSMENTS.—

[(A) IN GENERAL.—Children with disabilities are included in general State and district-wide assessment programs, with appropriate accommodations, where necessary. As appropriate, the State or local educational agency—

[(i) develops guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in State and district-wide assessment programs; and

[(ii) develops and, beginning not later than July 1, 2000, conducts those alternate assessments.

[(B) REPORTS.—The State educational agency makes available to the public, and reports to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled children, the following:

[(i) The number of children with disabilities participating in regular assessments.

[(ii) The number of those children participating in alternate assessments.

[(iii)(I) The performance of those children on regular assessments (beginning not later than July 1, 1998) and on alternate assessments (not later than July 1, 2000), if doing so would be statistically sound and would not result in the disclosure of performance results identifiable to individual children.

[(II) Data relating to the performance of children described under subclause (I) shall be disaggregated—

[(aa) for assessments conducted after July 1, 1998; and

[(bb) for assessments conducted before July 1, 1998, if the State is required to disaggregate such data prior to July 1, 1998.

[(18) SUPPLEMENTATION OF STATE, LOCAL AND OTHER FEDERAL FUNDS.—

[(A) EXPENDITURES.—Funds paid to a State under this part will be expended in accordance with all the provisions of this part.

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

[(C) PROHIBITION AGAINST SUPPLANTATION AND CONDITIONS FOR WAIVER BY SECRETARY.— Except as provided in section 613, funds paid to a State under this part will be used to supplement the level of Federal, State, and local funds (including funds that are not under the direct control of State or local educational agencies) expended for special education and related services provided to children with disabilities under this part and in no case to supplant such Federal, State, and local funds, except that, where the State provides clear and convincing evidence that all children with disabilities have available to them a free appropriate public education, the Secretary may waive, in whole or in part, the requirements of this subparagraph if the Secretary concurs with the evidence provided by the State.

[(19) MAINTENANCE OF STATE FINANCIAL SUPPORT.—

[(A) IN GENERAL.—The State does not reduce the amount of State financial support for special education and related services for children with disabilities, or otherwise made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year.

[(B) REDUCTION OF FUNDS FOR FAILURE TO MAINTAIN SUPPORT.—The Secretary shall reduce the allocation of funds under section 611 for any fiscal year following the fiscal year in which the State fails to comply with the requirement of subparagraph (A) by the same amount by which the State fails to meet the requirement.

[(C) WAIVERS FOR EXCEPTIONAL OR UNCONTROLLABLE CIRCUMSTANCES.—The Secretary may waive the requirements of subparagraph (A) for a State, for one fiscal year at a time, if the Secretary determines that—

[(i) granting a waiver would be equitable due to exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State; or

[(ii) the State meets the standard in paragraph (18)(C) of this section for a waiver of the requirement to supplement, and not to supplant, funds received under this part.

[(D) SUBSEQUENT YEARS.—If, for any year, a State fails to meet the requirement of subparagraph (A), including any year for which the State is granted a waiver under subparagraph (C), the financial support required of the State in future years under subparagraph (A) shall be the amount that would have been required in the absence of that failure and not the reduced level of the State's support.

[(E) REGULATIONS.—

[(i) The Secretary shall, by regulation, establish procedures (including objective criteria and consideration of the results of compliance reviews of the State conducted by the Secretary) for determining whether to grant a waiver under subparagraph (C)(ii).

[(ii) The Secretary shall publish proposed regulations under clause (i) not later than 6 months after the date of the enactment of the Individuals with Disabilities Education Act Amendments of 1997, and shall issue final regulations under clause (i) not later than 1 year after such date of enactment.

[(20) PUBLIC PARTICIPATION.—Prior to the adoption of any policies and procedures needed to comply with this section (including any amendments to such policies and procedures), the State ensures that there are public hearings, adequate notice of the hearings, and an opportunity for comment available to the general public, including individuals with disabilities and parents of children with disabilities.

[(21) STATE ADVISORY PANEL.—

[(A) IN GENERAL.—The State established and maintains an advisory panel for the purpose of providing policy guidance with respect to special education and related services for children with disabilities in the State.

[(B) MEMBERSHIP.—Such advisory panel shall consist of members appointed by the Governor, or any other official authorized under State law to make such appointments, that is representative of the State population and that is composed of individuals involved in, or concerned with, the education of children with disabilities, including—

[(i) parents of children with disabilities;

[(ii) individuals with disabilities;

[(iii) teachers;

[(iv) representatives of institutions of higher education that prepare special education and related services personnel;

[(v) State and local education officials;

[(vi) administrators of programs for children with disabilities;

[(vii) representatives of other State agencies involved in the financing or delivery of related services to children with disabilities;

[(viii) representatives of private schools and public charter schools;

[(ix) at least one representative of a vocational, community or business organization concerned with the provision of transition services to children with disabilities; and

[(x) representatives from the State juvenile and adult corrections agencies.

[(C) SPECIAL RULE.—A majority of the members of the panel shall be individuals with disabilities or parents of children with disabilities.

[(D) DUTIES.—The advisory panel shall—

[(i) advise the State educational agency of unmet needs within the State in the education of children with disabilities;

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

[(iii) advise the State educational agency in developing evaluations and reporting on data to the Secretary under section 618;

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

[(v) advise the State educational agency in developing and implementing policies relating to the coordination of services for children with disabilities.

[(22) SUSPENSION AND EXPULSION RATES.—

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

[(i) among local educational agencies in the State; or

[(ii) compared to such rates for nondisabled children within such agencies.

[(B) REVIEW AND REVISION OF POLICIES.—If such discrepancies are occurring, the State educational agency reviews and, if appropriate, revises (or requires the affected State or local educational agency to revise) its policies, procedures, and practices relating to the development and implementation of IEPs, the use of behavioral interventions, and procedural safeguards, to ensure that such policies, procedures, and practices comply with this Act.

[(b) STATE EDUCATIONAL AGENCY AS PROVIDER OF FREE APPROPRIATE PUBLIC EDUCATION OR DIRECT SERVICES.—If the State educational agency provides free appropriate public education to children with disabilities, or provides direct services to such children, such agency—

[(1) shall comply with any additional requirements of section 613(a), as if such agency were a local educational agency; and

[(2) may use amounts that are otherwise available to such agency under this part to serve those children without regard to section 613(a)(2)(A)(i) (relating to excess costs).

**[(c) EXCEPTION FOR PRIOR STATE PLANS.—**

[(1) IN GENERAL.—If a State has on file with the Secretary policies and procedures that demonstrate that such State meets any requirement of subsection (a), including any policies and procedures filed under this part as in effect before the effective date of the Individuals with Disabilities Education Act Amendments of 1997, the Secretary shall consider such State to have met such requirement for purposes of receiving a grant under this part.

[(2) MODIFICATIONS MADE BY STATE.—Subject to paragraph (3), an application submitted by a State in accordance with this section shall remain in effect until the State submits to the Secretary such modifications as the State deems necessary. This section shall apply to a modification to an application to the same extent and in the same manner as this section applies to the original plan.

[(3) MODIFICATIONS REQUIRED BY THE SECRETARY.—If, after the effective date of the Individuals with Disabilities Education Act Amendments of 1997, the provisions of this Act are amended (or the regulations developed to carry out this Act are amended), or there is a new interpretation of this Act by a Federal court or a State's highest court, or there is an official finding of noncompliance with Federal law or regulations, the Secretary may require a State to modify its application only to the extent necessary to ensure the State's compliance with this part.

**[(d) APPROVAL BY THE SECRETARY.—**

[(1) IN GENERAL.—If the Secretary determines that a State is eligible to receive a grant under this part, the Secretary shall notify the State of that determination.

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

[(A) with reasonable notice; and

[(B) with an opportunity for a hearing.

[(e) ASSISTANCE UNDER OTHER FEDERAL PROGRAMS.—Nothing in this title permits a State to reduce medical and other assistance available, or to alter eligibility, under titles V and XIX of the Social Security Act with respect to the provision of a free appropriate public education for children with disabilities in the State.

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

[(1) IN GENERAL.—If, on the date of enactment of the Education of the Handicapped Act Amendments of 1983, a State educational agency is prohibited by law from providing for the participation in special programs of children with disabilities enrolled in private elementary and secondary schools as required by subsection (a)(10)(A), the Secretary shall, notwithstanding such provision of law, arrange for the provision of services to such children through arrangements which shall be subject to the requirements of such subsection.

**[(2) PAYMENTS.—**

[(A) DETERMINATION OF AMOUNTS.—If the Secretary arranges for services pursuant to this subsection, the Secretary, after consultation with the appropriate public and private school officials, shall pay to the provider of such services for a fiscal year an amount per child that does not exceed the amount determined by dividing—

[(i) the total amount received by the State under this part for such fiscal year; by

[(ii) the number of children with disabilities served in the prior year, as reported to the Secretary by the State under section 618.

[(B) WITHHOLDING OF CERTAIN AMOUNTS.—Pending final resolution of any investigation or complaint that could result in a determination under this subsection, the Secretary may withhold from the allocation of the affected State educational agency the amount the Secretary estimates would be necessary to pay the cost of services described in subparagraph (A).

[(C) PERIOD OF PAYMENTS.—The period under which payments are made under subparagraph (A) shall continue until the Secretary determines that there will no longer be any failure or inability on the part of the State educational agency to meet the requirements of subsection (a)(10)(A).

[(3) NOTICE AND HEARING.—

[(A) IN GENERAL.—The Secretary shall not take any final action under this subsection until the State educational agency affected by such action has had an opportunity, for at least 45 days after receiving written notice thereof, to submit written objections and to appear before the Secretary or the Secretary's designee to show cause why such action should not be taken.

[(B) REVIEW OF ACTION.—If a State educational agency is dissatisfied with the Secretary's final action after a proceeding under subparagraph (A), such agency may, not later than 60 days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings on which the Secretary based the Secretary's action, as provided in section 2112 of title 28, United States Code.

[(C) REVIEW OF FINDINGS OF FACT.—The findings of fact by the Secretary, if supported by substantial evidence shall be conclusive, but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify the Secretary's previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

[(D) JURISDICTION OF COURT OF APPEALS; REVIEW BY UNITED STATES SUPREME COURT.—Upon the filing of a petition under subparagraph (B), the United States court of appeals shall have jurisdiction to affirm the action of the

Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

**[SEC. 613. LOCAL EDUCATIONAL AGENCY ELIGIBILITY.**

**[(a) IN GENERAL.—**A local educational agency is eligible for assistance under this part for a fiscal year if such agency demonstrates to the satisfaction of the State educational agency that it meets each of the following conditions:

**[(1) CONSISTENCY WITH STATE POLICIES.—**The local educational agency, in providing for the education of children with disabilities within its jurisdiction, has in effect policies, procedures, and programs that are consistent with the State policies and procedures established under section 612.

**[(2) USE OF AMOUNTS.—**

**[(A) IN GENERAL.—**Amounts provided to the local educational agency under this part shall be expended in accordance with the applicable provisions of this part and—

**[(i)** shall be used only to pay the excess costs of providing special education and related services to children with disabilities;

**[(ii)** shall be used to supplement State, local, and other Federal funds and not to supplant such funds; and

**[(iii)** shall not be used, except as provided in subparagraphs (B) and (C), to reduce the level of expenditures for the education of children with disabilities made by the local educational agency from local funds below the level of those expenditures for the preceding fiscal year.

**[(B) EXCEPTION.—**Notwithstanding the restriction in subparagraph (A)(iii), a local educational agency may reduce the level of expenditures where such reduction is attributable to—

**[(i)** the voluntary departure, by retirement or otherwise, or departure for just cause, of special education personnel;

**[(ii)** a decrease in the enrollment of children with disabilities;

**[(iii)** the termination of the obligation of the agency, consistent with this part, to provide a program of special education to a particular child with a disability that is an exceptionally costly program, as determined by the State educational agency, because the child—

**[(I)** has left the jurisdiction of the agency;

**[(II)** has reached the age at which the obligation of the agency to provide a free appropriate public education to the child has terminated; or

**[(III)** no longer needs such program of special education; or

**[(iv)** the termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of school facilities.



**[(C) TREATMENT OF FEDERAL FUNDS IN CERTAIN FISCAL YEARS.—**

**[(i)** Notwithstanding clauses (ii) and (iii) of subparagraph (A), for any fiscal year for which amounts appropriated to carry out section 611 exceeds \$4,100,000,000, a local educational agency may treat as local funds, for the purpose of such clauses, up to 20 percent of the amount of funds it receives under this part that exceeds the amount it received under this part for the previous fiscal year.

**[(ii)** Notwithstanding clause (i), if a State educational agency determines that a local educational agency is not meeting the requirements of this part the State educational agency may prohibit the local educational agency from treating funds received under this part as local funds under clause (i) for any fiscal year, only if it is authorized to do so by the State constitution or a State statute.

**[(D) SCHOOLWIDE PROGRAMS UNDER TITLE I OF THE ESEA.—**Notwithstanding subparagraph (A) or any other provision of this part a local educational agency may use funds received under this part for any fiscal year to carry out a schoolwide program, under section 1114 of the Elementary and Secondary Education Act of 1965, except that the amount so used in any such program shall not exceed—

**[(i)** the number of children with disabilities participating in the school wide program; multiplied by

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

**[(II)** the number of children with disabilities in the jurisdiction of that agency.

**[(3) PERSONNEL DEVELOPMENT.—**The local educational agency—

**[(A)** shall ensure that all personnel necessary to carry out this part are appropriately and adequately prepared, consistent with the requirements of section 653(c)(3)(D); and

**[(B)** to the extent such agency determines appropriate, shall contribute to and use the comprehensive system of personnel development of the State established under section 612(a)(14).

**[(4) PERMISSIVE USE OF FUNDS.—**Notwithstanding paragraph (2)(A) or section 612(a)(18)(B) (relating to commingled funds), funds provided to the local educational agency under this part may be used for the following activities:

**[(A) SERVICES AND AIDS THAT ALSO BENEFIT NON-DISABLED CHILDREN.—**For the costs of special education and related services and supplementary aids and services provided in a regular class or other education-related setting to a child with a disability in accordance with the individualized education program of the child, even if one or more nondisabled children benefit from such services.

[(B) INTEGRATED AND COORDINATED SERVICES SYSTEM.—To develop and implement a fully integrated and coordinated services system in accordance with subsection (f).

[(5) TREATMENT OF CHARTER SCHOOLS AND THEIR STUDENTS.—In carrying out this part with respect to charter schools that are public schools of the local educational agency, the local educational agency—

[(A) serves children with disabilities attending those schools in the same manner as it serves children with disabilities in its other schools; and

[(B) provides funds under this part to those schools in the same manner as it provides those funds to its other schools.

[(6) INFORMATION FOR STATE EDUCATIONAL AGENCY.—The local educational agency shall provide the State educational agency with information necessary to enable the State educational agency to carry out its duties under this part, including, with respect to paragraphs (16) and (17) of section 612(a), information relating to the performance of children with disabilities participating in programs carried out under this part.

[(7) PUBLIC INFORMATION.—The local educational agency shall make available to parents of children with disabilities and to the general public all documents relating to the eligibility of such agency under this part.

[(b) EXCEPTION FOR PRIOR LOCAL PLANS.—

[(1) IN GENERAL.—If a local educational agency or State agency has on file with the State educational agency policies and procedures that demonstrate that such local educational agency, or such State agency, as the case may be, meets any requirement of subsection (a), including any policies and procedures filed under this part as in effect before the effective date of the Individuals with Disabilities Education Act Amendments of 1997, the State educational agency shall consider such local educational agency or State agency, as the case may be, to have met such requirement for purposes of receiving assistance under this part.

[(2) MODIFICATION MADE BY LOCAL EDUCATIONAL AGENCY.—Subject to paragraph (3), an application submitted by a local educational agency in accordance with this section shall remain in effect until it submits to the State educational agency such modifications as the local educational agency deems necessary.

[(3) MODIFICATIONS REQUIRED BY STATE EDUCATIONAL AGENCY.—If, after the effective date of the Individuals with Disabilities Education Act Amendments of 1997, the provisions of this Act are amended (or the regulations developed to carry out this Act are amended), or there is a new interpretation of this Act by Federal or State courts, or there is an official finding of non-compliance with Federal or State law or regulations, the State education agency may require a local educational agency to modify its application only to the extent necessary to ensure the local educational agency's compliance with this part or State law.

[(c) NOTIFICATION OF LOCAL EDUCATIONAL AGENCY OR STATE AGENCY IN CASE OF INELIGIBILITY.—If the State educational agency

determines that a local educational agency or State agency is not eligible under this section, the State educational agency shall notify the local educational agency or State agency, as the case may be, of that determination and shall provide such local educational agency or State agency with reasonable notice and an opportunity for a hearing.

**[(d) LOCAL EDUCATIONAL AGENCY COMPLIANCE.—**

**[(1) IN GENERAL.—**If the State educational agency, after reasonable notice and an opportunity for a hearing, finds that a local educational agency or State agency that has been determined to be eligible under this section is failing to comply with any requirement described in subsection (a), the State educational agency shall reduce or shall not provide any further payments to the local educational agency or State agency until the State educational agency is satisfied that the local educational agency or State agency, as the case may be, is complying with that requirement.

**[(2) ADDITIONAL REQUIREMENT.—**Any State agency or local educational agency in receipt of a notice described in paragraph (1) shall, by means of public notice, take such measures as may be necessary to bring the pendency of an action pursuant to this subsection to the attention of the public within the jurisdiction of such agency.

**[(3) CONSIDERATION.—**In carrying out its responsibilities under paragraph (1), the State educational agency shall consider any decision made in a hearing held under section 615 that is adverse to the local educational agency or State agency involved in that decision.

**[(e) JOINT ESTABLISHMENT OF ELIGIBILITY.—**

**[(1) JOINT ESTABLISHMENT.—**

**[(A) IN GENERAL.—**A State educational agency may require a local educational agency to establish its eligibility jointly with another local educational agency if the State educational agency determines that the local educational agency would be ineligible under this section because the local educational agency would not be able to establish and maintain programs of sufficient size and scope to effectively meet the needs of children with disabilities.

**[(B) CHARTER SCHOOL EXCEPTION.—**A State educational agency may not require a charter school that is a local educational agency to jointly establish its eligibility under subparagraph (A) unless it is explicitly permitted to do so under the State's charter school statute.

**[(2) AMOUNT OF PAYMENTS.—**If a State educational agency requires the joint establishment of eligibility under paragraph (1), the total amount of funds made available to the affected local educational agencies shall be equal to the sum of the payments that each such local educational agency would have received under section 611(g) if such agencies were eligible for such payments.

**[(3) REQUIREMENTS.—**Local educational agencies that establish joint eligibility under this subsection shall—

**[(A)** adopt policies and procedures that are consistent with the State's policies and procedures under section 612(a); and

- [(B) be jointly responsible for implementing programs that receive assistance under this part.
- [(4) REQUIREMENTS FOR EDUCATIONAL SERVICE AGENCIES.—
- [(A) IN GENERAL.—If an educational service agency is required by State law to carry out programs under this part, the joint responsibilities given to local educational agencies under this subsection shall—
- [(i) not apply to the administration and disbursement of any payments received by that educational service agency; and
- [(ii) be carried out only by that educational service agency.
- [(B) ADDITIONAL REQUIREMENT.—Notwithstanding any other provision of this subsection, an educational service agency shall provide for the education of children with disabilities in the least restrictive environment, as required by section 612(a)(5).
- [(f) COORDINATED SERVICES SYSTEM.—
- [(1) IN GENERAL.—A local educational agency may not use more than 5 percent of the amount such agency receives under this part for any fiscal year, in combination with other amounts (which shall include amounts other than education funds), to develop and implement a coordinated services system designed to improve results for children and families, including children with disabilities and their families.
- [(2) ACTIVITIES.—In implementing a coordinated services system under this subsection, a local educational agency may carry out activities that include—
- [(A) improving the effectiveness and efficiency of service delivery, including developing strategies that promote accountability for results;
- [(B) service coordination and case management that facilitates the linkage of individualized education programs under this part and individualized family service plans under part C with individualized service plans under multiple Federal and State programs, such as title I of the Rehabilitation Act of 1973 (vocational rehabilitation), title XIX of the Social Security Act (Medicaid), and title XVI of the Social Security Act (supplemental security income);
- [(C) developing and implementing interagency financing strategies for the provision of education, health, mental health, and social services, including transition services and related services under this Act; and
- [(D) interagency personal development for individuals working on coordinated services.
- [(g) SCHOOL-BASED IMPROVEMENT PLAN.—
- [(1) IN GENERAL.—Each local educational agency may, in accordance with paragraph (2), use funds made available under this part to permit a public school within the jurisdiction of the local educational agency to design, implement, and evaluate a school-based improvement plan that is consistent with the purposes described in section 651(b) and that is designed to improve educational and transitional results for all children with disabilities and, as appropriate, for other children consistent

with subparagraphs (A) and (B) of subsection (a)(4) in that public school.

**[(2) AUTHORITY.—**

**[(A) IN GENERAL.—**A State educational agency may grant authority to a local educational agency to permit a public school described in paragraph (1) (through a school-based standing panel established under paragraph (4)(B)) to design, implement, and evaluate a school-based improvement plan described in paragraph 1 for a period not to exceed 3 years.

**[(B) RESPONSIBILITY OF LOCAL EDUCATIONAL AGENCY.—**If a State educational agency grants the authority described in subparagraph (A), a local educational agency that is granted such authority shall have the sole responsibility of oversight of all activities relating to the design, implementation, and evaluation of any school-based improvement plan that a public school is permitted to design under this subsection.

**[(3) PLAN REQUIREMENTS.—**A school-based improvement plan described in paragraph (1) shall—

**[(A)** be designed to be consistent with the purposes described in section 651(b) and to improve educational and transitional results for all children with disabilities and, as appropriate, for other children consistent with subparagraphs (A) and (B) of subsection (a)(4), who attend the school for which the plan is designed and implemented;

**[(B)** be designed, evaluated, and, as appropriate, implemented by a school-based standing panel established in accordance with paragraph (4)(B);

**[(C)** include goals and measurable indicators to assess the progress of the public school in meeting such goals; and

**[(D)** ensure that all children with disabilities receive the services described in the individualized education programs of such children.

**[(4) RESPONSIBILITIES OF THE LOCAL EDUCATIONAL AGENCY.—**A local educational agency that is granted authority under paragraph (2) to permit a public school to design, implement, and evaluate a school-based improvement plan shall—

**[(A)** select each school under the jurisdiction of such agency that is eligible to design, implement, and evaluate such a plan;

**[(B)** require each school selected under subparagraph (A), in accordance with criteria established by such local educational agency under subparagraph (C), to establish a school-based standing panel to carry out the duties described in paragraph (3)(B);

**[(C)** establish—

**[(i)** criteria that shall be used by such local educational agency in the selection of an eligible school under subparagraph (A);

**[(ii)** criteria that shall be used by a public school selected under subparagraph (A) in the establishment of a school-based standing panel to carry out the duties described in paragraph (3)(B) and that shall ensure

that the membership of such panel reflects the diversity of the community in which the public school is located and includes, at a minimum—

【(I) parents of children with disabilities who attend such public school, including parents of children with disabilities from unserved and underserved populations, as appropriate;

【(II) special education and general education teachers of such public school;

【(III) special education and general education administrators, or the designee of such administrators, of such public school; and

【(IV) related services providers who are responsible for providing services to the children with disabilities who attend such public school; and

【(iii) criteria that shall be used by such local educational agency with respect to the distribution of funds under this part to carry out this subsection;

【(D) disseminate the criteria established under subparagraph (C) to local school district personnel and local parent organizations within the jurisdiction of such local educational agency;

【(E) require a public school that desires to design, implement, and evaluate a school-based improvement plan to submit an application at such time, in such manner, and accompanied by such information as such local educational agency shall reasonably require; and

【(F) establish procedures for approval by such local educational agency of a school-based improvement plan designed under this subsection.

【(5) LIMITATION.—A school-based improvement plan described in paragraph (1) may be submitted to a local educational agency for approval only if a consensus with respect to any matter relating to the design, implementation, or evaluation of the goals of such plan is reached by the school-based standing panel that designed such plan.

【(6) ADDITIONAL REQUIREMENTS.—

【(A) PARENTAL INVOLVEMENT.—In carrying out the requirements of this subsection, a local educational agency shall ensure that the parents of children with disabilities are involved in the design, evaluation, and, where appropriate, implementation of school-based improvement plans in accordance with this subsection.

【(B) PLAN APPROVAL.—A local educational agency may approve a school-based improvement plan of a public school within the jurisdiction of such agency for a period of 3 years, if—

【(i) the approval is consistent with the policies, procedures, and practices established by such local educational agency and in accordance with this subsection; and

【(ii) a majority of parents of children who are members of the school-based standing panel, and a majority of other members of the school-based standing

panel, that designed such plan agree in writing to such plan.

[(7) EXTENSION OF PLAN.—If a public school within the jurisdiction of a local educational agency meets the applicable requirements and criteria described in paragraphs (3) and (4) at the expiration of the 3-year approval period described in paragraph (6)(B), such agency may approve a school-based improvement plan of such school for an additional 3-year period.

[(h) DIRECT SERVICES BY THE STATE EDUCATIONAL AGENCY.—

[(1) IN GENERAL.—A State educational agency shall use the payments that would otherwise have been available to a local educational agency or to a State agency to provide special education and related services directly to children with disabilities residing in the area served by that local agency, or for whom that State agency is responsible, if the State educational agency determines that the local education agency or State agency, as the case may be—

[(A) has not provided the information needed to establish the eligibility of such agency under this section;

[(B) is unable to establish and maintain programs of free appropriate public education that meet the requirements of subsection (a);

[(C) is unable or unwilling to be consolidated with one or more local educational agencies in order to establish and maintain such programs; or

[(D) has one or more children with disabilities who can best be served by a regional or State program or service-delivery system designed to meet the needs of such children.

[(2) MANNER AND LOCATION OF EDUCATION AND SERVICES.—The State educational agency may provide special education and related services under paragraph (1) in such manner and at such locations (including regional or State centers) as the State agency considers appropriate. Such education and services shall be provide in accordance with this part.

[(i) STATE AGENCY ELIGIBILITY.—Any state agency that desires to receive a subgrant for any fiscal year under section 611(g) shall demonstrate to the satisfaction of the State educational agency that—

[(1) all children with disabilities who are participating in programs and projects funded under this part receive a free appropriate public education, and that those children and their parents are provided all the rights and procedural safeguards described in this part; and

[(2) the agency meets such other conditions of this section as the Secretary determines to be appropriate.

[(j) DISCIPLINARY INFORMATION.—The State may require that a local educational agency include in the records of a child with a disability a statement of any current or previous disciplinary action that has been taken against the child and transmit such statement to the same extent that such disciplinary information is included in, and transmitted with, the student records of nondisabled children. The statement may include a description of any behavior engaged in by the child that required disciplinary action, a description of the disciplinary action taken, and any other information

that is relevant to the safety of the child and other individuals involved with the child. If the State adopts such a policy, and the child transfers from one school to another, the transmission of any of the child's records must include both the child's current individualized education program and any such statement of current or previous disciplinary action that has been taken against the child.

**[SEC. 614 EVALUATIONS, ELIGIBILITY DETERMINATIONS, INDIVIDUALIZED EDUCATION PROGRAMS, AND EDUCATIONAL PLACEMENTS.**

**[(a) EVALUATIONS AND REEVALUATIONS.—**

**[(1) INITIAL EVALUATIONS.—**

**[(A) IN GENERAL.—**A State educational agency, other State agency, or local educational agency shall conduct a full and individual initial evaluation, in accordance with this paragraph and subsection (b), before the initial provision of special education and related services to a child with a disability under this part.

**[(B) PROCEDURES.—**Such initial evaluation shall consist of procedures—

**[(i) to determine whether a child is a child with a disability (as defined in section 602(3)); and**

**[(ii) to determine the educational needs of such child.**

**[(C) PARENTAL CONSENT.—**

**[(i) IN GENERAL.—**The agency proposing to conduct an initial evaluation to determine if the child qualifies as a child with a disability as defined in section 602(3)(A) or 602(3)(B) shall obtain an informed consent from the parent of such child before the evaluation is conducted. Parental consent for evaluation shall not be construed as consent for placement for receipt of special education and related services.

**[(ii) REFUSAL.—**If the parents of such child refuse consent for the evaluation, the agency may continue to pursue an evaluation by utilizing the mediation and due process procedures under section 615, except to the extent inconsistent with State law relating to parental consent.

**[(2) REEVALUATIONS.—**A local educational agency shall ensure that a reevaluation of each child with a disability is conducted—

**[(A) if conditions warrant a reevaluation or if the child's parent or teacher requests a reevaluation, but at least once every 3 years; and**

**[(B) in accordance with subsections (b) and (c).**

**[(b) EVALUATION PROCEDURES.—**

**[(1) NOTICE.—**The local educational agency shall provide notice to the parents of a child with a disability, in accordance with subsections (b)(3), (b)(4), and (c) of section 615, that describes any evaluation procedures such agency proposes to conduct.

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

**[(A) use a variety of assessment tools and strategies to gather relevant functional and developmental information,**



including information provided by the parent, that may assist in determining whether the child is a child with a disability and the content of the child's individualized education program, including information related to enabling the child to be involved in and progress in the general curriculum or, for preschool children, to participate in appropriate activities;

[(B) not use any single procedure as the sole criterion for determining whether a child is a child with a disability or determining an appropriate educational program for the child; and

[(C) use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

[(3) ADDITIONAL REQUIREMENTS.—Each local educational agency shall ensure that—

[(A) tests and other evaluation materials used to assess a child under this section—

[(i) are selected and administered so as not to be discriminatory on a racial or cultural basis; and

[(ii) are provided and administered in the child's native language or other mode of communication, unless it is clearly not feasible to do so; and

[(B) any standardized tests that are given to the child—

[(i) have been validated for the specific purpose for which they are used;

[(ii) are administered by trained and knowledgeable personnel; and

[(iii) are administered in accordance with any instructions provided by the producer of such tests;

[(C) the child is assessed in all areas of suspected disability; and

[(D) assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.

[(4) DETERMINATION OF ELIGIBILITY.—Upon completion of administration of tests and other evaluation materials—

[(A) the determination of whether the child is a child with a disability as defined in section 602(3) shall be made by a team of qualified professionals and the parent of the child in accordance with paragraph (5); and

[(B) a copy of the evaluation report and the documentation of determination of eligibility will be given to the parent.

[(5) SPECIAL RULE FOR ELIGIBILITY DETERMINATION.—In making a determination of eligibility under paragraph (4)(A), a child shall not be determined to be a child with a disability if the determinant factor for such determination is lack of instruction in reading or math or limited English proficiency.

[(c) ADDITIONAL REQUIREMENTS FOR EVALUATION AND REEVALUATIONS.—

[(1) REVIEW OF EXISTING EVALUATION DATA.—As part of an initial evaluation (if appropriate) and as part of any reevaluation under this section, the IEP Team described in subsection

(d)(1)(B) and other qualified professionals, as appropriate, shall—

[(A) review existing evaluation data on the child, including evaluations and information provided by the parents of the child, current classroom-based assessments and observations, and teacher and related services providers observation; and

[(B) on the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine—

[(i) whether the child has a particular category of disability, as described in section 602(3), or, in case of a reevaluation of a child, whether the child continues to have such a disability;

[(ii) the present levels of performance and educational needs of the child;

[(iii) whether the child needs special education and related services, or in the case of a reevaluation of a child, whether the child continues to need special education and related services; and

[(iv) whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the individualized education program of the child and to participate, as appropriate, in the general curriculum.

[(2) SOURCE OF DATA.—The local educational agency shall administer such tests and other evaluation materials as may be needed to produce the data identified by the IEP Team under paragraph (1)(B).

[(3) PARENTAL CONSENT.—Each local educational agency shall obtain informed parental consent, in accordance with subsection (a)(1)(C), prior to conducting any reevaluation of a child with a disability, except that such informed parent consent need not be obtained if the local educational agency can demonstrate that it had taken reasonable measures to obtain such consent and the child's parent has failed to respond.

[(4) REQUIREMENTS IF ADDITIONAL DATA ARE NOT NEEDED.—If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability, the local educational agency—

[(A) shall notify the child's parents of—

[(i) that determination and the reasons for it; and

[(ii) the right of such parents to request an assessment to determine whether the child continues to be a child with a disability; and

[(B) shall not be required to conduct such an assessment unless requested to by the child's parents.

[(5) EVALUATIONS BEFORE CHANGE IN ELIGIBILITY.—A local education agency shall evaluate a child with a disability in accordance with this section before determining that the child is no longer a child with a disability.

[(d) INDIVIDUALIZED EDUCATION PROGRAMS.—

[(1) DEFINITIONS.—As used in this title:

[(A) INDIVIDUALIZED EDUCATION PROGRAM.—The term “individualized education program” or “IEP” means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with this section and that includes—

[(i) a statement of the child’s present levels of educational performance, including—

[(I) how the child’s disability affects the child’s involvement and progress in the general curriculum; or

[(II) for preschool children, as appropriate, how the disability affects the child’s participation in appropriate activities;

[(ii) a statement of measurable annual goals, including benchmarks or short-term objectives, related to—

[(I) meeting the child’s needs that result from the child’s disability to enable the child to be involved in and progress in the general curriculum; and

[(II) meeting each of the child’s other educational needs that result from the child’s disability;

[(iii) a statement of the special education and related services and supplementary aids and services to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child—

[(I) to advance appropriately toward attaining the annual goals;

[(II) to be involved and progress in the general curriculum in accordance with clause (i) and to participate in extracurricular and other nonacademic activities; and

[(III) to be educated and participate with other children with disabilities and nondisabled children in the activities described in this paragraph;

[(iv) an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in clause (iii);

[(v)(I) a statement of any individual modifications in the administration of State or districtwide assessments of student achievement that are needed in order for the child to participate in such assessment; and

[(II) if the IEP Team determines that the child will not participate in a particular State or districtwide assessment of student achievement (or part of such an assessment), a statement of—

[(aa) why that assessment is not appropriate for the child; and

[(bb) how the child will be assessed;

[(vi) the projected date for the beginning of the services and modifications described in clause (iii), and the

anticipated frequency, location, and duration of those services and modifications;

[(vii)(I) beginning at age 14, and updated annually, a statement of the transition service needs of the child under the applicable components of the child's IEP that focuses on the child's courses of study (such as participation in advanced-placement courses or a vocational education program);

[(II) beginning at age 16 (or younger, if determined appropriate by the IEP Team), a statement of needed transition services for the child, including, when appropriate, a statement of the interagency responsibilities or any needed linkages; and

[(III) beginning at least one year before the child reaches the age of majority under State law, a statement that the child has been informed of his or her rights under this title, if any, that will transfer to the child on reaching the age of majority under section 615(m); and

[(viii) a statement of—

[(1) how the child's progress toward the annual goals described in clause (ii) will be measured; and

[(II) how the child's parents will be regularly informed (by such means as periodic report cards), at least as often as parents are informed of their nondisabled children's progress, of—

[(aa) their child's progress toward the annual goals described in clause (ii); and

[(bb) the extent to which that progress is sufficient to enable the child to achieve the goals by the end of the year.

[(B) INDIVIDUALIZED EDUCATION PROGRAM TEAM.—The term “individualized education program team” or “IEP Team” means a group of individuals composed of—

[(i) the parents of a child with a disability;

[(ii) at least one regular education teacher of such child (if the child is, or may be, participating in the regular education environment);

[(iii) at least one special education teacher, or where appropriate, at least one special education provider of such child;

[(iv) a representative of the local educational agency who—

[(I) is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;

[(II) is knowledgeable about the general curriculum; and

[(III) is knowledgeable about the availability of resources of the local educational agency;

[(v) an individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in clauses (ii) through (vi);

[(vi) at the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and

[(vii) whenever appropriate, the child with a disability.

[(2) REQUIREMENT THAT PROGRAM BE IN EFFECT.—

[(A) IN GENERAL.—At the beginning of each school year, each local educational agency, State educational agency, or other State agency, as the case may be, shall have in effect, for each child with a disability in its jurisdiction, an individualized education program, as defined in paragraph (1)(A).

[(B) PROGRAM FOR CHILD AGED 3 THROUGH 5.—In the case of a child with a disability aged 3 through 5 (or, at the discretion of the State educational agency, a 2 year-old child with a disability who will turn age 3 during the school year), an individualized family service plan that contains the material described in section 636, and that is developed in accordance with this section, may serve as the IEP of the child if using that plan as the IEP is—

[(i) consistent with State policy; and

[(ii) agreed to by the agency and the child's parents.

[(3) DEVELOPMENT OF IEP.—

[(A) IN GENERAL.—In developing each child's IEP, the IEP Team, subject to subparagraph (C), shall consider—

[(i) the strengths of the child and the concerns of the parents for enhancing the education of their child; and

[(ii) the results of the initial evaluation or most recent evaluation of the child.

[(B) CONSIDERATION OF SPECIAL FACTORS.—The IEP Team shall—

[(i) in the case of a child whose behavior impedes his or her learning or that of others, consider, when appropriate, strategies, including positive behavioral interventions, strategies, and supports to address that behavior;

[(ii) in the case of a child with limited English proficiency, consider the language needs of the child as such needs relate to the child's IEP.

[(iii) in the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP Team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child;

[(iv) consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's lan-

guage and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and

[(v) consider whether the child requires assistive technology devices and services.

[(C) REQUIREMENT WITH RESPECT TO REGULAR EDUCATION TEACHER.—The regular education teacher of the child, as a member of IEP Team, shall, to the extent appropriate, participate in the development of the IEP of the child, including the determination of appropriate positive behavioral interventions and strategies and the determination of supplementary aids and services, program modifications, and support for school personnel consistent with paragraph (1)(A)(iii).

[(4) REVIEW AND REVISION OF IEP.—

[(A) IN GENERAL.—The local educational agency shall ensure that, subject to subparagraph (B), the IEP Team—

[(i) reviews the child's IEP periodically, but not less than annually to determine whether the annual goals for the child are being achieved; and

[(ii) revises the IEP as appropriate to address—

[(I) any lack of expected progress toward the annual goals and in the general curriculum, where appropriate;

[(II) the results of any reevaluation conducted under this section;

[(III) information about the child provided to, or by, the parents, as described in subsection (c)(1)(B);

[(IV) the child's anticipated needs; or

[(V) other matters.

[(B) REQUIREMENT WITH RESPECT TO REGULAR EDUCATION TEACHER.—The regular education teacher of the child, as a member of the IEP Team, shall, to the extent appropriate, participate in the review and revision of the IEP of the child.

[(5) FAILURE TO MEET TRANSITION OBJECTIVES.—If a participating agency, other than the local educational agency, fails to provide the transition services described in the IEP in accordance with paragraph (1)(A)(vii), the local education agency shall reconvene the IEP Team to identify alternative strategies to meet the transition objectives for the child set out in that program.

[(6) CHILDREN WITH DISABILITIES IN ADULT PRISONS.—

[(A) IN GENERAL.—The following requirements do not apply to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons:

[(i) The requirements contained in section 612(a)(17) and paragraph (1)(A)(v) of this subsection (relating to participation of children with disabilities in general assessments).

[(ii) The requirements of subclauses (I) and (II) of paragraph (1)(A)(vii) of this subsection (relating to transition planning and transition services), do not

apply with respect to such children whose eligibility under this part will end, because of their age, before they will be released from prison.

[(B) ADDITIONAL REQUIREMENT.—If a child with a disability is convicted as an adult under State law and incarcerated in an adult prison, the child’s IEP Team may modify the child’s IEP or placement notwithstanding the requirements of sections 612(a)(5)(A) and 614(d)(1)(A) if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

[(e) CONSTRUCTION.—Nothing in this section shall be construed to require the IEP Team to include information under one component of a child’s IEP that is already contained under another component of such IEP.

[(f) EDUCATIONAL PLACEMENTS.—Each local educational agency or State educational agency shall ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child.

**[SEC. 615. PROCEDURAL SAFEGUARDS.**

[(a) ESTABLISHMENT OF PROCEDURES.—Any State educational agency, State agency, or local educational agency that receives assistance under this part shall establish and maintain procedures in accordance with this section to ensure that children with disabilities and their parents are guaranteed procedural safeguards with respect to the provision of free appropriate public education by such agencies.

[(b) TYPES OF PROCEDURES.—The procedures required by this section shall include—

[(1) an opportunity for the parents of a child with a disability to examine all records relating to such child and to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a free, appropriate public education to such child, and to obtain an independent educational evaluation of the child;

[(2) procedures to protect the rights of the child whenever the parents of the child are not known, the agency cannot, after reasonable efforts, locate the parents, or the child is a ward of the State, including the assignment of an individual (who shall not be an employee of the State educational agency, the local educational agency, or any other agency that is involved in the education or care of the child) to act as a surrogate for the parents;

[(3) written prior notice to the parents of the child whenever such agency—

[(A) proposes to initiate or change; or

[(B) refuses to initiate or change;

the identification, evaluation, or educational placement of the child, in accordance with subsection (c), or the provision of a free, appropriate public education to the child;

[(4) procedures designed to ensure that the notice required by paragraph (3) is in the native language of the parents, unless it clearly is not feasible to do so;

[(5) an opportunity for mediation in accordance with subsection (e);

[(6) an opportunity to present complaints with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child;

[(7) procedures that require the parent of a child with a disability, or the attorney representing the child, to provide notice (which shall remain confidential)—

[(A) to the State educational agency or local educational agency, as the case may be, in the complaint filed under paragraph (6); and

[(B) that shall include—

[(i) the name of the child, the address of the residence of the child, and the name of the school the child is attending;

[(ii) a description of the nature of the problem of the child relating to such proposed initiation or change, including facts relating to such problem; and

[(iii) a proposed resolution of the problem to the extent known and available to the parents at the time; and

[(8) procedures that require the State educational agency to develop a model form to assist parents in filing a complaint in accordance with paragraph (7).

[(c) CONTENT OF PRIOR WRITTEN NOTICE.—The notice required by subsection (b)(3) shall include—

[(1) a description of the action proposed or refused by the agency;

[(2) an explanation of why the agency proposes or refuses to take the action;

[(3) a description of any other options that the agency considered and the reasons why those options were rejected;

[(4) a description of each evaluation procedure, test, record, or report the agency used as a basis for the proposed or refused action;

[(5) a description of any other factors that are relevant to the agency's proposal or refusal;

[(6) a statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; and

[(7) sources for parents to contact to obtain assistance in understanding the provisions of this part.

[(d) PROCEDURAL SAFEGUARDS NOTICE.—

[(1) IN GENERAL.—A copy of the procedural safeguards available to the parents of a child with a disability shall be given to the parents, at a minimum—

[(A) upon initial referral for evaluation;

[(B) upon each notification of an individualized education program meeting and upon reevaluation of the child; and

[(C) upon registration of a complaint under subsection (b)(6).

[(2) CONTENTS.—The procedural safeguards notice shall include a full explanation of the procedural safeguards, written



in the native language of the parents, unless it clearly is not feasible to do so, and written in an easily understandable manner, available under this section and under regulations promulgated by the Secretary relating to—

- [(A) independent educational evaluation;
- [(B) prior written notice;
- [(C) parental consent;
- [(D) access to educational records;
- [(E) opportunity to present complaints;
- [(F) the child's placement during pendency of due process proceedings;
- [(G) procedures for students who are subject to placement in an interim alternative educational setting;
- [(H) requirements for unilateral placement by parents of children in private schools at public expenses;
- [(I) mediation;
- [(J) due process hearings, including requirements for disclosure of evaluation results and recommendations;
- [(K) State-level appeals (if applicable in that State);
- [(L) civil actions; and
- [(M) attorneys' fees.

[(e) MEDIATION.—

[(1) IN GENERAL.—Any State educational agency or local educational agency that receives assistance under this part shall ensure that procedures are established and implemented to allow parties to disputes involving any matter described in subsection (b)(6) to resolve such disputes through a mediation process which, at a minimum, shall be available whenever a hearing is requested under subsection (f) or (k).

[(2) REQUIREMENTS.—Such procedures shall meet the following requirements:

[(A) The procedures shall ensure that the mediation process—

- [(i) is voluntary on the part of the parties;
- [(ii) is not used to deny or delay a parent's right to a due process hearing under subsection (f), or to deny any other rights afforded under this part; and
- [(iii) is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

[(B) A local educational agency or a State agency may establish procedures to require parents who choose not to use the mediation process to meet, at a time and location convenient to the parents, with a disinterested party who is under contract with—

[(i) a parent training and information center or community parent resource center in the State established under section 682 or 683; or

[(ii) an appropriate alternative dispute resolution entity;

to encourage the use, and explain the benefits, of the mediation process to the parents.

[(C) The State shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.

[(D) The State shall bear the cost of the mediation process, including the costs of meeting described in subparagraph (B).

[(E) Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute.

[(F) An agreement reached by the parties to the dispute in the mediation process shall be set forth in written mediation agreement.

[(G) Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings and the parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of such process.

[(f) IMPARTIAL DUE PROCESS HEARING.—

[(1) IN GENERAL.—Whenever a complaint has been received under subsection (b)(6) or (k) of this section, the parents involved in such complaint shall have an opportunity for an impartial due process hearing, which shall be conducted by the State educational agency or by the local educational agency, as determined by State law or by the State educational agency.

[(2) DISCLOSURE OR EVALUATIONS AND RECOMMENDATIONS.—

[(A) IN GENERAL.—At least 5 business days prior to a hearing conducted pursuant to paragraph (1), each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing.

[(B) FAILURE TO DISCLOSE.—A hearing officer may bar any party that fails to comply with subparagraph (A) from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

[(3) LIMITATION ON CONDUCT OF HEARING.—A hearing conducted pursuant to paragraph (1) may not be conducted by an employee of the State educational agency or the local educational agency involved in the education or care of the child.

[(g) APPEAL.—If the hearing required by subsection (f) is conducted by a local educational agency, any party aggrieved by the findings and decision rendered in such a hearing may appeal such findings and decision to the State educational agency. Such agency shall conduct an impartial review of such decision. The officer conducting such review shall make an independent decision upon completion of such review.

[(h) SAFEGUARDS.—Any party to a hearing conducted pursuant to subsection (f) or (k), or an appeal conducted pursuant to subsection (g), shall be accorded—

[(1) the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;

[(2) the right to present evidence and confront, cross-examine, and compel the attendance of witnesses;

[(3) the right to a written, or, at the option of the parents, electronic verbatim record of such hearing; and

[(4) the right to written, or, at the option of the parents, electronic findings of fact and decisions (which findings and decisions shall be made available to the public consistent with the requirements of section 617(c) (relating to the confidentiality of data, information, and records) and shall also be transmitted to the advisory panel established pursuant to section 612(a)(21)).

[(i) ADMINISTRATIVE PROCEDURES.—

[(1) IN GENERAL.—

[(A) DECISION MADE IN HEARING.—A decision made in a hearing conducted pursuant to subsection (f) or (k) shall be final, except that any party involved in such hearing may appeal such decision under the provisions of subsection (g) and paragraph (2) of this subsection.

[(B) DECISION MADE AT APPEAL.—A decision made under subsection (g) shall be final, except that any party may bring an action under paragraph (2) of this subsection.

[(2) RIGHT TO BRING CIVIL ACTION.—

[(A) IN GENERAL.—Any party aggrieved by the findings and decision made under subsection (f) or (k) who does not have the right to an appeal under subsection (g), and any party aggrieved by the findings and decision under this subsection, shall have the right to bring a civil action with respect to the complaint presented pursuant to this section, which action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy.

[(B) ADDITIONAL REQUIREMENTS.—In any action brought under this paragraph, the court—

[(i) shall receive the records of the administrative proceedings;

[(ii) shall hear additional evidence at the request of a party; and

[(iii) basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.

[(3) JURISDICTION OF DISTRICT COURTS; ATTORNEYS' FEES.—

[(A) IN GENERAL.—The district courts of the United States shall have jurisdiction of actions brought under this section without regard to the amount in controversy.

[(B) AWARD OF ATTORNEYS' FEES.—In any action or proceeding brought under this section, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to the parents of a child with a disability who is the prevailing party.

[(C) DETERMINATION OF AMOUNT OF ATTORNEYS' FEES.—Fees awarded under this paragraph shall be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this subsection.

[(D) PROHIBITION OF ATTORNEYS' FEES AND RELATED COSTS FOR CERTAIN SERVICES.—

[(i) Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or pro-

ceeding under this section for services performed subsequent to the time of a written offer of settlement to a parent if—

[(I) the offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than 10 days before the proceeding begins;

[(II) the offer is not accepted within 10 days; and

[(III) the court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.

[(ii) Attorneys' fees may not be awarded relating to any meeting of the IEP Team unless such meeting is convened as a result of an administrative proceeding or judicial action, or, at the discretion of the State, for a mediation described in subsection (e) that is conducted prior to the filing of a complaint under subsection (b)(6) or (k) of this section.

[(E) EXCEPTION TO PROHIBITION ON ATTORNEYS' FEES AND RELATED COSTS.—Notwithstanding subparagraph (D), an award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.

[(F) REDUCTION IN AMOUNT OF ATTORNEYS' FEES.—Except as provided in subparagraph (G), whenever the court finds that—

[(i) the parent, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;

[(ii) the amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;

[(iii) the time spent and legal services furnished were excessive considering the nature of the action or proceeding; or

[(iv) the attorney representing the parent did not provide to the school district the appropriate information in the due process complaint in accordance with subsection (b)(7);

the court shall reduce, accordingly, the amount of the attorneys' fees awarded under this section.

[(G) EXCEPTION TO REDUCTION IN AMOUNT OF ATTORNEYS' FEES.—The provisions of subparagraph (F) shall not apply in any action or proceeding if the court finds that the State or local educational agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of this section.

[(i) MAINTENANCE OF CURRENT EDUCATIONAL PLACEMENT.—Except as provided in subsection (k)(7), during the pendency of any proceedings conducted pursuant to this section, unless the State or

local educational agency and the parents otherwise agree, the child shall remain in the then-current educational placement of such child, or, if applying for initial admission to a public school, shall, with the consent of the parents, be placed in the public school program until all such proceedings have been completed.

**[(k) PLACEMENT IN ALTERNATIVE EDUCATIONAL SETTING.—**

**[(1) AUTHORITY OF SCHOOL PERSONNEL.—**

**[(A) School personnel under this section may order a change in the placement of a child with a disability—**

**[(i) to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 school days (to the extent such alternatives would be applied to children without disabilities); and**

**[(ii) to an appropriate interim alternative educational setting for the same amount of time that a child without a disability would be subject to discipline, but for not more than 45 days if—**

**[(I) the child carries or possesses a weapon to or at school, on school premises, or to or at a school function under the jurisdiction of a State or a local educational agency; or**

**[(II) the child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function under the jurisdiction of a State or local educational agency.**

**[(B) Either before or not later than 10 days after taking a disciplinary action described in subparagraph (A)—**

**[(i) if the local educational agency did not conduct a functional behavioral assessment and implement a behavioral intervention plan for such child before the behavior that resulted in the suspension described in subparagraph (A), the agency shall convene an IEP meeting to develop an assessment plan to address that behavior; or**

**[(ii) if the child already has a behavioral intervention plan, the IEP Team shall review the plan and modify it, as necessary, to address the behavior.**

**[(2) AUTHORITY OF HEARING OFFICER.—A hearing officer under this section may order a change in the placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 days if the hearing officer—**

**[(A) determines that the public agency has demonstrated by substantial evidence that maintaining the current placement of such child is substantially likely to result in injury to the child or to others;**

**[(B) considers the appropriateness of the child's current placement;**

**[(C) considers whether the public agency has made reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services; and**

[(D) determines that the interim alternative educational setting meets the requirements of paragraph (3)(B).

[(3) DETERMINATION OF SETTING.—

[(A) IN GENERAL.—The alternative educational setting described in paragraph (1)(A)(ii) shall be determined by the IEP Team.

[(B) ADDITIONAL REQUIREMENTS.—Any interim alternative educational setting in which a child is placed under paragraph (1) or (2) shall—

[(i) be selected so as to enable the child to continue to participate in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the child's current IEP, that will enable the child to meet the goals set out in that IEP; and

[(ii) include services and modifications designed to address the behavior described in paragraph (1) or paragraph (2) so that it does not recur.

[(4) MANIFESTATION DETERMINATION REVIEW.—

[(A) IN GENERAL.—If a disciplinary action is contemplated as described in paragraph (1) or paragraph (2) for a behavior of a child with a disability described in either of those paragraphs, or if a disciplinary action involving a change of placement for more than 10 days is contemplated for a child with a disability who has engaged in other behavior that violated any rule or code of conduct of the local educational agency that applies to all children—

[(i) not later than the date on which the decision to take that action is made, the parents shall be notified of that decision and of all procedural safeguards accorded under this section; and

[(ii) immediately, if possible, but in no case later than 10 school days after the date on which the decision to take that action is made, a review shall be conducted of the relationship between the child's disability and the behavior subject to the disciplinary action.

[(B) INDIVIDUALS TO CARRY OUT REVIEW.—A review described in subparagraph (A) shall be conducted by the IEP Team and other qualified personnel.

[(C) CONDUCT OF REVIEW.—In carrying out a review described in subparagraph (A), the IEP Team may determine that the behavior of the child was not a manifestation of such child's disability only if the IEP Team—

[(i) first considers, in terms of the behavior subject to disciplinary action, all relevant information, including—

[(I) evaluation and diagnostic results, including such results or other relevant information supplied by the parents of the child;

[(II) observations of the child; and

[(III) the child's IEP and placement; and

[(ii) then determines that—

[(I) in relationship to the behavior subject to disciplinary action, the child's IEP and placement

were appropriate and the special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with the child's IEP and placement;

[(II) the child's disability did not impair the ability of the child to understand the impact and consequences of the behavior subject to disciplinary action; and

[(III) the child's disability did not impair the ability of the child to control the behavior subject to disciplinary action.

[(5) DETERMINATION THAT BEHAVIOR WAS NOT MANIFESTATION OF DISABILITY.—

[(A) IN GENERAL.—If the result of the review described in paragraph (4) is a determination, consistent with paragraph (4)(C), that the behavior of the child with a disability was not a manifestation of the child's disability, the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner in which they would be applied to children without disabilities, except as provided in section 612(a)(1).

[(B) ADDITIONAL REQUIREMENT.—If the public agency initiates disciplinary procedures applicable to all children, the agency shall ensure that the special education and disciplinary records of the child with a disability are transmitted for consideration by the person or persons making the final determination regarding the disciplinary action.

[(6) PARENT APPEAL.

[(A) IN GENERAL.—

[(i) If the child's parent disagrees with a determination that the child's behavior was not a manifestation of the child's disability or with any decision regarding placement, the parent may request a hearing.

[(ii) The State or local educational agency shall arrange for an expedited hearing in any case described in this subsection when requested by a parent.

[(B) REVIEW OF DECISION.—

[(i) In reviewing a decision with respect to the manifestation determination, the hearing officer shall determine whether the public agency has demonstrated that the child's behavior was not a manifestation of such child's disability consistent with the requirements of paragraph (4)(C).

[(ii) In reviewing a decision under paragraph (1)(A)(ii) to place the child in an interim alternative educational setting, the hearing officer shall apply the standards set out in paragraph (2).

[(7) PLACEMENT DURING APPEALS.—

[(A) IN GENERAL.—When a parent requests a hearing regarding a disciplinary action described in paragraph (1)(A)(ii) or paragraph (2) to challenge the interim alternative educational setting or the manifestation determination, the child shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period provided for in

paragraph (1)(A)(ii) or paragraph (2), whichever occurs first, unless the parent and the State or local educational agency agree otherwise.

[(B) CURRENT PLACEMENT.—If a child is placed in an interim alternative educational setting pursuant to paragraph (1)(A)(ii) or paragraph (2) and school personnel propose to change the child’s placement after expiration of the interim alternative placement, during the pendency of any proceeding to challenge the proposed change in placement, the child shall remain in the current placement (the child’s placement prior to the interim alternative educational setting), except as provided in subparagraph (C).

[(C) EXPEDITED HEARING.—

[(i) If school personnel maintain that it is dangerous for the child to be in the current placement (placement prior to removal to the interim alternative education setting) during the pendency of the due process proceedings, the local educational agency may request an expedited hearing.

[(ii) In determining whether the child may be placed in the alternative educational setting or in another appropriate placement ordered by the hearing officer, the hearing officer shall apply the standards set out in paragraph (2).

[(8) PROTECTIONS FOR CHILDREN NOT YET ELIGIBLE FOR SPECIAL EDUCATION AND RELATED SERVICES.—

[(A) IN GENERAL.—A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violated any rule or code of conduct of the local educational agency, including any behavior described in paragraph (1), may assert any of the protections provided for in this part if the local educational agency had knowledge (as determined in accordance with this paragraph) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

[(B) BASIS OF KNOWLEDGE.—A local educational agency shall be deemed to have knowledge that a child is a child with a disability if—

[(i) the parent of the child has expressed concern in writing (unless the parent is illiterate or has a disability that prevents compliance with the requirements contained in this clause) to personnel of the appropriate educational agency that the child is in need of special education and related services;

[(ii) the behavior or performance of the child demonstrates the need for such services;

[(iii) the parent of the child has requested an evaluation of the child pursuant to section 614; or

[(iv) the teacher of the child, or other personnel of the local educational agency, has expressed concern about the behavior or performance of the child to the director of special education of such agency or to other personnel of the agency.



**[(C) CONDITIONS THAT APPLY IF NO BASIS OF KNOWLEDGE.—**

**[(i) IN GENERAL.—**If a local educational agency does not have knowledge that a child is a child with a disability (in accordance with subparagraph (B)) prior to taking disciplinary measures against the child, the child may be subjected to the same disciplinary measures as measures applied to children without disabilities who engaged in comparable behaviors consistent with clause (ii).

**[(ii) LIMITATIONS.—**If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under paragraph (1) or (2), the evaluation shall be conducted in an expedited manner. If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency shall provide special education and related services in accordance with the provisions of this part, except that, pending the results of the evaluation, the child shall remain in the educational placement determined by school authorities.

**[(9) REFERRAL TO AND ACTION BY LAW ENFORCEMENT AND JUDICIAL AUTHORITIES.—**

**[(A) Nothing in this part shall be construed to prohibit an agency from reporting a crime committed by a child with a disability to appropriate authorities or to prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.**

**[(B) An agency reporting a crime committed by a child with a disability shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom it reports the crime.**

**[(10) DEFINITIONS.—**For purposes of this subsection, the following definitions apply:

**[(A) CONTROLLED SUBSTANCE.—**The term “controlled substance” means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

**[(B) ILLEGAL DRUG.—**The term “illegal drug”—

**[(i) means a controlled substance; but**

**[(ii) does not include such a substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.**

**[(C) SUBSTANTIAL EVIDENCE.—**The term “substantial evidence” means beyond a preponderance of the evidence.

**[(D) WEAPON.—**The term “weapon” has the meaning given the term “dangerous weapon” under paragraph (2) of

the first subsection (g) of section 930 of title 18, United States Code.

[(1) RULE OF CONSTRUCTION.—Nothing in this title shall be construed to restrict or limit the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under such laws seeking relief that is also available under this part, the procedures under subsections (f) and (g) shall be exhausted to the same extent as would be required had the action been brought under this part.

[(m) TRANSFER OF PARENTAL RIGHTS AT AGE OF MAJORITY.—

[(1) IN GENERAL.—A State that receives amounts from a grant under this part may provide that, when a child with a disability reaches the age of majority under State law (except for a child with a disability who has been determined to be incompetent under State law)—

[(A) the public agency shall provide any notice required by this section to both the individual and the parents;

[(B) all other rights accorded to parents under this part transfer to the child;

[(C) the agency shall notify the individual and the parents of the transfer of rights; and

[(D) all rights accorded to parents under this part transfer to children who are incarcerated in an adult or juvenile Federal, State, or local correctional institution.

[(2) SPECIAL RULE.—If, under State law, a child with a disability who has reached the age of majority under State law, who has not been determined to be incompetent, but who is determined not to have the ability to provide informed consent with respect to the educational program of the child, the State shall establish procedures for appointing the parent of the child, or if the parent is not available, another appropriate individual, to represent the educational interests of the child throughout the period of eligibility of the child under this part.

#### **[SEC. 616. WITHHOLDING AND JUDICIAL REVIEW.**

[(a) WITHHOLDING OF PAYMENTS.—

[(1) IN GENERAL.—Whenever the Secretary, after reasonable notice and opportunity for hearing to the State educational agency involved (and to any local educational agency or State agency affected by any failure described in subparagraph (B)), finds—

[(A) that there has been a failure by the State to comply substantially with any provision of this part; or

[(B) that there is a failure to comply with any condition of a local educational agency's or State agency's eligibility under this part, including the terms of any agreement to achieve compliance with this part within the timelines specified in the agreement;

the Secretary shall, after notifying the State educational agency, withhold, in whole or in part, any further payments to the State under this part, or refer the matter for appropriate enforcement action, which may include referral to the Department of Justice.

[(2) NATURE OF WITHHOLDING.— If the Secretary withholds further payments under paragraph (1), the Secretary may determine that such withholding will be limited to programs or projects, or portions thereof, affected by the failure, or that the State educational agency shall not make further payments under this part to specified local educational agencies or State agencies affected by the failure. Until the Secretary is satisfied that there is no longer any failure to comply with the provisions of this part, as specified in subparagraph (A) or (B) of paragraph (1), payments to the State under this part shall be withheld in whole or in part, or payments by the State educational agency under this part shall be limited to local educational agencies and State agencies whose actions did not cause or were not involved in the failure, as the case may be. Any State educational agency, State agency, or local educational agency that has received notice under paragraph (1) shall, by means of a public notice, take such measures as may be necessary to bring the pendency of an action pursuant to this subsection to the attention of the public within the jurisdiction of such agency.

[(b) JUDICIAL REVIEW.—

[(1) IN GENERAL.—If any State is dissatisfied with the Secretary's final action with respect to the eligibility of the State under section 612, such State may, not later than 60 days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings upon which the Secretary's action was based, as provided in section 2112 of title 28, United States Code.

[(2) JURISDICTION; REVIEW BY UNITED STATES SUPREME COURT.—Upon the filing of such petition, the court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

[(3) STANDARD OF REVIEW.—The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive, but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify the Secretary's previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

[(c) DIVIDED STATE AGENCY RESPONSIBILITY.—For purposes of this section, where responsibility for ensuring that the requirements of this part are met with respect to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons is assigned to a public agency other than the State educational agency pursuant to section 612(a)(11)(C), the Secretary, in instances where the Secretary finds that the failure to comply substantially with the provisions of this part are related to a fail-

ure by the public agency, shall take appropriate corrective action to ensure compliance with this part, except—

[(1) any reduction or withholding of payments to the State is proportionate to the total funds allotted under section 611 to the State as the number of eligible children with disabilities in adult prisons under the supervision of the other public agency is proportionate to the number of eligible individuals with disabilities in the State under the supervision of the State educational agency; and

[(2) any withholding of funds under paragraph (1) shall be limited to the specific agency responsible for the failure to comply with this part.

**[SEC. 617. ADMINISTRATION.**

[(a) RESPONSIBILITIES OF SECRETARY.—In carrying out this part, the Secretary shall—

[(1) cooperate with, and (directly or by grant or contract) furnish technical assistance necessary to, the State in matters relating to—

[(A) the education of children with disabilities; and

[(B) carrying out this part; and

[(2) provide short-term training programs and institutes.

[(b) RULES AND REGULATIONS.—In carrying out the provisions of this part, the Secretary shall issue regulations under this Act only to the extent that such regulations are necessary to ensure that there is compliance with the specific requirements of this Act.

[(c) CONFIDENTIALITY.—The Secretary shall take appropriate action, in accordance with the provisions of section 444 of the General Education Provisions Act (20 U.S.C. 1232g), to assure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by the Secretary and by State and local educational agencies pursuant to the provisions of this part.

[(d) PERSONNEL.—The Secretary is authorized to hire qualified personnel necessary to carry out the Secretary's duties under subsection (a) and under sections 618, 661, and 673 (or their predecessor authorities through October 1, 1997) without regard to the provisions of title 5, United States Code, relating to appointments in the competitive service and without regard to chapter 51 and subchapter III of chapter 53 of such title relating to classification and general schedule pay rates, except that no more than twenty such personnel shall be employed at any time.

**[SEC. 618. PROGRAM INFORMATION.**

[(a) IN GENERAL.—Each State that receives assistance under this part, and the Secretary of the Interior, shall provide data each year to the Secretary—

[(1)(A) on—

[(i) the number of children with disabilities, by race, ethnicity, and disability category, who are receiving a free appropriate public education;

[(ii) the number of children with disabilities, by race and ethnicity, who are receiving early intervention services;

[(iii) the number of children with disabilities, by race, ethnicity, and disability category, who are participating in regular education;

[(iv) the number of children with disabilities, by race, ethnicity, and disability category, who are in separate classes, separate schools or facilities, or public or private residential facilities;

[(v) the number of children with disabilities, by race, ethnicity, and disability category, who, for each year of age from age 14 to 21, stopped receiving special education and related services because of program completion or other reasons and the reasons why those children stopped receiving special education and related services;

[(vi) the number of children with disabilities, by race and ethnicity, who, from birth through age 2, stopped receiving early intervention services because of program completion or for other reasons; and

[(vii)(I) the number of children with disabilities, by race, ethnicity, and disability category, who under subparagraphs (A)(ii) and (B) of section 615(k)(1), are removed to an interim alternative educational setting;

[(II) the acts or items precipitating those removals; and

[(III) the number of children with disabilities who are subject to long-term suspensions or expulsions; and

[(B) on the number of infants and toddlers, by race and ethnicity, who are at risk of having substantial developmental delays (as described in section 632), and who are receiving early intervention services under part C; and

[(2) on any other information that may be required by the Secretary.

[(b) SAMPLING.—The Secretary may permit States and the Secretary of the Interior to obtain the data described in subsection (a) through sampling.

[(c) DISPROPORTIONALITY.—

[(1) IN GENERAL.—Each State that receives assistance under this part, and the Secretary of the Interior, shall provide for the collection and examination of data to determine if significant disproportionality based on race is occurring in the State with respect to—

[(A) the identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment described in section 602(3); and

[(B) the placement in particular educational settings of such children.

[(2) REVIEW AND REVISION OF POLICIES, PRACTICES, AND PROCEDURES.—In the case of a determination of significant disproportionality with respect to the identification of children as children with disabilities, or the placement in particular educational settings of such children, in accordance with paragraph (1), the State or the Secretary of the Interior, as the case may be, shall provide for the review and, if appropriate, revision of the policies, procedures, and practices used in such identification or placement to ensure that such policies, procedures, and practices comply with the requirements of this Act.

**[SEC. 619. PRESCHOOL GRANTS.**

**[(a) IN GENERAL.—**The Secretary shall provide grants under this section to assist States to provide special education and related services, in accordance with this part—

**[(1)** to children with disabilities aged 3 through 5, inclusive; and

**[(2)** at the State's discretion, to 2-year-old children with disabilities who will turn 3 during the school year.

**[(b) ELIGIBILITY.—**A State shall be eligible for a grant under this section if such State—

**[(1)** is eligible under section 612 to receive a grant under this part; and

**[(2)** makes a free appropriate public education available to all children with disabilities, aged 3 through 5, residing in the State.

**[(c) ALLOCATIONS TO STATES.—**

**[(1) IN GENERAL.—**After reserving funds for studies and evaluations under section 674(e), the Secretary shall allocate the remaining amount among the States in accordance with paragraph (2) or (3), as the case may be.

**[(2) INCREASE IN FUNDS.—**If the amount available for allocations to States under paragraph (1) is equal to or greater than the amount allocated to the States under this section for the preceding fiscal year, those allocations shall be calculated as follows:

**[(A)(i)** Except as provided in subparagraph (B), the Secretary shall—

**[(I)** allocate to each State the amount it received for fiscal year 1997;

**[(II)** allocate 85 percent of any remaining funds to States on the basis of their relative populations of children aged 3 through 5; and

**[(III)** allocate 15 percent of those remaining funds to State on the basis of their relative populations of all children aged 3 through 5 who are living in poverty.

**[(ii)** For the purpose of making grants under this paragraph, the Secretary shall use the most recent population data, including data on children living in poverty, that are available and satisfactory to the Secretary.

**[(B)** Notwithstanding subparagraph (A), allocations under this paragraph shall be subject to the following:

**[(i)** No State's allocation shall be less than its allocation for the preceding fiscal year.

**[(ii)** No State's allocation shall be less than the greatest of—

**[(I)** the sum of—

**[(aa)** the amount it received for fiscal year 1997; and

**[(bb)** one third of one percent of the amount by which the amount appropriated under subsection (j) exceeds the amount appropriated under this section for fiscal year 1997;

**[(II)** the sum of—

**[(aa)** the amount it received for the preceding fiscal year; and

[(bb) that amount multiplied by the percentage by which the increase in the funds appropriated from the preceding fiscal year exceeds 1.5 percent; or

[(III) the sum of—

[(aa) the amount it received for the preceding fiscal year; and

[(bb) that amount multiplied by 90 percent of the percentage increase in the amount appropriated from the preceding fiscal year.

[(iii) Notwithstanding clause (ii), no State' allocation under this paragraph shall exceed the sum of—

[(I) the amount it received for the preceding fiscal year; and

[(II) that amount multiplied by the sum of 1.5 percent and the percentage increase in the amount appropriated.

[(C) If the amount available for allocations under this paragraph is insufficient to pay those allocations in full, those allocations shall be ratably reduced, subject to subparagraph (B)(i).

[(3) DECREASE IN FUNDS.—If the amount available for allocations to States under paragraph (1) is less than the amount allocated to the States under this section for the preceding fiscal year, those allocations shall be calculated as follows:

[(A) If the amount available for allocations is greater than the amount allocated to the States for fiscal year 1997, each State shall be allocated the sum of—

[(i) the amount if received for fiscal year 1997; and

[(ii) an amount that bears the same relation to any remaining funds as the increase the State received for the preceding fiscal year over fiscal year 1997 bears to the total of all such increases for all States.

[(B) If the amount available for allocations is equal to or less than the amount allocated to the States for fiscal year 1997, each State shall be allocated the amount it received for that year, ratably reduced, if necessary.

[(4) OUTLYING AREAS.—The Secretary shall increase the fiscal year 1998 allotment of each outlying area under section 611 by at least the amount that that area received under this section for fiscal year 1997.

[(d) RESERVATION FOR STATE ACTIVITIES.—

[(1) IN GENERAL.—Each State may retain not more than the amount described in paragraph (2) for administration and other State-level activities in accordance with subsections (e) and (f).

[(2) AMOUNT DESCRIBED.—For each fiscal year, the Secretary shall determine and report to the State educational agency an amount that is 25 percent of the amount the State received under this section for fiscal year 1997, cumulatively adjusted by the Secretary for each succeeding fiscal year by the lesser of—

[(A) the percentage increase, if any, from the preceding fiscal year in the State's allocation under this section; or

[(B) the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor.

[(1) IN GENERAL.—For the purpose of administering this section (including the coordination of activities under this part with, and providing technical assistance to, other programs that provide services to children with disabilities) a State may use not more than 20 percent of the maximum amount it may retain under subsection (d) for any fiscal year.

[(2) ADMINISTRATION OF PART C.—Funds described in paragraph (1) may also be used for the administration of part C of this Act, if the State educational agency is the lead agency for the State under that part.

[(f) OTHER STATE-LEVEL ACTIVITIES.—Each State shall use any funds it retains under subsection (d) and does not use for administration under subsection (e)—

[(1) for support services (including establishing and implementing the mediation process required by section 615(e)), which may benefit children with disabilities younger than 3 or older than 5 as long as those services also benefit children with disabilities aged 3 through 5.

[(2) for direct services for children eligible for services under this section;

[(3) to develop a State improvement plan under subpart 1 of part D;

[(4) for activities at the State and local levels to meet the performance goals established by the State under section 612(a)(16) and to support implementation of the State improvement plan under subpart 1 of part D if the State receives funds under that subpart; or

[(5) to supplement other funds used to develop and implement a Statewide coordinated services system designed to improve results for children and families, including children with disabilities and their families, but not to exceed one percent of the amount received by the State under this section for a fiscal year.

[(g) SUBGRANTS TO LOCAL EDUCATIONAL AGENCIES.—

[(1) SUBGRANTS REQUIRED.—Each State that receives a grant under this section for any fiscal year shall distribute any of the grant funds that it does not reserve under subsection (d) to local educational agencies in the State that have established their eligibility under section 613, as follows:

[(A) BASE PAYMENTS.—The State shall first award each agency described in paragraph (1) the amount that agency would have received under this section for fiscal year 1997 if the State had distributed 75 percent of its grant for that year under section 619(c)(3), as then in effect.

[(B) ALLOCATION OF REMAINING FUNDS.—After making allocations under subparagraph (A), the State shall—

[(i) allocate 85 percent of any remaining funds to those agencies on the basis of the relative numbers of children enrolled in public and private elementary and secondary schools within the agency's jurisdiction; and



[(ii) allocate 15 percent of those remaining funds to those agencies in accordance with their relative numbers of children living in poverty, as determined by the State educational agency.]

[(2) REALLOCATION OF FUNDS.—If a State educational agency determines that a local educational agency is adequately providing a free appropriate public education to all children served by that agency with State and local funds, the State educational agency may reallocate any portion of the funds under this section that are not needed by that local agency to provide a free appropriate public education to other local educational agencies in the State that are not adequately providing special education and related services to all children with disabilities aged 3 through 5 residing in the areas they serve.]

[(h) PART C INAPPLICABLE.—Part C of this Act does not apply to any child with a disability receiving a free appropriate public education, in accordance with this part, with funds received under this section.]

[(i) DEFINITION.—For the purpose of this section, the term “State” means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.]

[(j) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this section, there are authorized to be appropriated to the Secretary \$500,000,000 for fiscal year 1998 and such sums as may be necessary for each subsequent fiscal year.]

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

### **SEC. 611. AUTHORIZATION; ALLOTMENT; USE OF FUNDS; AUTHORIZATION OF APPROPRIATIONS.**

#### **(a) GRANTS TO STATES.—**

(1) *PURPOSE OF GRANTS.*—*The Secretary shall make grants to States and the outlying areas, and provide funds to the Secretary of the Interior, to assist them to provide special education and related services to children with disabilities in accordance with this part.*

(2) *MAXIMUM AMOUNT.*—*The maximum amount available for awarding grants under this section for any fiscal year is—*

(A) *the total number of children with disabilities in the 2002–2003 school year in the States who received special education and related services and who were—*

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

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

(B) *40 percent of the average per-pupil expenditure in public elementary schools and secondary schools in the United States; adjusted by;*

(C) *the rate of change in the sum of—*

(i) *85 percent of the change in the nationwide total of the population described in subsection*

(d)(3)(A)(i)(II); and

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

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

(1) **FUNDS RESERVED.**—From the amount appropriated for any fiscal year under subsection (i), the Secretary shall reserve not more than 1 percent, which shall be used—

(A) to provide assistance to the outlying areas in accordance with their respective populations of individuals aged 3 through 21; and

(B) to provide each freely associated State a grant in the amount that such freely associated State received for fiscal year 2003 under this part, but only if the freely associated State meets the applicable requirements of this part, as well as the requirements of section 611(b)(2)(C) as such section was in effect on the day before the date of enactment of the Individuals with Disabilities Education Improvement Act of 2003.

(2) **SPECIAL RULE.**—The provisions of Public Law 95–134, permitting the consolidation of grants by the outlying areas, shall not apply to funds provided to the outlying areas or the freely associated States under this section.

(3) **DEFINITION.**—As used in this subsection, the term “freely associated States” means the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

(c) **SECRETARY OF THE INTERIOR.**—From the amount appropriated for any fiscal year under subsection (i), the Secretary shall reserve 1.226 percent to provide assistance to the Secretary of the Interior in accordance with subsection (i).

(d) **ALLOCATIONS TO STATES.**—

(1) **IN GENERAL.**—After reserving funds for studies and evaluations under section 665, and for payments to the outlying areas, the freely associated States, and the Secretary of the Interior under subsections (b) and (c) for a fiscal year, the Secretary shall allocate the remaining amount among the States in accordance with this subsection.

(2) **SPECIAL RULE FOR USE OF FISCAL YEAR 1999 AMOUNT.**—If a State received any funds under this section for fiscal year 1999 on the basis of children aged 3 through 5, but does not make a free appropriate public education available to all children with disabilities aged 3 through 5 in the State in any subsequent fiscal year, the Secretary shall compute the State’s amount for fiscal year 1999, solely for the purpose of calculating the State’s allocation in that subsequent year under paragraph (3) or (4), by subtracting the amount allocated to the State for fiscal year 1999 on the basis of those children.

(3) **INCREASE IN FUNDS.**—If the amount available for allocations to States under paragraph (1) for a fiscal year is equal to or greater than the amount allocated to the States under this paragraph for the preceding fiscal year, those allocations shall be calculated as follows:

(A) **ALLOCATION OF INCREASE.**—

(i) **IN GENERAL.**—Except as provided in subparagraph (B), the Secretary shall allocate for the fiscal year—

(I) to each State the amount the State received under this section for fiscal year 1999;

(II) 85 percent of any remaining funds to States on the basis of the States' relative populations of children aged 3 through 21 who are of the same age as children with disabilities for whom the State ensures the availability of a free appropriate public education under this part; and

(III) 15 percent of those remaining funds to States on the basis of the States' relative populations of children described in subclause (II) who are living in poverty.

(ii) DATA.—For the purpose of making grants under this paragraph, the Secretary shall use the most recent population data, including data on children living in poverty, that are available and satisfactory to the Secretary.

(B) LIMITATIONS.—Notwithstanding subparagraph (A), allocations under this paragraph shall be subject to the following:

(i) PRECEDING YEAR ALLOCATION.—No State's allocation shall be less than its allocation under this section for the preceding fiscal year.

(ii) MINIMUM.—No State's allocation shall be less than the greatest of—

(I) the sum of—

(aa) the amount the State received under this section for fiscal year 1999; and

(bb)  $\frac{1}{3}$  of 1 percent of the amount by which the amount appropriated under subsection (i) for the fiscal year exceeds the amount appropriated for this section for fiscal year 1999;

(II) the sum of—

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

(bb) that amount multiplied by the percentage by which the increase in the funds appropriated for this section from the preceding fiscal year exceeds 1.5 percent; or

(III) the sum of—

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

(bb) that amount multiplied by 90 percent of the percentage increase in the amount appropriated for this section from the preceding fiscal year.

(iii) MAXIMUM.—Notwithstanding clause (ii), no State's allocation under this paragraph shall exceed the sum of—

(I) the amount the State received under this section for the preceding fiscal year; and

(II) that amount multiplied by the sum of 1.5 percent and the percentage increase in the amount appropriated under this section from the preceding fiscal year.

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

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

(A) *AMOUNTS GREATER THAN FISCAL YEAR 1999 ALLOCATIONS.*—If the amount available for allocations is greater than the amount allocated to the States for fiscal year 1999, each State shall be allocated the sum of—

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

(ii) an amount that bears the same relation to any remaining funds as the increase the State received under this section for the preceding fiscal year over fiscal year 1999 bears to the total of all such increases for all States.

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

(i) *IN GENERAL.*—If the amount available for allocations under this paragraph is equal to or less than the amount allocated to the States for fiscal year 1999, each State shall be allocated the amount the State received for fiscal year 1999.

(ii) *RATABLE REDUCTION.*—If the amount available for allocations under this paragraph is insufficient to make the allocations described in clause (i), those allocations shall be ratably reduced.

(e) *STATE-LEVEL ACTIVITIES.*—

(1) *STATE ADMINISTRATION.*—

(A) *IN GENERAL.*—For the purpose of administering this part, including paragraph (3), section 619, and the coordination of activities under this part with, and providing technical assistance to, other programs that provide services to children with disabilities—

(i) each State may reserve not more than the maximum amount the State was eligible to reserve for State administration for fiscal year 2003 or \$800,000 (adjusted by the cumulative rate of inflation since fiscal year 2003 as measured by the percentage increase, if any, in the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor), whichever is greater; and

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

(B) *PART C.*—Funds reserved under subparagraph (A) may be used for the administration of part C, if the State educational agency is the lead agency for the State under that part.

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

(2) *OTHER STATE-LEVEL ACTIVITIES.*—

(A) *STATE-LEVEL ACTIVITIES.*—

(i) *IN GENERAL.*—For the purpose of carrying out State-level activities, each State may reserve for each of the fiscal years 2004 and 2005, not more than 10 percent of the amount that remains after subtracting the amount reserved under paragraph (1) from the amount of the State's allocation under subsection (d) for fiscal years 2004 and 2005, respectively. For fiscal years 2006, 2007, 2008, and 2009, the State may reserve the maximum amount the State was eligible to reserve under the preceding sentence for fiscal year 2005 (adjusted by the cumulative rate of inflation since fiscal year 2005 as measured by the percentage increase, if any, in the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor).

(ii) *SMALL STATE ADJUSTMENT.*—Notwithstanding clause (i), in the case of a State for which the maximum amount reserved for State administration under paragraph (1) is not greater than \$800,000 (as adjusted pursuant to paragraph (1)(A)(i)), the State may reserve for the purpose of carrying out State-level activities for each of the fiscal years 2004 and 2005, not more than 12 percent of the amount that remains after subtracting the amount reserved under paragraph (1) from the amount of the State's allocation under subsection (d) for fiscal years 2004 and 2005, respectively. For each of the fiscal years 2006, 2007, 2008, and 2009, each such State may reserve for such purpose the maximum amount the State was eligible to reserve under the preceding sentence for fiscal year 2005 (adjusted by the cumulative rate of inflation since fiscal year 2005 as measured by the percentage increase, if any, in the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor).

(B) *REQUIRED ACTIVITIES.*—Funds reserved under subparagraph (A) shall be used to carry out the following activities:

(i) For monitoring, enforcement and complaint investigation.

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

(iii) To support the State protection and advocacy system to advise and assist parents in the areas of—

(I) dispute resolution and due process;

(II) voluntary mediation; and

(III) the opportunity to resolve complaints.

(C) *AUTHORIZED ACTIVITIES.*—Funds reserved under subparagraph (A) may be used to carry out the following activities:

(i) *For support and direct services, including technical assistance, personnel preparation, and professional development and training.*

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

(iii) *To assist local educational agencies in providing positive behavioral interventions and supports and mental health services for children with disabilities.*

(iv) *To improve the use of technology in the classroom by children with disabilities to enhance learning.*

(v) *To support the development and use of technology, including universally designed technologies and assistive technology devices, to maximize accessibility to the general curriculum for children with disabilities.*

(vi) *Development and implementation of transition programs, including coordination of services with agencies involved in supporting the transition of students with disabilities to post-secondary activities.*

(vii) *To assist local educational agencies in meeting personnel shortages.*

(viii) *To support capacity-building activities and improve the delivery of services by local educational agencies to improve results for children with disabilities.*

(ix) *Alternative programming for children who have been expelled from school, and services for children in correctional facilities, children enrolled in State-operated or State-supported schools, and children in charter schools.*

(x) *To support the development and provision of appropriate accommodations for children with disabilities, or the development and provision of alternate assessments that are valid and reliable for assessing the performance of children with disabilities, in accordance with sections 1111(b) and 6111 of the Elementary and Secondary Education Act of 1965.*

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

(A) *IN GENERAL.*—For the purpose of assisting local educational agencies (and charter schools that are local educational agencies) in addressing the needs of high-need children and the unanticipated enrollment of other children eligible for services under this part, each State shall reserve for each of the fiscal years 2004 through 2009, 2 percent of the amount that remains after subtracting the amount reserved under paragraph (1) from the amount of the State's allocation under subsection (d) for each of the fiscal years 2004 through 2009, respectively, to—

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

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

**(B) REQUIRED DISBURSEMENTS FROM THE FUND.—**

(i) *IN GENERAL.*—Each State educational agency shall make disbursements from the fund established under subparagraph (A) to local educational agencies to pay the percentage, described in subparagraph (D), of the costs of providing a free appropriate public education to high-need children.

(ii) *SPECIAL RULE.*—If funds reserved for a fiscal year under subparagraph (A) are insufficient to pay the percentage described in subparagraph (D) to assist all the local educational agencies having applications approved under subparagraph (C), then the State educational agency shall ratably reduce the amount paid to each local educational agency that receives a disbursement for that fiscal year.

(C) *APPLICATION.*—A local educational agency that desires a disbursement under this subsection shall submit an application to the State educational agency at such time, in such manner, and containing such information as the State educational agency may require. Such application shall include assurances that funds provided under this paragraph shall not be used to pay costs that otherwise would be reimbursable as medical assistance for a child with a disability under the State medicaid program under title XIX of the Social Security Act.

**(D) DISBURSEMENTS.—**

(i) *IN GENERAL.*—A State educational agency shall make a disbursement to a local educational agency that submits an application under subparagraph (C) in an amount that is equal to 75 percent of the costs that are in excess of 4 times the average per-pupil expenditure in the United States or in the State where the child resides (whichever average per-pupil expenditure is lower) associated with educating each high need child served by such local educational agency in a fiscal year for whom such agency desires a disbursement.

(ii) *APPROPRIATE COSTS.*—The costs associated with educating a high need child under clause (i) are only those costs associated with providing direct special education and related services to such child that are identified in such child's appropriately developed IEP.

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

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

(i) To pay the costs associated with serving children with disabilities who moved into the areas served by such local agencies after the budget for the following

school year had been finalized to assist the local educational agencies in providing a free appropriate public education for such children in such year.

(ii) To compensate local educational agencies for extraordinary costs, as determined by the State, of any children eligible for services under this part due to—

(I) unexpected enrollment or placement of children eligible for services under this part; or

(II) a significant underestimate of the average cost of providing services to children eligible for services under this part.

(G) REMAINING FUNDS.—Funds reserved under subparagraph (A) in any fiscal year but not expended in that fiscal year pursuant to subparagraph (D) or subparagraph (F) shall—

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

(ii) be allocated to local educational agencies in the same manner as funds are allocated to local educational agencies under subsection (f).

(H) ASSURANCE OF A FREE APPROPRIATE PUBLIC EDUCATION.—Nothing in this section shall be construed—

(i) to limit or condition the right of a child with a disability who is assisted under this part to receive a free appropriate public education pursuant to section 612(a)(1) in a least restrictive environment pursuant to section 612(a)(5); or

(ii) to authorize a State educational agency or local educational agency to indicate a limit on what is expected to be spent on the education of a child with a disability.

(I) MEDICAID SERVICES NOT AFFECTED.—Disbursements provided under this subsection shall not be used to pay costs that otherwise would be reimbursable as medical assistance for a child with a disability under the State medicaid program under title XIX of the Social Security Act.

(J) DEFINITIONS.—In this paragraph:

(i) AVERAGE PER-PUPIL EXPENDITURE.—The term “average per-pupil expenditure” has the meaning given the term in section 9101 of the Elementary and Secondary Education Act of 1965.

(ii) HIGH-NEED CHILD.—The term “high-need”, when used with respect to a child with a disability, means a child with a disability for whom a free appropriate public education in a fiscal year costs more than 4 times the average per-pupil expenditure for such fiscal year.

(K) SPECIAL RULE FOR RISK POOL AND HIGH-NEED ASSISTANCE PROGRAMS IN EFFECT AS OF JANUARY 1, 2003.—Notwithstanding the provisions of subparagraphs (A) through (J), a State may use funds reserved pursuant to this paragraph for administering and implementing a placement-neutral cost-sharing and reimbursement program of high-need, low-incidence, emergency, catastrophic, or extraor-



*dinary aid to local educational agencies that provides services to students eligible under this part based on eligibility criteria for such programs that were operative on January 1, 2003.*

(4) *INAPPLICABILITY OF CERTAIN PROHIBITIONS.—A State may use funds the State reserves under paragraphs (1), (2), and (3) without regard to—*

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

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

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

*(A) will be used to meet the requirements of this Act; and*

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

(6) *FLEXIBILITY IN USING FUNDS FOR PART C.—Any State eligible to receive a grant under section 619 may use funds made available under paragraph (1)(A), subsection (f)(3), or section 619(f)(5) to develop and implement a State policy jointly with the lead agency under part C and the State educational agency to provide early intervention services (which shall include an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills) in accordance with part C to children with disabilities who are eligible for services under section 619 and who previously received services under part C until such children enter, or are eligible under State law to enter, kindergarten.*

(f) *SUBGRANTS TO LOCAL EDUCATIONAL AGENCIES.—*

(1) *SUBGRANTS REQUIRED.—Each State that receives a grant under this section for any fiscal year shall distribute any funds the State does not reserve under subsection (e) to local educational agencies (including public charter schools that operate as local educational agencies) in the State that have established their eligibility under section 613 for use in accordance with this part.*

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

*(A) PROCEDURE.—For each fiscal year for which funds are allocated to States under subsection (d), each State shall allocate funds under paragraph (1) as follows:*

*(i) BASE PAYMENTS.—The State shall first award each local educational agency described in paragraph (1) the amount the local educational agency would have received under this section for fiscal year 1999, if the State had distributed 75 percent of its grant for that year under section 611(d) as section 611(d) was then in effect.*

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

*(I) allocate 85 percent of any remaining funds to those local educational agencies on the basis of the relative numbers of children enrolled in public and*

*private elementary schools and secondary schools within the local educational agency's jurisdiction; and*

*(II) allocate 15 percent of those remaining funds to those local educational agencies in accordance with their relative numbers of children living in poverty, as determined by the State educational agency.*

*(3) REALLOCATION OF FUNDS.—If a State educational agency determines that a local educational agency is adequately providing a free appropriate public education to all children with disabilities residing in the area served by that local educational agency with State and local funds, the State educational agency may reallocate any portion of the funds under this part that are not needed by that local educational agency to provide a free appropriate public education to other local educational agencies in the State that are not adequately providing special education and related services to all children with disabilities residing in the areas served by those other local educational agencies.*

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

*(1) the term “average per-pupil expenditure in public elementary schools and secondary schools in the United States” means—*

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

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

*(ii) any direct expenditures by the State for the operation of those local educational agencies; divided by*

*(B) the aggregate number of children in average daily attendance to whom those local educational agencies provided free public education during that preceding year; and*

*(2) the term “State” means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.*

*(h) USE OF AMOUNTS BY SECRETARY OF THE INTERIOR.—*

*(1) PROVISION OF AMOUNTS FOR ASSISTANCE.—*

*(A) IN GENERAL.—The Secretary of Education shall provide amounts to the Secretary of the Interior to meet the need for assistance for the education of children with disabilities on reservations aged 5 through 21 who are enrolled in elementary schools and secondary schools for Indian children operated or funded by the Secretary of the Interior. The amount of such payment for any fiscal year shall be equal to 80 percent of the amount allotted under subsection (c) for that fiscal year.*

*(B) CALCULATION OF NUMBER OF CHILDREN.—In the case of Indian students aged 3 through 5 who are enrolled in programs affiliated with the Bureau of Indian Affairs (hereafter in this subsection referred to as “BIA”) schools, and that are required by the States in which such schools are located to attain or maintain State accreditation, and*

*which schools had such accreditation prior to the date of enactment of the Individuals with Disabilities Education Act Amendments of 1991, the school shall be allowed to count those children for the purpose of distribution of the funds provided under this paragraph to the Secretary of the Interior. The Secretary of the Interior shall be responsible for meeting all of the requirements of this part for these children, in accordance with paragraph (2).*

*(C) ADDITIONAL REQUIREMENT.—With respect to all other children aged 3 through 21 on reservations, the State educational agency shall be responsible for ensuring that all of the requirements of this part are implemented.*

*(2) SUBMISSION OF INFORMATION.—The Secretary of Education may provide the Secretary of the Interior amounts under paragraph (1) for a fiscal year only if the Secretary of the Interior submits to the Secretary of Education information that—*

*(A) demonstrates that the Department of the Interior meets the appropriate requirements, as determined by the Secretary of Education, of sections 612 (including monitoring and evaluation activities) and 613;*

*(B) includes a description of how the Secretary of the Interior will coordinate the provision of services under this part with local educational agencies, tribes and tribal organizations, and other private and Federal service providers;*

*(C) includes an assurance that there are public hearings, adequate notice of such hearings, and an opportunity for comment afforded to members of tribes, tribal governing bodies, and affected local school boards before the adoption of the policies, programs, and procedures described in subparagraph (A);*

*(D) includes an assurance that the Secretary of the Interior will provide such information as the Secretary of Education may require to comply with section 618;*

*(E) includes an assurance that the Secretary of the Interior and the Secretary of Health and Human Services have entered into a memorandum of agreement, to be provided to the Secretary of Education, for the coordination of services, resources, and personnel between their respective Federal, State, and local offices and with State and local educational agencies and other entities to facilitate the provision of services to Indian children with disabilities residing on or near reservations (such agreement shall provide for the apportionment of responsibilities and costs including, but not limited to, child find, evaluation, diagnosis, remediation or therapeutic measures, and (where appropriate) equipment and medical or personal supplies as needed for a child to remain in school or a program); and*

*(F) includes an assurance that the Department of the Interior will cooperate with the Department of Education in its exercise of monitoring and oversight of this application, and any agreements entered into between the Secretary of the Interior and other entities under this part, and will fulfill its duties under this part.*

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

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

(A) *IN GENERAL.*—With funds appropriated under subsection (i), the Secretary of Education shall make payments to the Secretary of the Interior to be distributed to tribes or tribal organizations (as defined under section 4 of the Indian Self-Determination and Education Assistance Act) or consortia of the above to provide for the coordination of assistance for special education and related services for children with disabilities aged 3 through 5 on reservations served by elementary schools and secondary schools for Indian children operated or funded by the Department of the Interior. The amount of such payments under subparagraph (B) for any fiscal year shall be equal to 20 percent of the amount allotted under subsection (c).

(B) *DISTRIBUTION OF FUNDS.*—The Secretary of the Interior shall distribute the total amount of the payment under subparagraph (A) by allocating to each tribe or tribal organization an amount based on the number of children with disabilities ages 3 through 5 residing on reservations as reported annually, divided by the total of those children served by all tribes or tribal organizations.

(C) *SUBMISSION OF INFORMATION.*—To receive a payment under this paragraph, the tribe or tribal organization shall submit such figures to the Secretary of the Interior as required to determine the amounts to be allocated under subparagraph (B). This information shall be compiled and submitted to the Secretary of Education.

(D) *USE OF FUNDS.*—The funds received by a tribe or tribal organization shall be used to assist in child find, screening, and other procedures for the early identification of children aged 3 through 5, parent training, and the provision of direct services. These activities may be carried out directly or through contracts or cooperative agreements with the BIA, local educational agencies, and other public or private nonprofit organizations. The tribe or tribal organization is encouraged to involve Indian parents in the development and implementation of these activities. The above entities shall, as appropriate, make referrals to local, State, or Federal entities for the provision of services or further diagnosis.

(E) *BIENNIAL REPORT.*—To be eligible to receive a grant pursuant to subparagraph (A), the tribe or tribal organization shall provide to the Secretary of the Interior a biennial report of activities undertaken under this paragraph, including the number of contracts and cooperative agreements entered into, the number of children contacted and receiving services for each year, and the estimated number of children needing services during the 2 years following the year in which the report is made. The Secretary of the Interior shall include a summary of this information on a biennial basis in the report to the Secretary of Education required under this subsection. The Secretary of Education may require any additional information from the Secretary of the Interior.

(F) *PROHIBITIONS.*—None of the funds allocated under this paragraph may be used by the Secretary of the Interior for administrative purposes, including child count and the provision of technical assistance.

(5) *PLAN FOR COORDINATION OF SERVICES.*—The Secretary of the Interior shall develop and implement a plan for the coordination of services for all Indian children with disabilities residing on reservations covered under this Act. Such plan shall provide for the coordination of services benefiting these children from whatever source, including tribes, the Indian Health Service, other BIA divisions, and other Federal agencies. In developing the plan, the Secretary of the Interior shall consult with all interested and involved parties. The plan shall be based on the needs of the children and the system best suited for meeting those needs, and may involve the establishment of cooperative agreements between the BIA, other Federal agencies, and other entities. The plan shall also be distributed upon request to States, State and local educational agencies, and other agencies providing services to infants, toddlers, and children with disabilities, to tribes, and to other interested parties.

(6) *ESTABLISHMENT OF ADVISORY BOARD.*—To meet the requirements of section 612(a)(20), the Secretary of the Interior shall establish, under the BIA, an advisory board composed of individuals involved in or concerned with the education and provision of services to Indian infants, toddlers, children, and youth with disabilities, including Indians with disabilities, Indian parents or guardians of such children, teachers, service providers, State and local educational officials, representatives of tribes or tribal organizations, representatives from State Interagency Coordinating Councils under section 641 in States having reservations, and other members representing the various divisions and entities of the BIA. The chairperson shall be selected by the Secretary of the Interior. The advisory board shall—

(A) assist in the coordination of services within the BIA and with other local, State, and Federal agencies in the provision of education for infants, toddlers, and children with disabilities;

(B) advise and assist the Secretary of the Interior in the performance of the Secretary's responsibilities described in this subsection;

(C) develop and recommend policies concerning effective inter- and intra-agency collaboration, including modifications to regulations, and the elimination of barriers to inter- and intra-agency programs and activities;

(D) provide assistance and disseminate information on best practices, effective program coordination strategies, and recommendations for improved educational programming for Indian infants, toddlers, and children with disabilities; and

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

(7) *ANNUAL REPORTS.*—

(A) *IN GENERAL.*—The advisory board established under paragraph (6) shall prepare and submit to the Secretary of

*the Interior and to Congress an annual report containing a description of the activities of the advisory board for the preceding year.*

*(B) AVAILABILITY.—The Secretary of the Interior shall make available to the Secretary of Education the report described in subparagraph (A).*

*(i) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this part, other than section 619, there are authorized to be appropriated such sums as may be necessary.*

**SEC. 612. STATE ELIGIBILITY.**

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

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

*(A) IN GENERAL.—A free appropriate public education is available to all children with disabilities residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school.*

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

*(i) aged 3 through 5 and 18 through 21 in a State to the extent that its application to those children would be inconsistent with State law or practice, or the order of any court, respecting the provision of public education to children in those age ranges; and*

*(ii) aged 18 through 21 to the extent that State law does not require that special education and related services under this part be provided to children with disabilities who, in the educational placement prior to their incarceration in an adult correctional facility—*

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

*(II) did not have an individualized education program under this part.*

*(C) STATE FLEXIBILITY.—A State that provides early intervention services in accordance with part C to a child who is eligible for services under section 619, is not required to provide such child with a free appropriate public education.*

*(2) FULL EDUCATIONAL OPPORTUNITY GOAL.—The State has established a goal of providing full educational opportunity to all children with disabilities and a detailed timetable for accomplishing that goal.*

**(3) CHILD FIND.—**

*(A) IN GENERAL.—All children with disabilities residing in the State, including children with disabilities attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated and a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services.*

(B) *CONSTRUCTION.*—Nothing in this Act requires that children be classified by their disability so long as each child who has a disability listed in section 602 and who, by reason of that disability, needs special education and related services is regarded as a child with a disability under this part.

(4) *INDIVIDUALIZED EDUCATION PROGRAM.*—An individualized education program, or an individualized family service plan that meets the requirements of section 636(d), is developed, reviewed, and revised for each child with a disability in accordance with section 614(d).

(5) *LEAST RESTRICTIVE ENVIRONMENT.*—

(A) *IN GENERAL.*—To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(B) *ADDITIONAL REQUIREMENT.*—

(i) *IN GENERAL.*—A State funding mechanism shall not result in placements that violate the requirements of subparagraph (A), and a State shall not use a funding mechanism by which the State distributes funds on the basis of the type of setting in which a child is served that will result in the failure to provide a child with a disability a free appropriate public education according to the unique needs of the child as described in the child's IEP.

(ii) *ASSURANCE.*—If the State does not have policies and procedures to ensure compliance with clause (i), the State shall provide the Secretary an assurance that the State will revise the funding mechanism as soon as feasible to ensure that such mechanism does not result in such placements.

(6) *PROCEDURAL SAFEGUARDS.*—

(A) *IN GENERAL.*—Children with disabilities and their parents are afforded the procedural safeguards required by section 615.

(B) *ADDITIONAL PROCEDURAL SAFEGUARDS.*—Procedures to ensure that testing and evaluation materials and procedures utilized for the purposes of evaluation and placement of children with disabilities will be selected and administered so as not to be racially or culturally discriminatory. Such materials or procedures shall be provided and administered in the child's native language or mode of communication, unless it clearly is not feasible to do so, and no single procedure shall be the sole criterion for determining an appropriate educational program for a child.

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

(8) *CONFIDENTIALITY.*—Agencies in the State comply with section 617(c) (relating to the confidentiality of records and information).

(9) *TRANSITION FROM PART C TO PRESCHOOL PROGRAMS.*—Children participating in early-intervention programs assisted under part C, and who will participate in preschool programs assisted under this part, experience a smooth and effective transition to those preschool programs in a manner consistent with section 637(a)(8). By the third birthday of such a child, an individualized education program or, if consistent with sections 614(d)(2)(B) and 636(d), an individualized family service plan, has been developed and is being implemented for the child. The local educational agency will participate in transition planning conferences arranged by the designated lead agency under section 635(a)(10).

(10) *CHILDREN IN PRIVATE SCHOOLS.*—

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

(i) *IN GENERAL.*—To the extent consistent with the number and location of children with disabilities in the State who are enrolled by their parents in private elementary schools and secondary schools in the school district served by a local educational agency, provision is made for the participation of those children in the program assisted or carried out under this part by providing for such children special education and related services in accordance with the following requirements, unless the Secretary has arranged for services to those children under subsection (f):

(I) Amounts to be expended for the provision of those services (including direct services to parentally placed children) by the local educational agency shall be equal to a proportionate amount of Federal funds made available under this part.

(II) Such services may be provided to children with disabilities on the premises of private, including religious, schools, to the extent consistent with law.

(III) Each local educational agency shall maintain in its records and provide to the State educational agency the number of children evaluated under this paragraph, the number of children determined to be children with disabilities, and the number of children served under this subsection.

(ii) *CHILD-FIND REQUIREMENT.*—

(I) *IN GENERAL.*—The requirements of paragraph (3) of this subsection (relating to child find) shall apply with respect to children with disabilities in the State who are enrolled in private, including religious, elementary schools and secondary schools. Such child find process shall be conducted in a comparable time period as for other students attending public schools in the local educational agency.



(II) *EQUITABLE PARTICIPATION.*—The child find process shall be designed to ensure the equitable participation of parentally placed private school children and an accurate count of such children.

(III) *ACTIVITIES.*—In carrying out this clause, the local educational agency, or where applicable, the State educational agency, shall undertake activities similar to those activities undertaken for its public school children.

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

(iii) *CONSULTATION.*—To ensure timely and meaningful consultation, a local educational agency, or where appropriate, a State educational agency, shall consult, with representatives of children with disabilities who are parentally placed in private schools, during the design and development of special education and related services for these children, including consultation regarding—

(I) the child find process and how parentally placed private school children suspected of having a disability can participate equitably, including how parents, teachers, and private school officials will be informed of the process;

(II) the determination of the proportionate share of Federal funds available to serve parentally placed private school children with disabilities under this paragraph, including the determination of how the proportionate share of those funds were calculated;

(III) the consultation process among the school district, private school officials, and parents of parentally placed private school children with disabilities, including how such process will operate throughout the school year to ensure that parentally placed children with disabilities identified through the child find process can meaningfully participate in special education and related services;

(IV) how, where, and by whom special education and related services will be provided for parentally placed private school children, including a discussion of alternate service delivery mechanisms, how such services will be apportioned if funds are insufficient to serve all children, and how and when these decisions will be made; and

(V) how, if the local educational agency disagrees with the views of the private school officials on the provision of services through a contract, the local educational agency shall provide to the private school officials a written explanation of the reasons why the local educational agency chose not to provide services through a contract.

(iv) *WRITTEN AFFIRMATION.*—When timely and meaningful consultation as required by this section has occurred, the local educational agency shall obtain a written affirmation signed by the representatives of participating private schools, and if such officials do not provide such affirmations within a reasonable period of time, the local educational agency shall forward the documentation of the consultation process to the State educational agency.

(v) *COMPLIANCE.*—

(I) *IN GENERAL.*—A private school official shall have the right to complain to the State educational agency that the local educational agency did not engage in consultation that was meaningful and timely, or did not give due consideration to the views of the private school official.

(II) *PROCEDURE.*—If the private school official wishes to complain, the official shall provide the basis of the noncompliance with this section by the local educational agency to the State educational agency, and the local educational agency shall forward the appropriate documentation to the State educational agency. If the private school official is dissatisfied with the decision of the State educational agency, such official may complain to the Secretary by providing the basis of the noncompliance with this section by the local educational agency to the Secretary, and the State educational agency shall forward the appropriate documentation to the Secretary.

(vi) *PROVISION OF EQUITABLE SERVICES.*—

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

(II) *DIRECTLY OR THROUGH CONTRACTS.*—A public agency may provide special education and related services directly or through contracts with public and private agencies, organizations, and institutions.

(III) *SECULAR, NEUTRAL, NONIDEOLOGICAL.*—Special education and related services provided to children with disabilities attending private schools, including materials and equipment, shall be secular, neutral, and nonideological.

(vii) *PUBLIC CONTROL OF FUNDS.*—The control of funds used to provide special education and related services under this section, and title to materials, equipment, and property purchased with those funds, shall be in a public agency for the uses and purposes provided in this Act, and a public agency shall administer the funds and property.

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

(i) *IN GENERAL.*—Children with disabilities in private schools and facilities are provided special education and related services, in accordance with an individualized education program, at no cost to their parents, if such children are placed in, or referred to, such schools or facilities by the State or appropriate local educational agency as the means of carrying out the requirements of this part or any other applicable law requiring the provision of special education and related services to all children with disabilities within such State.

(ii) *STANDARDS.*—In all cases described in clause (i), the State educational agency shall determine whether such schools and facilities meet standards that apply to State and local educational agencies and that children so served have all the rights the children would have if served by such agencies.

(C) *PAYMENT FOR EDUCATION OF CHILDREN ENROLLED IN PRIVATE SCHOOLS WITHOUT CONSENT OF OR REFERRAL BY THE PUBLIC AGENCY.*—

(i) *IN GENERAL.*—Subject to subparagraph (A), this part does not require a local educational agency to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made a free appropriate public education available to the child and the parents elected to place the child in such private school or facility.

(ii) *REIMBURSEMENT FOR PRIVATE SCHOOL PLACEMENT.*—If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private elementary school or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made a free appropriate public education available to the child in a timely manner prior to that enrollment.

(iii) *LIMITATION ON REIMBURSEMENT.*—The cost of reimbursement described in clause (ii) may be reduced or denied—

(I) if—

(aa) at the most recent IEP meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP Team that they were rejecting the placement proposed by the public agency to provide a free appropriate public education to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or

(bb) 10 business days (including any holidays that occur on a business day) prior to the

removal of the child from the public school, the parents did not give written notice to the public agency of the information described in division (aa);

(II) if, prior to the parents' removal of the child from the public school, the public agency informed the parents, through the notice requirements described in section 615(b)(3), of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for such evaluation; or

(III) upon a judicial finding of unreasonableness with respect to actions taken by the parents.

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

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

(aa) the school prevented the parent from providing such notice; or

(bb) the parents had not received notice, pursuant to section 615, of the notice requirement in clause (iii)(I); and

(II) may, in the discretion of a court or a hearing officer, not be reduced or denied for failure to provide such notice if—

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

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

(11) **STATE EDUCATIONAL AGENCY RESPONSIBLE FOR GENERAL SUPERVISION.**—

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

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

(ii) all educational programs for children with disabilities in the State, including all such programs administered by any other State or local agency—

(I) are under the general supervision of individuals in the State who are responsible for educational programs for children with disabilities; and

(II) meet the educational standards of the State educational agency.

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

(C) **EXCEPTION.**—Notwithstanding subparagraphs (A) and (B), the Governor (or another individual pursuant to State law), consistent with State law, may assign to any public agency in the State the responsibility of ensuring that the requirements of this part are met with respect to

*children with disabilities who are convicted as adults under State law and incarcerated in adult prisons.*

(12) OBLIGATIONS RELATED TO AND METHODS OF ENSURING SERVICES.—

(A) ESTABLISHING RESPONSIBILITY FOR SERVICES.—*The Chief Executive Officer of a State or designee of the officer shall ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each public agency described in subparagraph (B) and the State educational agency, in order to ensure that all services described in subparagraph (B)(i) that are needed to ensure a free appropriate public education are provided, including the provision of such services during the pendency of any dispute under clause (iii). Such agreement or mechanism shall include the following:*

(i) AGENCY FINANCIAL RESPONSIBILITY.—*An identification of, or a method for defining, the financial responsibility of each agency for providing services described in subparagraph (B)(i) to ensure a free appropriate public education to children with disabilities, provided that the financial responsibility of each public agency described in subparagraph (B), including the State Medicaid agency and other public insurers of children with disabilities, shall precede the financial responsibility of the local educational agency (or the State agency responsible for developing the child's IEP).*

(ii) CONDITIONS AND TERMS OF REIMBURSEMENT.—*The conditions, terms, and procedures under which a local educational agency shall be reimbursed by other agencies.*

(iii) INTERAGENCY DISPUTES.—*Procedures for resolving interagency disputes (including procedures under which local educational agencies may initiate proceedings) under the agreement or other mechanism to secure reimbursement from other agencies or otherwise implement the provisions of the agreement or mechanism.*

(iv) COORDINATION OF SERVICES PROCEDURES.—*Policies and procedures for agencies to determine and identify the interagency coordination responsibilities of each agency to promote the coordination and timely and appropriate delivery of services described in subparagraph (B)(i).*

(B) OBLIGATION OF PUBLIC AGENCY.—

(i) IN GENERAL.—*If any public agency other than an educational agency is otherwise obligated under Federal or State law, or assigned responsibility under State policy pursuant to subparagraph (A), to provide or pay for any services that are also considered special education or related services (such as, but not limited to, services described in section 602(1) relating to assistive technology devices, 602(2) relating to assistive technology services, 602(25) relating to related services, 602(32) relating to supplementary aids and services,*

and 602(33) relating to transition services) that are necessary for ensuring a free appropriate public education to children with disabilities within the State, such public agency shall fulfill that obligation or responsibility, either directly or through contract or other arrangement pursuant to subparagraph (A) or an agreement pursuant to subparagraph (C).

(ii) REIMBURSEMENT FOR SERVICES BY PUBLIC AGENCY.—If a public agency other than an educational agency fails to provide or pay for the special education and related services described in clause (i), the local educational agency (or State agency responsible for developing the child's IEP) shall provide or pay for such services to the child. Such local educational agency or State agency is authorized to claim reimbursement for the services from the public agency that failed to provide or pay for such services and such public agency shall reimburse the local educational agency or State agency pursuant to the terms of the interagency agreement or other mechanism described in subparagraph (A)(i) according to the procedures established in such agreement pursuant to subparagraph (A)(ii).

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

- (i) State statute or regulation;
- (ii) signed agreements between respective agency officials that clearly identify the responsibilities of each agency relating to the provision of services; or
- (iii) other appropriate written methods as determined by the Chief Executive Officer of the State or designee of the officer and approved by the Secretary.

(13) PROCEDURAL REQUIREMENTS RELATING TO LOCAL EDUCATIONAL AGENCY ELIGIBILITY.—The State educational agency will not make a final determination that a local educational agency is not eligible for assistance under this part without first affording that agency reasonable notice and an opportunity for a hearing.

(14) PERSONNEL STANDARDS.—

(A) IN GENERAL.—The State educational agency has established and maintains standards to ensure that personnel necessary to carry out this part are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities.

(B) RELATED SERVICES PERSONNEL AND PARAPROFESSIONALS.—The standards under subparagraph (A) include standards for related services personnel and paraprofessionals that—

- (i) are consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services;
- (ii) ensure that related services personnel who deliver services in their discipline or profession meet the re-

quirements of clause (i) and have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis; and

(iii) allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulation, or written policy, in meeting the requirements of this part to be used to assist in the provision of special education and related services under this part to children with disabilities.

(C) STANDARDS FOR SPECIAL EDUCATION TEACHERS.—

(i) IN GENERAL.—The standards described in subparagraph (A) shall ensure that each person employed as a special education teacher in the State who teaches in an elementary, middle, or secondary school is highly qualified not later than the end of the 2006–2007 school year.

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

(I) the Secretary, the State educational agency, and local educational agencies shall apply the definition of highly qualified in section 602(10) to special education teachers; and

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

(iii) PARENTS' RIGHT TO KNOW.—In carrying out section 1111(h)(6) of the Elementary and Secondary Education Act of 1965 with respect to special education teachers, a local educational agency shall—

(I) include in a response to a request under such section any additional information needed to demonstrate that the teacher meets the applicable requirements of section 602(10) relating to certification or licensure as a special education teacher; and

(II) apply the definition of highly qualified in section 602(10) in carrying out section 1111(h)(6)(B)(ii).

(D) POLICY.—In implementing this section, a State shall adopt a policy that includes a requirement that local educational agencies in the State take measurable steps to recruit, hire, train, and retain highly qualified personnel to provide special education and related services under this part to children with disabilities.

(E) RULE OF CONSTRUCTION.—Notwithstanding any other individual right of action that a parent or student may maintain under this part, nothing in this subsection shall be construed to create a right of action on behalf of an individual student for the failure of a particular State educational agency or local educational agency staff person to be highly qualified, or to prevent a parent from filing a

complaint about staff qualifications with the State educational agency as provided for under this part.

(15) PERFORMANCE GOALS AND INDICATORS.—The State—

(A) has established goals for the performance of children with disabilities in the State that—

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

(ii) are the same as the State's definition of adequate yearly progress, including the State's objectives for progress by children with disabilities, under section 1111(b)(2)(C) of the Elementary and Secondary Education Act of 1965;

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

(iv) are consistent, to the extent appropriate, with any other goals and standards for children established by the State;

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

(C) will annually report to the Secretary and the public on the progress of the State, and of children with disabilities in the State, toward meeting the goals established under subparagraph (A).

(16) PARTICIPATION IN ASSESSMENTS.—

(A) IN GENERAL.—All children with disabilities are included in all general State and districtwide assessment programs and accountability systems, including assessments and accountability systems described under section 1111 of the Elementary and Secondary Education Act of 1965, with appropriate accommodations, alternate assessments where necessary, and as indicated in their respective individualized education programs.

(B) ACCOMMODATION GUIDELINES.—The State (or, in the case of a districtwide assessment, the local educational agency) has developed guidelines for the provision of appropriate accommodations.

(C) ALTERNATE ASSESSMENTS.—

(i) IN GENERAL.—The State (or, in the case of a districtwide assessment, the local educational agency) has developed and implemented guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in regular assessments under subparagraph (B) as indicated in their respective individualized education programs.

(ii) REQUIREMENTS FOR ALTERNATE ASSESSMENTS.—The guidelines under clause (i) shall provide for alternate assessments that—

(I) are aligned with the State's challenging academic content and academic achievement standards; and



(II) if the State has adopted alternate academic achievement standards permitted under section 1111(b)(1) of the Elementary and Secondary Education Act of 1965, measure the achievement of children with disabilities against those standards.

(iii) CONDUCT OF ALTERNATIVE ASSESSMENTS.—The State conducts the alternate assessments described in this subparagraph.

(D) REPORTS.—The State educational agency (or, in the case of a districtwide assessment, the local educational agency) makes available to the public, and reports to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled children, the following:

(i) The number of children with disabilities participating in regular assessments, and the number of those children who were provided accommodations in order to participate in those assessments.

(ii) The number of children with disabilities participating in alternate assessments described in subparagraph (C)(ii)(I).

(iii) The number of children with disabilities participating in alternate assessments described in subparagraph (C)(ii)(II).

(iv) The performance of children with disabilities on regular assessments and on alternate assessments (if the number of children with disabilities participating in those assessments is sufficient to yield statistically reliable information and reporting that information will not reveal personally identifiable information about an individual student), compared with the achievement of all children, including children with disabilities, on those assessments.

(E) UNIVERSAL DESIGN.—The State educational agency (or, in the case of a districtwide assessment, the local educational agency) shall, to the extent feasible, use universal design principles in developing and administering any assessments under this paragraph.

(17) SUPPLEMENTATION OF STATE, LOCAL, AND OTHER FEDERAL FUNDS.—

(A) EXPENDITURES.—Funds paid to a State under this part will be expended in accordance with all the provisions of this part.

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

(C) PROHIBITION AGAINST SUPPLANTATION AND CONDITIONS FOR WAIVER BY SECRETARY.—Except as provided in section 613, funds paid to a State under this part will be used to supplement the level of Federal, State, and local funds (including funds that are not under the direct control of State or local educational agencies) expended for special education and related services provided to children with disabilities under this part and in no case to supplant such Federal, State, and local funds, except that, where the State

*provides clear and convincing evidence that all children with disabilities have available to them a free appropriate public education, the Secretary may waive, in whole or in part, the requirements of this subparagraph if the Secretary concurs with the evidence provided by the State.*

**(18) MAINTENANCE OF STATE FINANCIAL SUPPORT.—**

*(A) IN GENERAL.—The State does not reduce the amount of State financial support for special education and related services for children with disabilities, or otherwise made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year.*

*(B) REDUCTION OF FUNDS FOR FAILURE TO MAINTAIN SUPPORT.—The Secretary shall reduce the allocation of funds under section 611 for any fiscal year following the fiscal year in which the State fails to comply with the requirement of subparagraph (A) by the same amount by which the State fails to meet the requirement.*

*(C) WAIVERS FOR EXCEPTIONAL OR UNCONTROLLABLE CIRCUMSTANCES.—The Secretary may waive the requirement of subparagraph (A) for a State, for 1 fiscal year at a time, if the Secretary determines that—*

*(i) granting a waiver would be equitable due to exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State; or*

*(ii) the State meets the standard in paragraph (17)(C) for a waiver of the requirement to supplement, and not to supplant, funds received under this part.*

*(D) SUBSEQUENT YEARS.—If, for any year, a State fails to meet the requirement of subparagraph (A), including any year for which the State is granted a waiver under subparagraph (C), the financial support required of the State in future years under subparagraph (A) shall be the amount that would have been required in the absence of that failure and not the reduced level of the State's support.*

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

**(20) STATE ADVISORY PANEL.—**

*(A) IN GENERAL.—The State has established and maintains an advisory panel for the purpose of providing policy guidance with respect to special education and related services for children with disabilities in the State.*

*(B) MEMBERSHIP.—Such advisory panel shall consist of members appointed by the Governor, or any other official authorized under State law to make such appointments, that is representative of the State population and that is composed of individuals involved in, or concerned with, the education of children with disabilities, including—*

(i) parents of children with disabilities ages birth through 26;

(ii) individuals with disabilities;

(iii) teachers;

(iv) representatives of institutions of higher education that prepare special education and related services personnel;

(v) State and local education officials;

(vi) administrators of programs for children with disabilities;

(vii) representatives of other State agencies involved in the financing or delivery of related services to children with disabilities;

(viii) representatives of private schools and public charter schools;

(ix) at least 1 representative of a vocational, community, or business organization concerned with the provision of transition services to children with disabilities; and

(x) representatives from the State juvenile and adult corrections agencies.

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

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

(i) advise the State educational agency of unmet needs within the State in the education of children with disabilities;

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

(iii) advise the State educational agency in developing evaluations and reporting on data to the Secretary under section 618;

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

(v) advise the State educational agency in developing and implementing policies relating to the coordination of services for children with disabilities.

(21) *SUSPENSION AND EXPULSION RATES.*—

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

(i) among local educational agencies in the State; or

(ii) compared to such rates for nondisabled children within such agencies.

(B) *REVIEW AND REVISION OF POLICIES.*—If such discrepancies are occurring, the State educational agency reviews and, if appropriate, revises (or requires the affected State or local educational agency to revise) its policies, procedures, and practices relating to the development and implementation of IEPs, the use of behavioral interventions, and proce-

*dural safeguards, to ensure that such policies, procedures, and practices comply with this Act.*

(22) ACCESS TO INSTRUCTIONAL MATERIALS.—

(A) IN GENERAL.—*The State adopts the national Instructional Materials Accessibility Standard described in section 675(a) for the purposes of providing instructional materials to blind persons or other persons with print disabilities in a timely manner after the publication of the standard in the Federal Register.*

(B) PREPARATION AND DELIVERY OF FILES.—*Not later than 2 years after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2003, a State educational agency, as part of any print instructional materials adoption process, procurement contract, or other practice or instrument used for purchase of print instructional materials, enters into a written contract with the publisher of the print instructional materials to—*

*(i) prepare, and on or before delivery of the print instructional materials, provide to the National Instructional Materials Access Center, established pursuant to section 675(b), electronic files containing the contents of the print instructional materials using the Instructional Materials Accessibility Standard; or*

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

(C) ASSISTIVE TECHNOLOGY.—*In carrying out subparagraph (B), the State educational agency, to the maximum extent possible, shall work collaboratively with the State agency responsible for assistive technology programs.*

(b) STATE EDUCATIONAL AGENCY AS PROVIDER OF FREE APPROPRIATE PUBLIC EDUCATION OR DIRECT SERVICES.—*If the State educational agency provides free appropriate public education to children with disabilities, or provides direct services to such children, such agency—*

*(1) shall comply with any additional requirements of section 613(a), as if such agency were a local educational agency; and*

*(2) may use amounts that are otherwise available to such agency under this part to serve those children without regard to section 613(a)(2)(A)(i) (relating to excess costs).*

(c) EXCEPTION FOR PRIOR STATE PLANS.—

(1) IN GENERAL.—*If a State has on file with the Secretary policies and procedures that demonstrate that such State meets any requirement of subsection (a), including any policies and procedures filed under this part as in effect before the effective date of the Individuals with Disabilities Education Improvement Act of 2003, the Secretary shall consider such State to have met such requirement for purposes of receiving a grant under this part.*

(2) MODIFICATIONS MADE BY STATE.—*Subject to paragraph (3), an application submitted by a State in accordance with this section shall remain in effect until the State submits to the Secretary such modifications as the State determines necessary. This section shall apply to a modification to an application to*

*the same extent and in the same manner as this section applies to the original plan.*

(3) **MODIFICATIONS REQUIRED BY THE SECRETARY.**—*If, after the effective date of the Individuals with Disabilities Education Improvement Act of 2003, the provisions of this Act are amended (or the regulations developed to carry out this Act are amended), there is a new interpretation of this Act by a Federal court or a State’s highest court, or there is an official finding of noncompliance with Federal law or regulations, then the Secretary may require a State to modify its application only to the extent necessary to ensure the State’s compliance with this part.*

(d) **APPROVAL BY THE SECRETARY.**—

(1) **IN GENERAL.**—*If the Secretary determines that a State is eligible to receive a grant under this part, the Secretary shall notify the State of that determination.*

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

(A) *with reasonable notice; and*

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

(e) **ASSISTANCE UNDER OTHER FEDERAL PROGRAMS.**—*Nothing in this title permits a State to reduce medical and other assistance available, or to alter eligibility, under titles V and XIX of the Social Security Act with respect to the provision of a free appropriate public education for children with disabilities in the State.*

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

(1) **IN GENERAL.**—*If, on the date of enactment of the Education of the Handicapped Act Amendments of 1983, a State educational agency was prohibited by law from providing for the equitable participation in special programs of children with disabilities enrolled in private elementary schools and secondary schools as required by subsection (a)(10)(A), or if the Secretary determines that a State educational agency, local educational agency, or other entity has substantially failed or is unwilling to provide for such equitable participation, then the Secretary shall, notwithstanding such provision of law, arrange for the provision of services to such children through arrangements which shall be subject to the requirements of such subsection.*

(2) **PAYMENTS.**—

(A) **DETERMINATION OF AMOUNTS.**—*If the Secretary arranges for services pursuant to this subsection, the Secretary, after consultation with the appropriate public and private school officials, shall pay to the provider of such services for a fiscal year an amount per child that does not exceed the amount determined by dividing—*

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

(ii) *the number of children with disabilities served in the prior year, as reported to the Secretary by the State under section 618.*

(B) **WITHHOLDING OF CERTAIN AMOUNTS.**—*Pending final resolution of any investigation or complaint that may result in a determination under this subsection, the Secretary may withhold from the allocation of the affected State edu-*

ational agency the amount the Secretary estimates will be necessary to pay the cost of services described in subparagraph (A).

(C) *PERIOD OF PAYMENTS.*—The period under which payments are made under subparagraph (A) shall continue until the Secretary determines that there will no longer be any failure or inability on the part of the State educational agency to meet the requirements of subsection (a)(10)(A).

(3) *NOTICE AND HEARING.*—

(A) *IN GENERAL.*—The Secretary shall not take any final action under this subsection until the State educational agency affected by such action has had an opportunity, for at least 45 days after receiving written notice thereof, to submit written objections and to appear before the Secretary or the Secretary's designee to show cause why such action should not be taken.

(B) *REVIEW OF ACTION.*—If a State educational agency is dissatisfied with the Secretary's final action after a proceeding under subparagraph (A), such agency may, not later than 60 days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings on which the Secretary based the Secretary's action, as provided in section 2112 of title 28, United States Code.

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

(D) *JURISDICTION OF COURT OF APPEALS; REVIEW BY UNITED STATES SUPREME COURT.*—Upon the filing of a petition under subparagraph (B), the United States court of appeals shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

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

(a) *IN GENERAL.*—A local educational agency is eligible for assistance under this part for a fiscal year if such agency submits a plan that provides assurances to the State educational agency that the local educational agency meets each of the following conditions:

(1) *CONSISTENCY WITH STATE POLICIES.*—The local educational agency, in providing for the education of children with disabilities within its jurisdiction, has in effect policies, procedures, and programs that are consistent with the State policies and procedures established under section 612.

(2) *USE OF AMOUNTS.*—

(A) *IN GENERAL.*—Amounts provided to the local educational agency under this part shall be expended in accordance with the applicable provisions of this part and—

(i) shall be used only to pay the excess costs of providing special education and related services to children with disabilities;

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

(iii) shall not be used, except as provided in subparagraphs (B) and (C), to reduce the level of expenditures for the education of children with disabilities made by the local educational agency from local funds below the level of those expenditures for the preceding fiscal year.

(B) *EXCEPTION.*—Notwithstanding the restriction in subparagraph (A)(iii), a local educational agency may reduce the level of expenditures where such reduction is attributable to—

(i) the voluntary departure, by retirement or otherwise, or departure for just cause, of special education personnel;

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

(iii) the termination of the obligation of the agency, consistent with this part, to provide a program of special education to a particular child with a disability that is an exceptionally costly program, as determined by the State educational agency, because the child—

(I) has left the jurisdiction of the agency;

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

(III) no longer needs such program of special education; or

(iv) the termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of school facilities.

(C) *TREATMENT OF FEDERAL FUNDS IN CERTAIN FISCAL YEARS.*—

(i) *8 PERCENT RULE.*—Notwithstanding clauses (ii) and (iii) of subparagraph (A), a local educational agency may treat as local funds, for the purposes of such clauses, not more than 8 percent of the amount of funds the local educational agency receives under this part.

(ii) *40 PERCENT RULE.*—Notwithstanding clauses (ii) and (iii) of subparagraph (A), for any fiscal year for which States are allocated the maximum amount of grants pursuant to section 611(a)(2), a local educational agency may treat as local funds, for the purposes of such clauses, not more than 40 percent of the amount of funds the local educational agency receives under this part, subject to clause (iv).

(iii) *EARLY INTERVENING SERVICES.*—

(I) 8 PERCENT RULE.—If a local educational agency exercises authority pursuant to clause (i), the 8 percent funds shall be counted toward the percentage and amount of funds that may be used to provide early intervening educational services pursuant to subsection (f).

(II) 40 PERCENT RULE.—If a local educational agency exercises authority pursuant to clause (ii), the local educational agency shall use an amount of the 40 percent funds from clause (ii) that represents 15 percent of the total amount of funds the local educational agency receives under this part, to provide early intervening educational services pursuant to subsection (f).

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

(I) clauses (ii) and (iii) of subparagraph (A); and

(II) the provision of the local share of costs for title XIX of the Social Security Act.

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

(D) SCHOOLWIDE PROGRAMS UNDER TITLE I OF THE ESEA.—Notwithstanding subparagraph (A) or any other provision of this part, a local educational agency may use funds received under this part for any fiscal year to carry out a schoolwide program under section 1114 of the Elementary and Secondary Education Act of 1965, except that the amount so used in any such program shall not exceed—

(i) the number of children with disabilities participating in the schoolwide program; multiplied by

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

(II) the number of children with disabilities in the jurisdiction of that agency.

(3) PERSONNEL DEVELOPMENT.—The local educational agency shall ensure that all personnel necessary to carry out this part are appropriately and adequately prepared, consistent with the requirements of section 612(a)(14) of this Act and section 2122 of the Elementary and Secondary Education Act of 1965.

(4) PERMISSIVE USE OF FUNDS.—

(A) USES.—Notwithstanding paragraph (2)(A) or section 612(a)(17)(B) (relating to commingled funds), funds provided to the local educational agency under this part may be used for the following activities:

(i) SERVICES AND AIDS THAT ALSO BENEFIT NON-DISABLED CHILDREN.—For the costs of special education and related services, and supplementary aids and services, provided in a regular class or other education-related setting to a child with a disability in accordance with the individualized education program of



*the child, even if 1 or more nondisabled children benefit from such services.*

(ii) **EARLY INTERVENING SERVICES.**—*To develop and implement coordinated, early intervening educational services in accordance with subsection (f).*

(B) **ADMINISTRATIVE CASE MANAGEMENT.**—*A local educational agency may use funds received under this part to purchase appropriate technology for recordkeeping, data collection, and related case management activities of teachers and related services personnel providing services described in the individualized education program of children with disabilities, that is needed for the implementation of such case management activities.*

(5) **TREATMENT OF CHARTER SCHOOLS AND THEIR STUDENTS.**—*In carrying out this part with respect to charter schools that are public schools of the local educational agency, the local educational agency—*

(A) *serves children with disabilities attending those charter schools in the same manner as the local educational agency serves children with disabilities in its other schools, including providing supplementary and related services on site at the charter school to the same extent to which the local educational agency has a policy or practice of providing such services on the site to its other public schools; and*

(B) *provides funds under this part to those charter schools on the same basis, including proportional distribution based on relative enrollment of children with disabilities, and at the same time, as the local educational agency distributes State, local, or a combination of State and local, funds to those charter schools under the State's charter school law.*

(6) **PURCHASE OF INSTRUCTIONAL MATERIALS.**—*Not later than 2 years after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2003, a local educational agency, when purchasing print instructional materials, acquires these instructional materials in the same manner as a State educational agency described in section 612(a)(22).*

(7) **INFORMATION FOR STATE EDUCATIONAL AGENCY.**—*The local educational agency shall provide the State educational agency with information necessary to enable the State educational agency to carry out its duties under this part, including, with respect to paragraphs (15) and (16) of section 612(a), information relating to the performance of children with disabilities participating in programs carried out under this part.*

(8) **PUBLIC INFORMATION.**—*The local educational agency shall make available to parents of children with disabilities and to the general public all documents relating to the eligibility of such agency under this part.*

(9) **RECORDS REGARDING MIGRATORY CHILDREN WITH DISABILITIES.**—*The local educational agency shall cooperate in the Secretary's efforts under section 1308 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6398) to ensure the linkage of records pertaining to migratory children with a disability for the purpose of electronically exchanging, among the*

*States, health and educational information regarding such children.*

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

(1) **IN GENERAL.—***If a local educational agency or State agency has on file with the State educational agency policies and procedures that demonstrate that such local educational agency, or such State agency, as the case may be, meets any requirement of subsection (a), including any policies and procedures filed under this part as in effect before the effective date of the Individuals with Disabilities Education Improvement Act of 2003, the State educational agency shall consider such local educational agency or State agency, as the case may be, to have met such requirement for purposes of receiving assistance under this part.*

(2) **MODIFICATION MADE BY LOCAL EDUCATIONAL AGENCY.—***Subject to paragraph (3), an application submitted by a local educational agency in accordance with this section shall remain in effect until the local educational agency submits to the State educational agency such modifications as the local educational agency determines necessary.*

(3) **MODIFICATIONS REQUIRED BY STATE EDUCATIONAL AGENCY.—***If, after the effective date of the Individuals with Disabilities Education Improvement Act of 2003, the provisions of this Act are amended (or the regulations developed to carry out this Act are amended), there is a new interpretation of this Act by Federal or State courts, or there is an official finding of non-compliance with Federal or State law or regulations, then the State educational agency may require a local educational agency to modify its application only to the extent necessary to ensure the local educational agency's compliance with this part or State law.*

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

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

(1) **IN GENERAL.—***If the State educational agency, after reasonable notice and an opportunity for a hearing, finds that a local educational agency or State agency that has been determined to be eligible under this section is failing to comply with any requirement described in subsection (a), the State educational agency shall reduce or shall not provide any further payments to the local educational agency or State agency until the State educational agency is satisfied that the local educational agency or State agency, as the case may be, is complying with that requirement.*

(2) **ADDITIONAL REQUIREMENT.—***Any State agency or local educational agency in receipt of a notice described in paragraph (1) shall, by means of public notice, take such measures as may be necessary to bring the pendency of an action pursuant to this*

subsection to the attention of the public within the jurisdiction of such agency.

(3) *CONSIDERATION.*—In carrying out its responsibilities under paragraph (1), the State educational agency shall consider any decision made in a hearing held under section 615 that is adverse to the local educational agency or State agency involved in that decision.

(e) *JOINT ESTABLISHMENT OF ELIGIBILITY.*—

(1) *JOINT ESTABLISHMENT.*—

(A) *IN GENERAL.*—A State educational agency may require a local educational agency to establish its eligibility jointly with another local educational agency if the State educational agency determines that the local educational agency will be ineligible under this section because the local educational agency will not be able to establish and maintain programs of sufficient size and scope to effectively meet the needs of children with disabilities.

(B) *CHARTER SCHOOL EXCEPTION.*—A State educational agency may not require a charter school that is a local educational agency to jointly establish its eligibility under subparagraph (A) unless the charter school is explicitly permitted to do so under the State's charter school law.

(2) *AMOUNT OF PAYMENTS.*—If a State educational agency requires the joint establishment of eligibility under paragraph (1), the total amount of funds made available to the affected local educational agencies shall be equal to the sum of the payments that each such local educational agency would have received under section 611(f) if such agencies were eligible for such payments.

(3) *REQUIREMENTS.*—Local educational agencies that establish joint eligibility under this subsection shall—

(A) adopt policies and procedures that are consistent with the State's policies and procedures under section 612(a); and

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

(4) *REQUIREMENTS FOR EDUCATIONAL SERVICE AGENCIES.*—

(A) *IN GENERAL.*—If an educational service agency is required by State law to carry out programs under this part, the joint responsibilities given to local educational agencies under this subsection shall—

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

(ii) be carried out only by that educational service agency.

(B) *ADDITIONAL REQUIREMENT.*—Notwithstanding any other provision of this subsection, an educational service agency shall provide for the education of children with disabilities in the least restrictive environment, as required by section 612(a)(5).

(f) *EARLY INTERVENING SERVICES.*—

(1) *IN GENERAL.*—A local educational agency may not use more than 15 percent of the amount such agency receives under this part for any fiscal year, less any amount treated as local

funds pursuant to subsection (a)(2)(C), if any, in combination with other amounts (which may include amounts other than education funds), to develop and implement coordinated, early intervening educational services, which may include interagency financing structures, for students in kindergarten through grade 12 (with a particular emphasis on students in kindergarten through grade 3) who do not meet the definition of a child with a disability under section 602(3) but who need additional academic and behavioral support to succeed in a general education environment.

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

(A) professional development (which may be provided by entities other than local educational agencies) for teachers and other school staff to enable such personnel to deliver scientifically based academic and behavioral interventions, including scientifically based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software;

(B) providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction; and

(C) developing and implementing interagency financing structures for the provision of such services and supports.

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

(4) **REPORTING.**—Each local educational agency that develops and maintains coordinated, early intervening educational services with funds made available for this subsection, shall annually report to the State educational agency on—

(A) the number of children served under this subsection; and

(B) the number of children served under this subsection who are subsequently referred to special education.

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

(6) **REPORT TO CONGRESS.**—Not later than 1 year after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2003, the Comptroller General shall conduct a study on the types of services provided to children served under this subsection, and shall submit a report to Congress regarding the study.

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

(1) **IN GENERAL.**—A State educational agency shall use the payments that would otherwise have been available to a local educational agency or to a State agency to provide special edu-

cation and related services directly to children with disabilities residing in the area served by that local educational agency, or for whom that State agency is responsible, if the State educational agency determines that the local educational agency or State agency, as the case may be—

(A) has not provided the information needed to establish the eligibility of such agency under this section;

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

(C) is unable or unwilling to be consolidated with 1 or more local educational agencies in order to establish and maintain such programs; or

(D) has 1 or more children with disabilities who can best be served by a regional or State program or service delivery system designed to meet the needs of such children.

(2) MANNER AND LOCATION OF EDUCATION AND SERVICES.—

The State educational agency may provide special education and related services under paragraph (1) in such manner and at such locations (including regional or State centers) as the State agency considers appropriate. Such education and services shall be provided in accordance with this part.

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

(1) all children with disabilities who are participating in programs and projects funded under this part receive a free appropriate public education, and that those children and their parents are provided all the rights and procedural safeguards described in this part; and

(2) the agency meets such other conditions of this section as the Secretary determines to be appropriate.

(i) DISCIPLINARY INFORMATION.—The State may require that a local educational agency include in the records of a child with a disability a statement of any current or previous disciplinary action that has been taken against the child and transmit such statement to the same extent that such disciplinary information is included in, and transmitted with, the student records of nondisabled children. The statement may include a description of any behavior engaged in by the child that required disciplinary action, a description of the disciplinary action taken, and any other information that is relevant to the safety of the child and other individuals involved with the child. If the State adopts such a policy, and the child transfers from 1 school to another, the transmission of any of the child's records shall include both the child's current individualized education program and any such statement of current or previous disciplinary action that has been taken against the child.

(j) STATE AGENCY FLEXIBILITY.—

(1) TREATMENT OF FEDERAL FUNDS IN CERTAIN FISCAL YEARS.—If a State educational agency pays or reimburses local educational agencies within the State for not less than 80 percent of the non-Federal share of the costs of special education and related services, or the State is the sole provider of free appropriate public education or direct services pursuant to section

612(b), then the State educational agency, notwithstanding sections 612(a) (17) and (18) and 612(b), may treat funds allocated pursuant to section 611 as general funds available to support the educational purposes described in paragraph (2) (A) and (B).

(2) *CONDITIONS.*—A State educational agency may use funds in accordance with paragraph (1) subject to the following conditions:

(A) *8 PERCENT RULE.*—A State educational agency may treat not more than 8 percent of the funds the State educational agency receives under this part as general funds to support any educational purpose described in the Elementary and Secondary Education Act of 1965, needs-based student or teacher higher education programs, or the non-Federal share of costs of title XIX of the Social Security Act.

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

(C) *REQUIREMENT.*—A State educational agency may exercise its authority pursuant to subparagraph (B) only if the State educational agency uses an amount of the 40 percent funds from subparagraph (B) that represents 15 percent of the total amount of funds the State educational agency receives under this part, to provide, or to pay or reimburse local educational agencies for providing, early intervening prereferral services pursuant to subsection (f).

(2) *PROHIBITION.*—Notwithstanding subsection (a), if the Secretary determines that a State educational agency is unable to establish, maintain, or oversee programs of free appropriate public education that meet the requirements of this part, then the Secretary shall prohibit the State educational agency from treating funds allocated under this part as general funds pursuant to paragraph (1).

(3) *REPORT.*—For each fiscal year for which a State educational agency exercises its authority pursuant to paragraph (1) and treats Federal funds as general funds, the State educational agency shall report to the Secretary the amount of funds so treated and the activities that were funded with such funds.

\* \* \* \* \*

**SEC. 614. EVALUATIONS, ELIGIBILITY DETERMINATIONS, INDIVIDUALIZED EDUCATION PROGRAMS, AND EDUCATIONAL PLACEMENTS.**

(a) *EVALUATIONS AND REEVALUATIONS.*—

(1) *INITIAL EVALUATIONS.*—

(A) *IN GENERAL.*—A State educational agency, other State agency, or local educational agency shall conduct a full and individual initial evaluation in accordance with this

paragraph and subsection (b), before the initial provision of special education and related services to a child with a disability under this part.

(B) *REQUEST FOR INITIAL EVALUATION.*—Consistent with subparagraph (D), either a parent of a child, or a State educational agency, other State agency, or local educational agency may initiate a request for an initial evaluation to determine if the child is a child with a disability.

(C) *PROCEDURES.*—Such initial evaluation shall consist of procedures—

(i) to determine whether a child is a child with a disability (as defined in section 602(3)) within 60 days of receiving parental consent for the evaluation, or, if the State has established a timeframe within which the evaluation must be conducted, within such timeframe; and

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

(D) *PARENTAL CONSENT.*—

(i) *IN GENERAL.*—The agency proposing to conduct an initial evaluation to determine if the child qualifies as a child with a disability as defined in section 602(3) (A) or (B) shall obtain an informed consent from the parent of such child before the evaluation is conducted. Parental consent for evaluation shall not be construed as consent for placement for receipt of special education and related services.

(ii) *REFUSAL.*—If the parents of such child refuse consent for the evaluation, the agency may continue to pursue an evaluation by utilizing the mediation and due process procedures under section 615, except to the extent inconsistent with State law relating to parental consent.

(iii) *REFUSAL OR FAILURE TO CONSENT.*—If the parent of a child does not provide informed consent to the receipt of special education and related services, or the parent fails to respond to a request to provide the consent, the local educational agency shall not be considered to be in violation of the requirement to make available a free appropriate public education to the child for the failure to provide the special education and related services for which the local educational agency requests such informed consent.

(2) *REEVALUATIONS.*—

(A) *IN GENERAL.*—A local educational agency shall ensure that a reevaluation of each child with a disability is conducted in accordance with subsections (b) and (c)—

(i) if the local educational agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or

(ii) if the child's parents or teacher requests a reevaluation.

(B) *LIMITATION.*—A reevaluation conducted under subparagraph (A) shall occur—

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

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

(b) *EVALUATION PROCEDURES.*—

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

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

(A) use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent, that may assist in determining—

(i) whether the child is a child with a disability; and

(ii) the content of the child's individualized education program, including information related to enabling the child to be involved in and progress in the general curriculum, or for preschool children, to participate in appropriate activities;

(B) not use any single procedure, measure, or assessment as the sole criterion for determining whether a child is a child with a disability or determining an appropriate educational program for the child; and

(C) use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

(3) *ADDITIONAL REQUIREMENTS.*—Each local educational agency shall ensure that—

(A) tests and other evaluation materials used to assess a child under this section—

(i) are selected and administered so as not to be discriminatory on a racial or cultural basis;

(ii) are provided and administered, to the extent practicable, in the language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally;

(iii) are used for purposes for which the assessments or measures are valid and reliable;

(iv) are administered by trained and knowledgeable personnel; and

(v) are administered in accordance with any instructions provided by the producer of such tests;

(B) the child is assessed in all areas of suspected disability; and

(C) assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.

(4) *DETERMINATION OF ELIGIBILITY.*—Upon completion of administration of tests and other evaluation materials—



(A) the determination of whether the child is a child with a disability as defined in section 602(3) shall be made by a team of qualified professionals and the parent of the child in accordance with paragraph (5); and

(B) a copy of the evaluation report and the documentation of determination of eligibility shall be given to the parent.

(5) *SPECIAL RULE FOR ELIGIBILITY DETERMINATION.*—In making a determination of eligibility under paragraph (4)(A), a child shall not be determined to be a child with a disability if the determinant factor for such determination is—

(A) lack of scientifically based instruction in reading;

(B) lack of instruction in mathematics; or

(C) limited English proficiency.

(6) *SPECIFIC LEARNING DISABILITIES.*—

(A) *IN GENERAL.*—Notwithstanding section 607(b), when determining whether a child has a specific learning disability as defined in section 602(29), a local educational agency shall not be required to take into consideration whether a child has a severe discrepancy between achievement and intellectual ability in oral expression, listening comprehension, written expression, basic reading skill, reading comprehension, mathematical calculation, or mathematical reasoning.

(B) *ADDITIONAL AUTHORITY.*—In determining whether a child has a specific learning disability, a local educational agency may use a process that determines if the child responds to scientific, research-based intervention as a part of the evaluation procedures described in paragraphs (2) and (3).

(c) *ADDITIONAL REQUIREMENTS FOR EVALUATION AND REEVALUATIONS.*—

(1) *REVIEW OF EXISTING EVALUATION DATA.*—As part of an initial evaluation (if appropriate) and as part of any reevaluation under this section, the IEP Team described in subsection (d)(1)(B) and other qualified professionals, as appropriate, shall—

(A) review existing evaluation data on the child, including evaluations and information provided by the parents of the child, current classroom-based assessments, and observations, and teacher and related services providers observations; and

(B) on the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine—

(i) whether the child has a particular category of disability, as described in section 602(3), or, in case of a reevaluation of a child, whether the child continues to have such a disability;

(ii) the present levels of performance and educational needs of the child;

(iii) whether the child needs special education and related services, or in the case of a reevaluation of a child, whether the child continues to need special education and related services; and

(iv) whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the individualized education program of the child and to participate, as appropriate, in the general curriculum.

(2) SOURCE OF DATA.—The local educational agency shall administer such tests and other evaluation materials and procedures as may be needed to produce the data identified by the IEP Team under paragraph (1)(B).

(3) PARENTAL CONSENT.—Each local educational agency shall obtain informed parental consent, in accordance with subsection (a)(1)(D), prior to conducting any reevaluation of a child with a disability, except that such informed parental consent need not be obtained if the local educational agency can demonstrate that the local educational agency had taken reasonable measures to obtain such consent and the child's parent has failed to respond.

(4) REQUIREMENTS IF ADDITIONAL DATA ARE NOT NEEDED.—If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child is or continues to be a child with a disability, the local educational agency—

(A) shall notify the child's parents of—

(i) that determination and the reasons for the determination; and

(ii) the right of such parents to request an assessment to determine whether the child is or continues to be a child with a disability; and

(B) shall not be required to conduct such an assessment unless requested by the child's parents.

(5) EVALUATIONS BEFORE CHANGE IN ELIGIBILITY.—

(A) IN GENERAL.—Except as provided in subparagraph (B), a local educational agency shall evaluate a child with a disability in accordance with this section before determining that the child is no longer a child with a disability.

(B) EXCEPTION.—

(i) IN GENERAL.—The evaluation described in subparagraph (A) shall not be required before the termination of a child's eligibility under this part due to graduation from secondary school with a regular diploma, or to exceeding the age eligibility for a free appropriate public education under State law.

(ii) SUMMARY OF PERFORMANCE.—For a child whose eligibility under this part terminates under circumstances described in clause (i), a local educational agency shall provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals.

(d) INDIVIDUALIZED EDUCATION PROGRAMS.—

(1) DEFINITIONS.—As used in this title:

(A) INDIVIDUALIZED EDUCATION PROGRAM.—

(i) *IN GENERAL.*—The term “individualized education program” or “IEP” means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with this section and that includes—

(I) a statement of the child’s present levels of academic achievement and functional performance, including—

(aa) how the child’s disability affects the child’s involvement and progress in the general curriculum; or

(bb) for preschool children, as appropriate, how the disability affects the child’s participation in appropriate activities;

(II) a statement of measurable annual goals, including academic and functional goals, designed to—

(aa) meet the child’s needs that result from the child’s disability to enable the child to be involved in and make progress in the general curriculum; and

(bb) meet each of the child’s other educational needs that result from the child’s disability;

(III) a description of how the child’s progress toward meeting the annual goals described in subclause (II) will be measured and when periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;

(IV) a statement of the special education and related services, and supplementary aids and services, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child—

(aa) to advance appropriately toward attaining the annual goals;

(bb) to be involved in and make progress in the general curriculum in accordance with subclause (I) and to participate in extracurricular and other nonacademic activities; and

(cc) to be educated and participate with other children with disabilities and nondisabled children in the activities described in this paragraph;

(V) an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in subclause (IV)(cc);

(VI)(aa) a statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional per-

formance of the child on State and districtwide assessments consistent with section 612(a)(16)(A); and

(bb) if the IEP Team determines that the child shall take an alternate assessment on a particular State or districtwide assessment of student achievement, a statement of why—

(AA) the child cannot participate in the regular assessment; and

(BB) the particular alternate assessment selected is appropriate for the child;

(VII) the projected date for the beginning of the services and modifications described in subclause (IV), and the anticipated frequency, location, and duration of those services and modifications; and

(VIII) beginning not later than the first IEP to be in effect when the child is 14, and updated annually thereafter—

(aa) appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills;

(bb) the transition services (including courses of study) needed by the child to reach those goals, including services to be provided by other agencies when needed; and

(cc) beginning at least 1 year before the child reaches the age of majority under State law, a statement that the child has been informed of the child's rights under this title, if any, that will transfer to the child on reaching the age of majority under section 615(m).

(ii) **RULE OF CONSTRUCTION.**—Nothing in this section shall be construed to require—

(I) that additional information be included in a child's IEP beyond what is explicitly required in this section; and

(II) the IEP Team to include information under 1 component of a child's IEP that is already contained under another component of such IEP.

(B) **INDIVIDUALIZED EDUCATION PROGRAM TEAM.**—The term “individualized education program team” or “IEP Team” means a group of individuals composed of—

(i) the parents of a child with a disability;

(ii) at least 1 regular education teacher of such child (if the child is, or may be, participating in the regular education environment);

(iii) at least 1 special education teacher, or where appropriate, at least 1 special education provider of such child;

(iv) a representative of the local educational agency who—

(I) is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;

(II) is knowledgeable about the general curriculum; and

(III) is knowledgeable about the availability of resources of the local educational agency;

(v) an individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in clauses (ii) through (vi);

(vi) at the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and

(vii) whenever appropriate, the child with a disability.

(C) IEP TEAM ATTENDANCE.—

(i) ATTENDANCE NOT NECESSARY.—A member of the IEP Team shall not be required to attend an IEP meeting, in whole or in part, if that member, the parent of a child with a disability, and the local educational agency agree that the attendance of such member is not necessary because no modification to the member's area of the curriculum or related services is being modified or discussed in the meeting.

(ii) EXCUSAL.—A member of the IEP Team may be excused from attending an IEP meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if—

(I) that member, the parent, and the local educational agency consent to the excusal; and

(II) the member submits input into the development of the IEP prior to the meeting.

(iii) WRITTEN AGREEMENT AND CONSENT REQUIRED.—A parent's agreement under clause (i) and consent under clause (ii) shall be in writing.

(2) REQUIREMENT THAT PROGRAM BE IN EFFECT.—

(A) IN GENERAL.—At the beginning of each school year, each local educational agency, State educational agency, or other State agency, as the case may be, shall have in effect, for each child with a disability in its jurisdiction, an individualized education program, as defined in paragraph (1)(A).

(B) PROGRAM FOR CHILD AGED 3 THROUGH 5.—In the case of a child with a disability aged 3 through 5 (or, at the discretion of the State educational agency, a 2-year-old child with a disability who will turn age 3 during the school year), an individualized family service plan that contains the material described in section 636, and that is developed in accordance with this section, may serve as the IEP of the child if using that plan as the IEP is—

(i) consistent with State policy; and

(ii) agreed to by the agency and the child's parents.

(3) DEVELOPMENT OF IEP.—

(A) *IN GENERAL.*—*In developing each child's IEP, the IEP Team, subject to subparagraph (C), shall consider—*

- (i) the strengths of the child;*
- (ii) the concerns of the parents for enhancing the education of their child;*
- (iii) the results of the initial evaluation or most recent evaluation of the child; and*
- (iv) the academic, developmental, and functional needs of the child.*

(B) *CONSIDERATION OF SPECIAL FACTORS.*—*The IEP Team shall—*

- (i) in the case of a child whose behavior impedes the child's learning or that of others, provide for positive behavioral interventions and supports, and other strategies to address that behavior;*
- (ii) in the case of a child with limited English proficiency, consider the language needs of the child as such needs relate to the child's IEP;*
- (iii) in the case of a child who is blind or visually impaired—*

*(I) provide for instruction in Braille and the use of Braille unless the IEP Team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child; and*

*(II) consider, when appropriate, instructional services related to functional performance skills, orientation and mobility, and skills in the use of assistive technology devices, including low vision devices;*

*(iv) consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and*

*(v) consider whether the child requires assistive technology devices and services.*

(C) *REQUIREMENT WITH RESPECT TO REGULAR EDUCATION TEACHER.*—*A regular education teacher of the child, as a member of the IEP Team shall, to the extent appropriate, participate in the development of the IEP of the child, including the determination of appropriate positive behavioral interventions and supports, and other strategies, and the determination of supplementary aids and services, program modifications, and support for school personnel consistent with paragraph (1)(A)(i)(IV).*

(D) *AGREEMENT.*—*In making changes to a child's IEP after the annual IEP meeting for a school year, the parent*

of a child with a disability and the local educational agency may agree not to convene an IEP meeting for the purposes of making such changes, and instead may develop a written document to amend or modify the child's current IEP.

(E) CONSOLIDATION OF IEP TEAM MEETINGS.—To the extent possible, the local educational agency shall encourage the consolidation of reevaluations of a child with IEP Team meetings for the child.

(4) REVIEW AND REVISION OF IEP.—

(A) IN GENERAL.—The local educational agency shall ensure that, subject to subparagraph (B), the IEP Team—

(i) reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and

(ii) revise the IEP as appropriate to address—

(I) any lack of expected progress toward the annual goals and in the general curriculum, where appropriate;

(II) the results of any reevaluation conducted under this section;

(III) information about the child provided to, or by, the parents, as described in subsection (c)(1)(B);

(IV) the child's anticipated needs; or

(V) other matters.

(B) REQUIREMENT WITH RESPECT TO REGULAR EDUCATION TEACHER.—A regular education teacher of the child, as a member of the IEP Team, shall, consistent with paragraph (1)(C), participate in the review and revision of the IEP of the child.

(5) THREE-YEAR IEP.—

(A) DEVELOPMENT OF 3-YEAR IEP.—The local educational agency may offer a child with a disability who has reached the age of 18, the option of developing a comprehensive 3-year IEP. With the consent of the parent, when appropriate, the IEP Team shall develop an IEP, as described in paragraphs (1) and (3), that is designed to serve the child for the final 3-year transition period, which includes a statement of—

(i) measurable goals that will enable the child to be involved in and make progress in the general education curriculum and that will meet the child's transitional and postsecondary needs that result from the child's disability; and

(ii) measurable annual goals for measuring progress toward meeting the postsecondary goals described in clause (i).

(B) REVIEW AND REVISION OF 3-YEAR IEP.—

(i) REQUIREMENT.—Each year the local educational agency shall ensure that the IEP Team—

(I) provides an annual review of the child's IEP to determine the child's current levels of progress and determine whether the annual goals for the child are being achieved; and

(II) revises the IEP, as appropriate, to enable the child to continue to meet the measurable transition goals set out in the IEP.

(ii) *COMPREHENSIVE REVIEW.*—If the review under clause (i) determines that the child is not making sufficient progress toward the goals described in subparagraph (A), the local educational agency shall ensure that the IEP Team provides a review, within 30 calendar days, of the IEP under paragraph (4).

(iii) *PREFERENCE.*—At the request of the child, or when appropriate, the parent, the IEP Team shall conduct a review of the child's 3-year IEP under paragraph (4) rather than an annual review under subparagraph (B)(i).

(6) *FAILURE TO MEET TRANSITION OBJECTIVES.*—If a participating agency, other than the local educational agency, fails to provide the transition services described in the IEP in accordance with paragraph (1)(A)(i)(VIII), the local educational agency shall reconvene the IEP Team to identify alternative strategies to meet the transition objectives for the child set out in that program.

(7) *CHILDREN WITH DISABILITIES IN ADULT PRISONS.*—

(A) *IN GENERAL.*—The following requirements shall not apply to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons:

(i) The requirements contained in section 612(a)(16) and paragraph (1)(A)(i)(V) (relating to participation of children with disabilities in general assessments).

(ii) The requirements of items (aa) and (bb) of paragraph (1)(A)(i)(VIII) (relating to transition planning and transition services), do not apply with respect to such children whose eligibility under this part will end, because of their age, before they will be released from prison.

(B) *ADDITIONAL REQUIREMENT.*—If a child with a disability is convicted as an adult under State law and incarcerated in an adult prison, the child's IEP Team may modify the child's IEP or placement notwithstanding the requirements of sections 612(a)(5)(A) and 614(d)(1)(A) if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

(e) *EDUCATIONAL PLACEMENTS.*—Each local educational agency or State educational agency shall ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child.

(f) *ALTERNATIVE MEANS OF MEETING PARTICIPATION.*—When conducting IEP Team meetings and placement meetings pursuant to this section, the parent of a child with a disability and a local educational agency may agree to use alternative means of meeting participation, such as video conferences and conference calls.

**SEC. 615. PROCEDURAL SAFEGUARDS.**

(a) *ESTABLISHMENT OF PROCEDURES.*—Any State educational agency, State agency, or local educational agency that receives assistance under this part shall establish and maintain procedures in



accordance with this section to ensure that children with disabilities and their parents are guaranteed procedural safeguards with respect to the provision of free appropriate public education by such agencies.

(b) *TYPES OF PROCEDURES.*—The procedures required by this section shall include—

(1) an opportunity for the parents of a child with a disability to examine all records relating to such child and to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to such child, and to obtain an independent educational evaluation of the child;

(2) procedures to protect the rights of the child whenever the parents of the child are not known, the agency cannot, after reasonable efforts, locate the parents, or the child is a ward of the State, including the assignment of an individual (who shall not be an employee of the State educational agency, the local educational agency, or any other agency that is involved in the education or care of the child) to act as a surrogate for the parents;

(3) written prior notice to the parents of the child, in accordance with subsection (c)(1), whenever the local educational agency—

(A) proposes to initiate or change; or

(B) refuses to initiate or change,

the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child;

(4) procedures designed to ensure that the notice required by paragraph (3) is in the native language of the parents, unless it clearly is not feasible to do so;

(5) an opportunity for mediation in accordance with subsection (e);

(6) an opportunity for either party to present complaints with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child;

(7)(A) procedures that require either party, or the attorney representing a party, to provide due process complaint notice in accordance with subsection (c)(2) (which shall remain confidential)—

(i) to the other party, in the complaint filed under paragraph (6), and forward a copy of such notice to the State educational agency; and

(ii) that shall include—

(I) the name of the child, the address of the residence of the child, and the name of the school the child is attending;

(II) in the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the child and the name of the school the child is attending;

(III) a description of the nature of the problem of the child relating to such proposed initiation or change, including facts relating to such problem; and

(IV) a proposed resolution of the problem to the extent known and available to the party at the time; and  
 (B) a requirement that a party may not have a due process hearing until the party, or the attorney representing the party, files a notice that meets the requirements of subparagraph (A)(ii);

(8) a requirement that the local educational agency shall send a prior written notice pursuant to subsection (c)(1) in response to a parent's due process complaint notice under paragraph (7) if the local educational agency has not sent such a prior written notice to the parent regarding the subject matter contained in the parent's due process complaint notice; and

(9) procedures that require the State educational agency to develop a model form to assist parents in filing a complaint and due process complaint notice in accordance with paragraphs (6) and (7), respectively.

(c) NOTIFICATION REQUIREMENTS.—

(1) CONTENT OF PRIOR WRITTEN NOTICE.—The prior written notice of the local educational agency required by subsection (b)(3) shall include—

(A) a description of the action proposed or refused by the agency;

(B) an explanation of why the agency proposes or refuses to take the action;

(C) a description of any other options that the agency considered and the reasons why those options were rejected;

(D) a description of each evaluation procedure, test, record, or report the agency used as a basis for the proposed or refused action;

(E) a description of any other factors that are relevant to the agency's proposal or refusal;

(F) a statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; and

(G) sources for parents to contact to obtain assistance in understanding the provisions of this part.

(2) DUE PROCESS COMPLAINT NOTICE.—

(A) IN GENERAL.—The due process complaint notice required under subsection (b)(7)(A) shall be deemed to be sufficient unless the party receiving the notice notifies the hearing officer and the other party in writing that the receiving party believes the notice has not met the requirements of that subsection.

(B) TIMING.—The party sending a hearing officer notification under subparagraph (A) shall send the notification within 20 days of receiving the complaint.

(C) DETERMINATION.—Within 5 days of receipt of the notification provided under subparagraph (B), the hearing officer shall make a determination on the face of the notice of whether the notification meets the requirements of subsection (b)(7)(A), and shall immediately notify both parties in writing of such determination.

(D) PARENT'S AMENDED NOTICE OF COMPLAINT.—

(i) *IN GENERAL.*—A parent may amend the parent's due process complaint notice only if—

(I) the public agency consents in writing to such amendment and is given the opportunity to resolve the complaint through a meeting held pursuant to subsection (f)(1)(B); or

(II) the hearing officer grants permission, but may do so only before a due process hearing occurs.

(ii) *APPLICABLE TIMELINE.*—The applicable timeline for a due process hearing under this part shall recommence at the time the party files an amended notice.

(d) *PROCEDURAL SAFEGUARDS NOTICE.*—

(1) *IN GENERAL.*—A copy of the procedural safeguards available to the parents of a child with a disability shall be given to the parents only 1 time a year, except that a copy also shall be given to the parents—

(A) upon initial referral or parental request for evaluation;

(B) upon registration of a complaint under subsection (b)(6); and

(C) upon request by a parent.

(2) *CONTENTS.*—The procedural safeguards notice shall include a full explanation of the procedural safeguards, written in the native language of the parents, unless it clearly is not feasible to do so, and written in an easily understandable manner, available under this section and under regulations promulgated by the Secretary relating to—

(A) independent educational evaluation;

(B) prior written notice;

(C) parental consent;

(D) access to educational records;

(E) the opportunity to present and resolve complaints, including—

(i) the time period in which to make a complaint;

(ii) the opportunity for the agency to resolve the complaint; and

(iii) the availability of mediation;

(F) the child's placement during pendency of due process proceedings;

(G) procedures for students who are subject to placement in an interim alternative educational setting;

(H) requirements for unilateral placement by parents of children in private schools at public expense;

(I) due process hearings, including requirements for disclosure of evaluation results and recommendations;

(J) State-level appeals (if applicable in that State);

(K) civil actions, including the time period in which to file such actions; and

(L) attorney's fees.

(e) *MEDIATION.*—

(1) *IN GENERAL.*—Any State educational agency or local educational agency that receives assistance under this part shall ensure that procedures are established and implemented to allow parties to disputes involving any matter, including mat-

ters arising prior to the filing of a complaint pursuant to subsection (b)(6), to resolve such disputes through a mediation process.

(2) **REQUIREMENTS.**—Such procedures shall meet the following requirements:

(A) **The procedures shall ensure that the mediation process—**

(i) is voluntary on the part of the parties;

(ii) is not used to deny or delay a parent's right to a due process hearing under subsection (f), or to deny any other rights afforded under this part; and

(iii) is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

(B) **OPPORTUNITY TO MEET WITH A DISINTERESTED PARTY.**—A local educational agency or a State agency may establish procedures to offer to parents and schools who choose not to use the mediation process, an opportunity to meet, at a time and location convenient to the parents, with a disinterested party who is under contract with—

(i) a parent training and information center or community parent resource center in the State established under section 671 or 672; or

(ii) an appropriate alternative dispute resolution entity,

to encourage the use, and explain the benefits, of the mediation process to the parents.

(C) **LIST OF QUALIFIED MEDIATORS.**—The State shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.

(D) **COSTS.**—The State shall bear the cost of the mediation process, including the costs of meetings described in subparagraph (B).

(E) **SCHEDULING AND LOCATION.**—Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute.

(F) **WRITTEN MEDIATION AGREEMENT.**—An agreement reached by the parties to the dispute in the mediation process shall be set forth in a written mediation agreement that is enforceable in any State court of competent jurisdiction or in a district court of the United States.

(G) **MEDIATION DISCUSSIONS.**—Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings, and the parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of such process.

(f) **IMPARTIAL DUE PROCESS HEARING.**—

(1) **IN GENERAL.**—

(A) **HEARING.**—Whenever a complaint has been received under subsection (b)(6) or (k), the parents or the local educational agency involved in such complaint shall have an opportunity for an impartial due process hearing, which shall be conducted by the State educational agency or by

*the local educational agency, as determined by State law or by the State educational agency.*

**(B) OPPORTUNITY TO RESOLVE COMPLAINT.—**

*(i) PRELIMINARY MEETING.—Prior to the opportunity for an impartial due process hearing under subparagraph (A), the local educational agency shall convene a meeting with the parents and the IEP Team—*

*(I) within 15 days of receiving notice of the parents' complaint;*

*(II) which shall include a representative of the public agency who has decisionmaking authority on behalf of such agency;*

*(III) which may not include an attorney of the local educational agency unless the parent is accompanied by an attorney; and*

*(IV) where the parents of the child discuss their complaint, and the specific issues that form the basis of the complaint, and the local educational agency is provided the opportunity to resolve the complaint,*

*unless the parents and the local educational agency agree in writing to waive such meeting, or agree to use the mediation process described in subsection (e).*

*(ii) HEARING.—If the local educational agency has not resolved the complaint to the satisfaction of the parents within 15 days of the receipt of the complaint, the due process hearing may occur, and all of the applicable timelines for a due process hearing under this part shall commence.*

*(iii) WRITTEN SETTLEMENT AGREEMENT.—In the case that an agreement is reached to resolve the complaint at such meeting, the agreement shall be set forth in a written settlement agreement that is—*

*(I) signed by both the parent and a representative of the public agency who has decisionmaking authority on behalf of such agency; and*

*(II) enforceable in any State court of competent jurisdiction or in a district court of the United States.*

**(2) DISCLOSURE OF EVALUATIONS AND RECOMMENDATIONS.—**

*(A) IN GENERAL.—Not less than 5 business days prior to a hearing conducted pursuant to paragraph (1), each party shall disclose to all other parties all evaluations completed by that date, and recommendations based on the offering party's evaluations, that the party intends to use at the hearing.*

*(B) FAILURE TO DISCLOSE.—A hearing officer may bar any party that fails to comply with subparagraph (A) from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.*

**(3) LIMITATIONS ON HEARING.—**

*(A) PERSON CONDUCTING HEARING.—A hearing officer conducting a hearing pursuant to paragraph (1)(A) shall, at a minimum—*

*(i) not be—*

(I) an employee of the State educational agency or the local educational agency involved in the education or care of the child; or

(II) a person having a personal or professional interest that conflicts with the person's objectivity in the hearing;

(ii) possess a fundamental understanding of this Act, Federal and State regulations pertaining to this Act, and interpretations of this Act by State and Federal courts;

(iii) possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and

(iv) possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

(B) *SUBJECT MATTER OF HEARING.*—The party requesting the due process hearing shall not be allowed to raise issues at the due process hearing that were not raised in the notice filed under subsection (b)(7), unless the other party agrees otherwise.

(C) *RULE OF CONSTRUCTION.*—Nothing in this section shall be construed to preclude a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed.

(D) *TIMELINE FOR REQUESTING HEARING.*—A parent or public agency shall request an impartial due process hearing within 2 years of the date the parent or public agency knew or should have known about the alleged action that forms the basis of the complaint, or, if the State has an explicit time limitation for requesting such a hearing under this part, in such time as the State law allows.

(E) *EXCEPTION TO THE STATUTE OF LIMITATIONS.*—The statute of limitations described in subparagraph (D) shall not apply if the parent was prevented from requesting the hearing due to—

(i) failure of the local educational agency to provide prior written or procedural safeguards notices;

(ii) false representations that the local educational agency was attempting to resolve the problem forming the basis of the complaint; or

(iii) the local educational agency's withholding of information from parents.

(F) *DECISION OF HEARING OFFICER.*—

(i) *IN GENERAL.*—Subject to clause (ii), a decision made by a hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education.

(ii) *PROCEDURAL ISSUES.*—In matters alleging a procedural violation, a hearing officer may find that a child did not receive a free appropriate public education only if the procedural inadequacies—

(I) compromised the child's right to an appropriate public education;

(II) seriously hampered the parents' opportunity to participate in the process; or

(III) caused a deprivation of educational benefits.

(iii) *RULE OF CONSTRUCTION.*—Nothing in this paragraph shall be construed to preclude a hearing officer from ordering a local educational agency to comply with procedural requirements under this section.

(G) *RULE OF CONSTRUCTION.*—Nothing in this section shall be construed to affect the right of a parent to file a complaint with the State educational agency.

(g) *APPEAL.*—If the hearing required by subsection (f) is conducted by a local educational agency, any party aggrieved by the findings and decision rendered in such a hearing may appeal such findings and decision to the State educational agency. Such State educational agency shall conduct an impartial review of such decision. The officer conducting such review shall make an independent decision upon completion of such review.

(h) *SAFEGUARDS.*—Any party to a hearing conducted pursuant to subsection (f) or (k), or an appeal conducted pursuant to subsection (g), shall be accorded—

(1) the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;

(2) the right to present evidence and confront, cross-examine, and compel the attendance of witnesses;

(3) the right to a written, or, at the option of the parents, electronic verbatim record of such hearing; and

(4) the right to a written, or, at the option of the parents, electronic findings of fact and decisions, which findings and decisions—

(A) shall be made available to the public consistent with the requirements of section 617(b) (relating to the confidentiality of data, information, and records); and

(B) shall be transmitted to the advisory panel established pursuant to section 612(a)(20).

(i) *ADMINISTRATIVE PROCEDURES.*—

(1) *IN GENERAL.*—

(A) *DECISION MADE IN HEARING.*—A decision made in a hearing conducted pursuant to subsection (f) or (k) shall be final, except that any party involved in such hearing may appeal such decision under the provisions of subsection (g) and paragraph (2).

(B) *DECISION MADE AT APPEAL.*—A decision made under subsection (g) shall be final, except that any party may bring an action under paragraph (2).

(2) *RIGHT TO BRING CIVIL ACTION.*—

(A) *IN GENERAL.*—Any party aggrieved by the findings and decision made under subsection (f) or (k) who does not have the right to an appeal under subsection (g), and any party aggrieved by the findings and decision under this subsection, shall have the right to bring a civil action with respect to the complaint presented pursuant to this section, which action may be brought in any State court of com-

petent jurisdiction or in a district court of the United States, without regard to the amount in controversy.

(B) *LIMITATION.*—The party bringing the action shall have 90 days from the date of the decision of the hearing officer to bring such an action, or, if the State has an explicit time limitation for bringing such action under this part, in such time as the State law allows.

(C) *ADDITIONAL REQUIREMENTS.*—In any action brought under this paragraph, the court—

(i) shall receive the records of the administrative proceedings;

(ii) shall hear additional evidence at the request of a party; and

(iii) basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.

(3) *JURISDICTION OF DISTRICT COURTS; ATTORNEYS' FEES.*—

(A) *IN GENERAL.*—The district courts of the United States shall have jurisdiction of actions brought under this section without regard to the amount in controversy.

(B) *AWARD OF ATTORNEYS' FEES.*—In any action or proceeding brought under this section, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to the parents of a child with a disability who is the prevailing party.

(C) *DETERMINATION OF AMOUNT OF ATTORNEYS' FEES.*—Fees awarded under this paragraph shall be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this subsection.

(D) *PROHIBITION OF ATTORNEYS' FEES AND RELATED COSTS FOR CERTAIN SERVICES.*—

(i) *IN GENERAL.*—Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under this section for services performed subsequent to the time of a written offer of settlement to a parent if—

(I) the offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than 10 days before the proceeding begins;

(II) the offer is not accepted within 10 days; and

(III) the court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.

(ii) *IEP TEAM MEETINGS.*—Attorneys' fees may not be awarded relating to any meeting of the IEP Team unless such meeting is convened as a result of an administrative proceeding or judicial action, or, at the discretion of the State, for a mediation described in subsection (e).



(iii) *OPPORTUNITY TO RESOLVE COMPLAINTS.*—A meeting conducted pursuant to subsection (f)(1)(B)(i) shall not be considered—

(I) a meeting convened as a result of an administrative hearing or judicial action; or

(II) an administrative hearing or judicial action for purposes of this paragraph.

(E) *EXCEPTION TO PROHIBITION ON ATTORNEYS' FEES AND RELATED COSTS.*—Notwithstanding subparagraph (D), an award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.

(F) *REDUCTION IN AMOUNT OF ATTORNEYS' FEES.*—Except as provided in subparagraph (G), whenever the court finds that—

(i) the parent, or the parent's attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;

(ii) the amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;

(iii) the time spent and legal services furnished were excessive considering the nature of the action or proceeding; or

(iv) the attorney representing the parent did not provide to the local educational agency the appropriate information in the notice of the complaint described in subsection (b)(7)(A),

the court shall reduce, accordingly, the amount of the attorneys' fees awarded under this section.

(G) *EXCEPTION TO REDUCTION IN AMOUNT OF ATTORNEYS' FEES.*—The provisions of subparagraph (F) shall not apply in any action or proceeding if the court finds that the State or local educational agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of this section.

(4) *PARENTS REPRESENTING THEIR CHILDREN IN COURT.*—Subject to subsection (m), and notwithstanding any other provision of Federal law regarding attorney representation (including the Federal Rules of Civil Procedure), a parent of a child with a disability may represent the child in any action under this part in Federal or State court, without the assistance of an attorney.

(j) *MAINTENANCE OF CURRENT EDUCATIONAL PLACEMENT.*—Except as provided in subsection (k)(4), during the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents otherwise agree, the child shall remain in the then-current educational placement of such child, or, if applying for initial admission to a public school, shall, with the consent of the parents, be placed in the public school program until all such proceedings have been completed.

(k) *PLACEMENT IN ALTERNATIVE EDUCATIONAL SETTING.*—

(1) *AUTHORITY OF SCHOOL PERSONNEL.*—

(A) *IN GENERAL.*—School personnel under this section may order a change in the placement of a child with a disability who violates a code of student conduct to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 school days (to the extent such alternatives are applied to children without disabilities).

(B) *ADDITIONAL AUTHORITY.*—If school personnel seek to order a change in placement that would exceed 10 school days and the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to subparagraph (C), the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner in which the procedures would be applied to children without disabilities, except as provided in section 612(a)(1).

(C) *MANIFESTATION DETERMINATION.*—

(i) *IN GENERAL.*—Except as provided in subparagraphs (A) and (D), within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the IEP Team shall review all relevant information in the student's file, any information provided by the parents, and teacher observations, to determine—

(I) if the conduct in question was the result of the child's disability; or

(II) if the conduct in question resulted from the failure to implement the IEP or to implement behavioral interventions as required by section 614(d)(3)(B)(i).

(ii) *MANIFESTATION.*—If the IEP Team determines that either subclause (I) or (II) of clause (i) is applicable for the child, the conduct shall be determined to be a manifestation of the child's disability.

(D) *SPECIAL CIRCUMSTANCES.*—In cases where a child—

(i) carries or possesses a weapon to or at school, on school premises, or to or at a school function under the jurisdiction of a State or local educational agency; or

(ii) knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school or a school function under the jurisdiction of a State or local educational agency; or

(iii) has committed serious bodily injury upon another person while at school or at a school function under the jurisdiction of a State or local educational agency,

school personnel may remove a student to an interim alternative educational setting for not more than 45 school days, without regard to whether the behavior is determined to be a manifestation of the child's disability.

(E) *NOTIFICATION.*—Not later than the date on which the decision to take disciplinary action is made, the local educational agency shall notify the parents of that decision,

and of all procedural safeguards accorded under this section.

(F) SERVICES.—A child with a disability who is removed from the child's current placement under subparagraph (B) or (D) shall—

(i) continue to receive educational services pursuant to section 612(a)(1), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and

(ii) receive behavioral intervention services as described in section 614(d)(3)(B)(i), and a functional behavioral assessment (but only if the local educational agency did not conduct such an assessment before the violation occurred), designed to address the behavior violation so that the violation does not recur.

(2) DETERMINATION OF SETTING.—The alternative educational setting shall be determined by the IEP Team.

(3) APPEAL.—

(A) IN GENERAL.—The parent of a child with a disability who disagrees with any decision regarding disciplinary action, placement, or the manifestation determination under this subsection, or a local educational agency that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others, may request a hearing.

(B) AUTHORITY OF HEARING OFFICER.—

(i) IN GENERAL.—If a parent of a child with a disability disagrees with a decision as described in subparagraph (A), the hearing officer may determine whether the decision regarding such action was appropriate.

(ii) CHANGE OF PLACEMENT ORDER.—A hearing officer under this section may order a change in placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of such child is substantially likely to result in injury to the child or to others.

(4) PLACEMENT DURING APPEALS.—When a parent requests a hearing regarding a disciplinary procedure described in paragraph (1)(B) or challenges the interim alternative educational setting or manifestation determination—

(A) the child shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period provided for in paragraph (1)(B), whichever occurs first, unless the parent and the State or local educational agency agree otherwise; and

(B) the State or local educational agency shall arrange for an expedited hearing, which shall occur within 20 school days of the date the hearing is requested.

(5) PROTECTIONS FOR CHILDREN NOT YET ELIGIBLE FOR SPECIAL EDUCATION AND RELATED SERVICES.—

(A) *IN GENERAL.*—A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violates a code of student conduct, may assert any of the protections provided for in this part if the local educational agency had knowledge (as determined in accordance with this paragraph) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

(B) *BASIS OF KNOWLEDGE.*—A local educational agency shall be deemed to have knowledge that a child is a child with a disability if, before the behavior that precipitated the disciplinary action occurred—

(i) the parent of the child has expressed concern in writing (unless the parent is illiterate or has a disability that prevents compliance with the requirements contained in this clause) to personnel of the appropriate educational agency that the child is in need of special education and related services;

(ii) the parent of the child has requested an evaluation of the child pursuant to section 614;

(iii) the teacher of the child, or other personnel of the local educational agency, has expressed concern about a pattern of behavior demonstrated by the child, to the director of special education of such agency or to other administrative personnel of the agency; or

(iv) the child has engaged in a pattern of behavior that should have alerted personnel of the local educational agency that the child may be in need of special education and related services.

(C) *EXCEPTION.*—A local educational agency shall not be deemed to have knowledge that the child has a disability if the parent of the child has not agreed to allow an evaluation of the child pursuant to section 614.

(D) *CONDITIONS THAT APPLY IF NO BASIS OF KNOWLEDGE.*—

(i) *IN GENERAL.*—If a local educational agency does not have knowledge that a child is a child with a disability (in accordance with subparagraph (B) or (C)) prior to taking disciplinary measures against the child, the child may be subjected to disciplinary measures applied to children without disabilities who engaged in comparable behaviors consistent with clause (ii).

(ii) *LIMITATIONS.*—If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under paragraph (1), the evaluation shall be conducted in an expedited manner. If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency shall provide special education and related services in accordance with this part, except that, pending the results of the evaluation, the child shall remain in the educational placement determined by school authorities.

(6) REFERRAL TO AND ACTION BY LAW ENFORCEMENT AND JUDICIAL AUTHORITIES.—

(A) CONSTRUCTION.—Nothing in this part shall be construed to prohibit an agency from reporting a crime committed by a child with a disability to appropriate authorities or to prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.

(B) TRANSMITTAL OF RECORDS.—An agency reporting a crime committed by a child with a disability shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime.

(7) DEFINITIONS.—For purposes of this subsection, the following definitions apply:

(A) CONTROLLED SUBSTANCE.—The term “controlled substance” means a drug or other substance identified under schedule I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

(B) ILLEGAL DRUG.—The term “illegal drug” means a controlled substance but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.

(C) WEAPON.—The term “weapon” has the meaning given the term “dangerous weapon” under section 930(g)(2) of title 18, United States Code.

(D) SERIOUS BODILY INJURY.—The term “serious bodily injury” has the meaning given the term “serious bodily injury” under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code.

(l) RULE OF CONSTRUCTION.—Nothing in this title shall be construed to restrict or limit the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under such laws seeking relief that is also available under this part, the procedures under subsections (f) and (g) shall be exhausted to the same extent as would be required had the action been brought under this part.

(m) TRANSFER OF PARENTAL RIGHTS AT AGE OF MAJORITY.—

(1) IN GENERAL.—A State that receives amounts from a grant under this part may provide that, when a child with a disability reaches the age of majority under State law (except for a child with a disability who has been determined to be incompetent under State law)—

(A) the public agency shall provide any notice required by this section to both the individual and the parents;

(B) all other rights accorded to parents under this part transfer to the child;

(C) the agency shall notify the individual and the parents of the transfer of rights; and

(D) all rights accorded to parents under this part transfer to children who are incarcerated in an adult or juvenile Federal, State, or local correctional institution.

(2) *SPECIAL RULE.*—If, under State law, a child with a disability who has reached the age of majority under State law, who has not been determined to be incompetent, but who is determined not to have the ability to provide informed consent with respect to the educational program of the child, the State shall establish procedures for appointing the parent of the child, or if the parent is not available, another appropriate individual, to represent the educational interests of the child throughout the period of eligibility of the child under this part.

(n) *E-MAIL.*—A parent of a child with a disability may elect to receive notices required under this section by e-mail communication, if the public agency makes such option available.

**SEC. 616. MONITORING, TECHNICAL ASSISTANCE, AND ENFORCEMENT.**

(a) **FEDERAL AND STATE MONITORING.**—

(1) *IN GENERAL.*—The Secretary shall—

(A) monitor implementation of this Act through—

(i) oversight of the States' exercise of general supervision, as required in section 612(a)(11); and

(ii) the system of indicators, described in subsection (b)(2); and

(B) enforce this Act in accordance with subsection (c); and

(C) require States to monitor implementation of this Act by local educational agencies and enforce this Act in accordance with paragraph (3) of this subsection and subsection (c).

(2) *FOCUSED MONITORING.*—The primary focus of Federal and State monitoring activities described in paragraph (1) shall be on improving educational results and functional outcomes for all children with disabilities, while ensuring compliance with program requirements, with a particular emphasis on those requirements that are most closely related to improving educational results for children with disabilities.

(3) *MONITORING PRIORITIES.*—The Secretary shall monitor, and shall require States to monitor, the following priority areas:

(A) Provision of a free appropriate public education in the least restrictive environment.

(B) Provision of transition services, as defined in section 602(33).

(C) State exercise of general supervisory authority, including the effective use of complaint resolution and mediation.

(D) Overrepresentation of racial and ethnic groups in special education and related services, to the extent the overrepresentation is the result of inappropriate policies, procedures, and practices.

(4) *PERMISSIVE AREAS OF REVIEW.*—The Secretary may examine other relevant information and data, including data provided by States under section 618, and data from the State's compliance plan under subsection (b)(2)(C).

(b) *INDICATORS.*—

(1) *SYSTEM.*—The Secretary shall implement and administer a system of required indicators as described in paragraph (2) that measures the progress of States in improving their performance under this Act.

(2) *INDICATORS.*—

(A) *IN GENERAL.*—Using the performance indicators established by States under section 612(a)(15), the Secretary shall review—

(i) the performance of children with disabilities in the State on assessments, including alternate assessments, dropout rates, and graduation rates, which for purposes of this paragraph means the number and percentage of students with disabilities who graduate with a regular diploma within the number of years specified in a student's IEP; and

(ii) the performance of children with disabilities in the State on assessments, including alternate assessments, dropout rates, and graduation rates, as compared to the performance and rates for all children.

(B) *SECRETARY'S ASSESSMENT.*—Based on that review and a review of the State's compliance plan under subparagraph (C), the Secretary shall assess the State's progress in improving educational results for children with disabilities.

(C) *STATE COMPLIANCE PLAN.*—Not later than 1 year after the date of the enactment of the Individuals with Disabilities Education Improvement Act of 2003, each State shall have in place a compliance plan developed in collaboration with the Secretary. Each State's compliance plan shall—

(i) include benchmarks to measure continuous progress on the priority areas described in subsection (a)(3);

(ii) describe strategies the State will use to achieve the benchmarks; and

(iii) be approved by the Secretary.

(D) *PUBLIC REPORTING AND PRIVACY.*—

(i) *IN GENERAL.*—After the Secretary approves a State's compliance plan under subparagraph (C), the State shall use the benchmarks in the plan and the indicators described in this subsection to analyze the progress of each local educational agency in the State on those benchmarks and indicators.

(ii) *REPORT.*—The State shall report annually to the public on each local educational agency's progress under clause (i), except where doing so would result in the disclosure of personally identifiable information about individual children or where the available data is insufficient to yield statistically reliable information.

(3) *DATA COLLECTION AND ANALYSIS.*—The Secretary shall—

(A) review the data collection and analysis capacity of States to ensure that data and information determined necessary for implementation of this subsection is collected, analyzed, and accurately reported to the Secretary; and

(B) provide technical assistance to improve the capacity of States to meet these data collection requirements.

## (c) COMPLIANCE AND ENFORCEMENT.—

(1) *IN GENERAL.*—The Secretary shall examine relevant State information and data annually, to determine whether the State is making satisfactory progress toward improving educational results for children with disabilities using the indicators described in subsection (b)(2)(A) and the benchmarks established in the State compliance plan under subsection (b)(2)(C), and is in compliance with the provisions of this Act.

## (2) LACK OF SATISFACTORY PROGRESS BY A STATE.—

(A) *IN GENERAL.*—If after examining data, as provided in subsection (b)(2) (A) and (C), the Secretary determines that a State failed to make satisfactory progress in meeting the indicators described in subsection (b)(2)(A) or has failed to meet the benchmarks described in subsection (b)(2)(C) for 2 consecutive years after the State has developed its compliance plan, the Secretary shall notify the State that the State has failed to make satisfactory progress, and shall take 1 or more of the following actions:

(i) Direct the use of State level funds for technical assistance, services, or other expenditures to ensure that the State resolves the area or areas of unsatisfactory progress.

(ii) Withhold not less than 20, but not more than 50, percent of the State's funds for State administration and activities for the fiscal year under section 611(e), after providing the State the opportunity to show cause why the withholding should not occur, until the Secretary determines that sufficient progress has been made in improving educational results for children with disabilities.

(B) *ADDITIONAL SECRETARIAL ACTION.*—If, at the end of the 5th year after the Secretary has approved the compliance plan that the State has developed under subsection (b)(2)(C), the Secretary determines that a State failed to meet the benchmarks in the State compliance plan and make satisfactory progress in improving educational results for children with disabilities pursuant to the indicators described in subsection (b)(2)(A), the Secretary shall take 1 or more of the following actions:

(i) Seek to recover funds under section 452 of the General Education Provisions Act.

(ii) After providing reasonable notice and an opportunity for a hearing to the State educational agency involved, withhold, in whole or in part, any further payments to the State under this part pursuant to subsection (c)(5).

(iii) After providing reasonable notice and an opportunity for a hearing to the State educational agency involved, refer the matter for appropriate enforcement action, which may include referral to the Department of Justice.

(iv) Pending the outcome of any hearing to withhold payments under clause (ii), the Secretary may suspend payments to a recipient, suspend the authority of the recipient to obligate Federal funds, or both, after such



recipient has been given reasonable notice and an opportunity to show cause why future payments or authority to obligate Federal funds should not be suspended.

(C) **SUBSTANTIAL NONCOMPLIANCE.**—Notwithstanding subparagraph (B), at any time that the Secretary determines that a State is not in substantial compliance with any provision of this part or that there is a substantial failure to comply with any condition of a local agency's or State agency's eligibility under this part, the Secretary shall take 1 or more of the following actions:

(i) Request that the State prepare a corrective action plan or improvement plan if the Secretary determines that the State should be able to correct the problem within 1 year.

(ii) Identify the State as a high-risk grantee and impose special conditions on the State's grant under this part.

(iii) Require the State to enter into a compliance agreement under section 457 of the General Education Provisions Act, if the Secretary has reason to believe that the State cannot correct the problem within 1 year.

(iv) Recovery of funds under section 452 of the General Education Provisions Act.

(v) After providing reasonable notice and an opportunity for a hearing to the State educational agency involved, withhold, in whole or in part, any further payments to the State under this part.

(vi) After providing reasonable notice and an opportunity for a hearing to the State educational agency involved, refer the matter for appropriate enforcement action, which may include referral to the Department of Justice.

(vii) Pending the outcome of any hearing to withhold payments under clause (v), the Secretary may suspend payments to a recipient, suspend the authority of the recipient to obligate Federal funds, or both, after such recipient has been given reasonable notice and an opportunity to show cause why future payments or authority to obligate Federal funds should not be suspended.

(3) **EGREGIOUS NONCOMPLIANCE.**—At any time that the Secretary determines that a State is in egregious noncompliance or is willfully disregarding the provisions of this Act, the Secretary shall take such additional enforcement actions as the Secretary determines to be appropriate from among those actions specified in paragraph (2)(C), and, additionally, may impose 1 or more of the following sanctions upon that State:

(A) Institute a cease and desist action under section 456 of the General Education Provisions Act.

(B) Refer the case to the Office of the Inspector General.

(4) **REPORT TO CONGRESS.**—The Secretary shall report to Congress within 30 days of taking enforcement action pursuant to paragraph (2) (B) or (C), or (3), on the specific action taken and the reasons why enforcement action was taken.

(5) *NATURE OF WITHHOLDING.*—If the Secretary withholds further payments under paragraphs (2)(B)(ii) and (2)(C)(v), the Secretary may determine that such withholding will be limited to programs or projects, or portions thereof, affected by the failure, or that the State educational agency shall not make further payments under this part to specified local educational agencies or State agencies affected by the failure. Until the Secretary is satisfied that there is no longer any failure to make satisfactory progress as specified in paragraph (2)(B), or to comply with the provisions of this part, as specified in paragraph (2)(C), payments to the State under this part shall be withheld in whole or in part, or payments by the State educational agency under this part shall be limited to local educational agencies and State agencies whose actions did not cause or were not involved in the failure, as the case may be. Any State educational agency, State agency, or local educational agency that has received notice under paragraph (2)(B) or (2)(C) shall, by means of a public notice, take such measures as may be necessary to bring the pendency of an action pursuant to this subsection to the attention of the public within the jurisdiction of such agency.

(6) *JUDICIAL REVIEW.*—

(A) *IN GENERAL.*—If any State is dissatisfied with the Secretary's final action with respect to the eligibility of the State under section 612, such State may, not later than 60 days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings upon which the Secretary's action was based, as provided in section 2112 of title 28, United States Code.

(B) *JURISDICTION; REVIEW BY UNITED STATES SUPREME COURT.*—Upon the filing of such petition, the court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

(C) *STANDARD OF REVIEW.*—The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive, but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify the Secretary's previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(d) *DIVIDED STATE AGENCY RESPONSIBILITY.*—For purposes of this section, where responsibility for ensuring that the requirements of this part are met with respect to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons is assigned to a public agency other than the State educational agency pursuant to section 612(a)(11)(C), the Secretary, in instances where the Secretary finds that the failure to comply sub-

stantially with the provisions of this part are related to a failure by the public agency, shall take appropriate corrective action to ensure compliance with this part, except that—

(1) any reduction or withholding of payments to the State shall be proportionate to the total funds allotted under section 611 to the State as the number of eligible children with disabilities in adult prisons under the supervision of the other public agency is proportionate to the number of eligible individuals with disabilities in the State under the supervision of the State educational agency; and

(2) any withholding of funds under paragraph (1) shall be limited to the specific agency responsible for the failure to comply with this part.

(e) **STATE AND LOCAL MONITORING.**—

(1) **IN GENERAL.**—The State educational agency shall monitor and enforce implementation of this Act, implement a system of monitoring the benchmarks in the State's compliance plan under subsection (b)(2)(C), and require local educational agencies to monitor and enforce implementation of this Act.

(2) **ADDITIONAL ENFORCEMENT OPTIONS.**—If a State educational agency determines that a local educational agency is not meeting the requirements of this part, including the benchmarks in the State's compliance plan, the State educational agency shall prohibit the local educational agency from treating funds received under this part as local funds under section 613(a)(2)(C) for any fiscal year.

**SEC. 617. ADMINISTRATION.**

(a) **RESPONSIBILITIES OF SECRETARY.**—The Secretary shall—

(1) cooperate with, and (directly or by grant or contract) furnish technical assistance necessary to, a State in matters relating to—

(A) the education of children with disabilities; and

(B) carrying out this part; and

(2) provide short-term training programs and institutes.

(b) **CONFIDENTIALITY.**—The Secretary shall take appropriate action, in accordance with section 444 of the General Education Provisions Act (20 U.S.C. 1232g), to assure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by the Secretary and by State and local educational agencies pursuant to this part.

(c) **PERSONNEL.**—The Secretary is authorized to hire qualified personnel necessary to carry out the Secretary's duties under subsection (a) and under sections 618, 661, and 664, without regard to the provisions of title 5, United States Code, relating to appointments in the competitive service and without regard to chapter 51 and subchapter III of chapter 53 of such title relating to classification and general schedule pay rates, except that not more than 20 such personnel shall be employed at any 1 time.

(d) **MODEL FORMS.**—Not later than the date that the Secretary publishes final regulations under this Act, to implement amendments made by the Individuals with Disabilities Education Improvement Act of 2003, the Secretary shall publish and disseminate widely to States, local educational agencies, and parent and community training and information centers—

(1) a model IEP form;

- (2) a model individualized family service plan (IFSP) form;
- (3) a model form of the notice of procedural safeguards described in section 615(d); and
- (4) a model form of the prior written notice described in section 615 (b)(3) and (c)(1) that is consistent with the requirements of this part and is sufficient to meet such requirements.

**SEC. 618. PROGRAM INFORMATION.**

(a) *IN GENERAL.*—Each State that receives assistance under this part, and the Secretary of the Interior, shall provide data each year to the Secretary of Education and the public on—

(1)(A) the number and percentage of children with disabilities, by race, ethnicity, limited English proficiency status, gender, and disability category, who are receiving a free appropriate public education;

(B) the number and percentage of children with disabilities, by race, gender, and ethnicity, who are receiving early intervention services;

(C) the number and percentage of children with disabilities, by race, ethnicity, limited English proficiency status, gender, and disability category, who are participating in regular education;

(D) the number and percentage of children with disabilities, by race, ethnicity, limited English proficiency status, gender, and disability category, who are in separate classes, separate schools or facilities, or public or private residential facilities;

(E) the number and percentage of children with disabilities, by race, ethnicity, limited English proficiency status, gender, and disability category, who, for each year of age from age 14 through 21, stopped receiving special education and related services because of program completion (including graduation with a regular secondary school diploma), or other reasons, and the reasons why those children stopped receiving special education and related services;

(F) the number and percentage of children with disabilities, by race, gender, and ethnicity, who, from birth through age 2, stopped receiving early intervention services because of program completion or for other reasons;

(G)(i) the number and percentage of children with disabilities, by race, ethnicity, limited English proficiency status, gender, and disability category, who are removed to an interim alternative educational setting under section 615(k)(1);

(ii) the acts or items precipitating those removals; and

(iii) the number of children with disabilities who are subject to long-term suspensions or expulsions;

(H) the incidence and duration of disciplinary actions by race, ethnicity, limited English proficiency status, gender, and disability category, of children with disabilities, including suspensions of 1 day or more;

(I) the number and percentage of children with disabilities who are removed to alternative educational settings or expelled as compared to children without disabilities who are removed to alternative educational settings or expelled;

(J) the number of due process complaints filed under section 615 and the number of hearings conducted;

(K) the number of hearings requested under section 615(k) and the number of changes in placements ordered as a result of those hearings;

(L) the number of hearings requested under section 615(k)(3)(B)(ii) and the number of changes in placements ordered as a result of those hearings; and

(M) the number of mediations held and the number of settlement agreements reached through such mediations;

(2) the number and percentage of infants and toddlers, by race, and ethnicity, who are at risk of having substantial developmental delays (as defined in section 632), and who are receiving early intervention services under part C; and

(3) any other information that may be required by the Secretary.

(b) **DATA REPORTING.**—The data described in subsection (a) shall be reported by each State at the school district and State level in a manner that does not result in the disclosure of data identifiable to individual children.

(c) **TECHNICAL ASSISTANCE.**—The Secretary may provide technical assistance to States to ensure compliance with the data collection and reporting requirements under this Act.

(d) **DISPROPORTIONALITY.**—

(1) **IN GENERAL.**—Each State that receives assistance under this part, and the Secretary of the Interior, shall provide for the collection and examination of data to determine if significant disproportionality based on race is occurring in the State with respect to—

(A) the identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment described in section 602(3);

(B) the placement in particular educational settings of such children; and

(C) the incidence, duration, and type of disciplinary actions, including suspensions and expulsions.

(2) **REVIEW AND REVISION OF POLICIES, PRACTICES, AND PROCEDURES.**—In the case of a determination of significant disproportionality with respect to the identification of children as children with disabilities, or the placement in particular educational settings of such children, in accordance with paragraph (1), the State or the Secretary of the Interior, as the case may be, shall provide for the review and, if appropriate, revision of the policies, procedures, and practices used in such identification or placement to ensure that such policies, procedures, and practices comply with the requirements of this Act.

**SEC. 619. PRESCHOOL GRANTS.**

(a) **IN GENERAL.**—The Secretary shall provide grants under this section to assist States to provide special education and related services, in accordance with this part—

(1) to children with disabilities aged 3 through 5, inclusive; and

(2) at the State's discretion, to 2-year-old children with disabilities who will turn 3 during the school year.

(b) **ELIGIBILITY.**—A State shall be eligible for a grant under this section if such State—

(1) is eligible under section 612 to receive a grant under this part; and

(2) makes a free appropriate public education available to all children with disabilities, aged 3 through 5, residing in the State.

(c) ALLOCATIONS TO STATES.—

(1) IN GENERAL.—The Secretary shall allocate the amount made available to carry out this section for a fiscal year among the States in accordance with paragraph (2) or (3), as the case may be.

(2) INCREASE IN FUNDS.—If the amount available for allocations to States under paragraph (1) is equal to or greater than the amount allocated to the States under this section for the preceding fiscal year, those allocations shall be calculated as follows:

(A) ALLOCATION.—

(i) IN GENERAL.—Except as provided in subparagraph (B), the Secretary shall—

(I) allocate to each State the amount the State received under this section for fiscal year 1997;

(II) allocate 85 percent of any remaining funds to States on the basis of the States' relative populations of children aged 3 through 5; and

(III) allocate 15 percent of those remaining funds to States on the basis of the States' relative populations of all children aged 3 through 5 who are living in poverty.

(ii) DATA.—For the purpose of making grants under this paragraph, the Secretary shall use the most recent population data, including data on children living in poverty, that are available and satisfactory to the Secretary.

(B) LIMITATIONS.—Notwithstanding subparagraph (A), allocations under this paragraph shall be subject to the following:

(i) PRECEDING YEARS.—No State's allocation shall be less than its allocation under this section for the preceding fiscal year.

(ii) MINIMUM.—No State's allocation shall be less than the greatest of—

(I) the sum of—

(aa) the amount the State received under this section for fiscal year 1997; and

(bb)  $\frac{1}{3}$  of 1 percent of the amount by which the amount appropriated under subsection (j) for the fiscal year exceeds the amount appropriated for this section for fiscal year 1997;

(II) the sum of—

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

(bb) that amount multiplied by the percentage by which the increase in the funds appropriated under this section from the preceding fiscal year exceeds 1.5 percent; or

(III) the sum of—

(aa) the amount the State received under this section for the preceding fiscal year; and  
 (bb) that amount multiplied by 90 percent of the percentage increase in the amount appropriated under this section from the preceding fiscal year.

(iii) *MAXIMUM.*—Notwithstanding clause (ii), no State's allocation under this paragraph shall exceed the sum of—

(I) the amount the State received under this section for the preceding fiscal year; and

(II) that amount multiplied by the sum of 1.5 percent and the percentage increase in the amount appropriated under this section from the preceding fiscal year.

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

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

(A) *ALLOCATIONS.*—If the amount available for allocations is greater than the amount allocated to the States for fiscal year 1997, each State shall be allocated the sum of—

(i) the amount the State received under this section for fiscal year 1997; and

(ii) an amount that bears the same relation to any remaining funds as the increase the State received under this section for the preceding fiscal year over fiscal year 1997 bears to the total of all such increases for all States.

(B) If the amount available for allocations under this paragraph is equal to or less than the amount allocated under this section to the States for fiscal year 1997, each State shall be allocated the amount the State received for that year, ratably reduced, if necessary.

(d) *RESERVATION FOR STATE ACTIVITIES.*—

(1) *IN GENERAL.*—Each State may reserve not more than the amount described in paragraph (2) for administration and other State-level activities in accordance with subsections (e) and (f).

(2) *AMOUNT DESCRIBED.*—For each fiscal year, the Secretary shall determine and report to the State educational agency an amount that is 25 percent of the amount the State received under this section for fiscal year 1997, cumulatively adjusted by the Secretary for each succeeding fiscal year by the lesser of—

(A) the percentage increase, if any, from the preceding fiscal year in the State's allocation under this section; or

(B) the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor.

(e) *STATE ADMINISTRATION.*—

(1) *IN GENERAL.*—For the purpose of administering this section (including the coordination of activities under this part with, and providing technical assistance to, other programs that provide services to children with disabilities) a State may use not more than 20 percent of the maximum amount the State may reserve under subsection (d) for any fiscal year.

(2) *ADMINISTRATION OF PART C.*—Funds described in paragraph (1) may also be used for the administration of part C of this Act, if the State educational agency is the lead agency for the State under that part.

(f) *OTHER STATE-LEVEL ACTIVITIES.*—Each State shall use any funds the State reserves under subsection (d) and does not use for administration under subsection (e)—

(1) for support services (including establishing and implementing the mediation process required by section 615(e)), which may benefit children with disabilities younger than 3 or older than 5 as long as those services also benefit children with disabilities aged 3 through 5;

(2) for direct services for children eligible for services under this section;

(3) for activities at the State and local levels to meet the performance goals established by the State under section 612(a)(15);

(4) to supplement other funds used to develop and implement a statewide coordinated services system designed to improve results for children and families, including children with disabilities and their families, but not more than 1 percent of the amount received by the State under this section for a fiscal year; or

(5) to provide early intervention services (which shall include an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills) in accordance with part C to children with disabilities who are eligible for services under this section and who previously received services under part C until such children enter, or are eligible under State law to enter, kindergarten.

(g) *SUBGRANTS TO LOCAL EDUCATIONAL AGENCIES.*—

(1) *SUBGRANTS REQUIRED.*—Each State that receives a grant under this section for any fiscal year shall distribute all of the grant funds that the State does not reserve under subsection (d) to local educational agencies in the State that have established their eligibility under section 613, as follows:

(A) *BASE PAYMENTS.*—The State shall first award each local educational agency described in paragraph (1) the amount that agency would have received under this section for fiscal year 1997 if the State had distributed 75 percent of its grant for that year under section 619(c)(3), as such section was then in effect.

(B) *ALLOCATION OF REMAINING FUNDS.*—After making allocations under subparagraph (A), the State shall—

(i) allocate 85 percent of any remaining funds to those local educational agencies on the basis of the relative numbers of children enrolled in public and private elementary schools and secondary schools within the local educational agency's jurisdiction; and



(ii) allocate 15 percent of those remaining funds to those local educational agencies in accordance with their relative numbers of children living in poverty, as determined by the State educational agency.

(2) **REALLOCATION OF FUNDS.**—If a State educational agency determines that a local educational agency is adequately providing a free appropriate public education to all children with disabilities aged 3 through 5 residing in the area served by that agency with State and local funds, the State educational agency may reallocate any portion of the funds under this section that are not needed by that local educational agency to provide a free appropriate public education to other local educational agencies in the State that are not adequately providing special education and related services to all children with disabilities aged 3 through 5 residing in the areas the other local educational agencies serve.

(h) **PART C INAPPLICABLE.**—Part C of this Act does not apply to any child with a disability receiving a free appropriate public education, in accordance with this part, with funds received under this section.

(i) **DEFINITION.**—For the purpose of this section, the term ‘State’ means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(j) **AUTHORIZATION OF APPROPRIATIONS.**—For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary.

## **[PART C—INFANTS AND TODDLERS WITH DISABILITIES**

### **[SEC. 631. FINDINGS AND POLICY.**

[(a) **FINDINGS.**—The Congress finds that there is an urgent and substantial need—

[(1) to enhance the development of infants and toddlers with disabilities and to minimize their potential for developmental delay;

[(2) to reduce the educational costs to our society, including our Nation’s schools, by minimizing the need for special education and related services after infants and toddlers with disabilities reach school age;

[(3) to minimize the likelihood of institutionalization of individuals with disabilities and maximize the potential for their independently living in society;

[(4) to enhance the capacity of families to meet the special needs of their infants and toddlers with disabilities; and

[(5) to enhance the capacity of State and local agencies and service providers to identify, evaluate, and meet the needs of historically underrepresented populations, particularly minority, low-income, inner-city, and rural populations.

[(b) **POLICY.**—It is therefore the policy of the United States to provide financial assistance to States—

[(1) to develop and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system that pro-

vides early intervention services for infants and toddlers with disabilities and their families.

[(2) to facilitate the coordination of payment for early intervention services from Federal, State, local, and private sources (including public and private insurance coverage);

[(3) to enhance their capacity to provide quality early intervention services and expand and improve existing early intervention services being provided to infants and toddlers with disabilities and their families; and

[(4) to encourage States to expand opportunities for children under 3 years of age who would be at risk of having substantial developmental delay if they did not receive early intervention services.

**[SEC. 632. DEFINITIONS.**

[As used in this part:

[(1) **AT-RISK INFANT OR TODDLER.**—The term “at-risk infant or toddler” means an individual under 3 years of age who would be at risk of experiencing a substantial developmental delay if early intervention services were not provided to the individual.

[(2) **COUNCIL.**—The term “council” means a State interagency coordinating council established under section 641.

[(3) **DEVELOPMENTAL DELAY.**—The term “developmental delay”, when used with respect to an individual residing in a State, has the meaning given such term by the State under section 635(a)(1).

[(4) **EARLY INTERVENTION SERVICES.**—The term “early intervention services” means developmental services that—

[(A) are provided under public supervision;

[(B) are provided at no cost except where Federal or State law provides for a system of payments by families, including a schedule of sliding fees;

[(C) are designed to meet the developmental needs of an infant or toddler with a disability in any one or more of the following areas—

[(i) physical development;

[(ii) cognitive development;

[(iii) communication development;

[(iv) social or emotional development; or

[(v) adaptive development;

[(D) meet the standards of the State in which they are provided, including the requirements of this part;

[(E) include—

[(i) family training, counseling, and home visits;

[(ii) special instruction;

[(iii) speech-language pathology and audiology services;

[(iv) occupational therapy;

[(v) physical therapy;

[(vi) psychological services;

[(vii) service coordination services;

[(viii) medical services only for diagnostic or evaluation purposes;

[(ix) early identification, screening, and assessment services;

[(x) health services necessary to enable the infant or toddler to benefit from the other early intervention services;

[(xi) social work services;

[(xii) vision services;

[(xiii) assistive technology devices and assistive technology services; and

[(xiv) transportation and related costs that are necessary to enable an infant or toddler and the infant's or toddler's family to receive another service described in this paragraph;

[(F) are provided by qualified personnel, including—

[(i) special educators;

[(ii) speech-language pathologists and audiologists;

[(iii) occupational therapists;

[(iv) physical therapists;

[(v) psychologists;

[(vi) social workers;

[(vii) nurses;

[(viii) nutritionists;

[(ix) family therapists;

[(x) orientation and mobility specialists; and

[(xi) pediatricians and other physicians;

[(G) to the maximum extent appropriate, are provided in natural environments, including the home, and community settings in which children without disabilities participate; and

[(H) are provided in conformity with an individualized family service plan adopted in accordance with section 636.

[(5) INFANT OR TODDLER WITH A DISABILITY.—The term “infant or toddler with a disability”—

[(A) means an individual under 3 years of age who needs early intervention services because the individual—

[(i) is experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures in one or more of the areas of cognitive development, physical development, communication development, social or emotional development, and adaptive development; or

[(ii) has a diagnosed physical or mental condition which has a high probability of resulting in developmental delay; and

[(B) may also include, at a State's discretion, at-risk infants and toddlers.

**[SEC. 633. GENERAL AUTHORITY.**

[(The Secretary shall, in accordance with this part, make grants to States (from their allotments under section 643) to assist each State to maintain and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system to provide early intervention services for infants and toddlers with disabilities and their families.

**[SEC. 634. ELIGIBILITY.**

[(In order to be eligible for a grant under section 633, a State shall demonstrate to the Secretary that the State—

[(1) has adopted a policy that appropriate early intervention services are available to all infants and toddlers with disabilities in the State and their families, including Indian infants and toddlers with disabilities and their families residing on a reservation geographically located in the State; and

[(2) has in effect a statewide system that meets the requirements of section 635.

**[SEC. 635. REQUIREMENTS FOR STATEWIDE SYSTEM.**

[(a) IN GENERAL.—A statewide system described in section 633 shall include, at a minimum, the following components:

[(1) A definition of the term “developmental delay” that will be used by the State in carrying out programs under this part.

[(2) A State policy that is in effect and that ensures that appropriate early intervention services are available to all infants and toddlers with disabilities and their families, including Indian infants and toddlers and their families residing on a reservation geographically located in the State.

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

[(4) For each infant or toddler with a disability in the State, an individualized family service plan in accordance with section 636, including service coordination services in accordance with such service plan.

[(5) A comprehensive child find system, consistent with part B, including a system for making referrals to service providers that includes timelines and provides for participation by primary referral sources.

[(6) A public awareness program focusing on early identification of infants and toddlers with disabilities, including the preparation and dissemination by the lead agency designated or established under paragraph (10) to all primary referral sources, especially hospitals and physicians, of information for parents on the availability of early intervention services, and procedures for determining the extent to which such sources disseminate such information to parents of infants and toddlers.

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

[(8) A comprehensive system of personnel development, including the training of paraprofessionals and the training of primary referral sources respecting the basic components of early intervention services available in the State, that is consistent with the comprehensive system of personnel development described in section 612(a)(14) and may include—

[(A) implementing innovative strategies and activities for the recruitment and retention of early education service providers;

[(B) promoting the preparation of early intervention providers who are fully and appropriately qualified to provide early intervention services under this part;

[(C) training personnel to work in rural and inner-city areas; and

[(D) training personnel to coordinate transition services for infants and toddlers served under this part from an early intervention program under this part to preschool or other appropriate services.

[(9) Subject to subsection (b), policies and procedures relating to the establishment and maintenance of standards to ensure that personnel necessary to carry out this part are appropriately and adequately prepared and trained, including—

[(A) the establishment and maintenance of standards which are consistent with any State-approved or recognized certification, licensing, registration, or other comparable requirements which apply to the area in which such personnel are providing early intervention services; and

[(B) to the extent such standards are not based on the highest requirements in the State applicable to a specific profession or discipline, the steps the State is taking to require the retraining or hiring of personnel that meet appropriate professional requirements in the State; except that nothing in this part, including this paragraph, prohibits the use of paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulations, or written policy, to assist in the provision of early intervention services to infants and toddlers with disabilities under this part.

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

[(A) the general administration and supervision of programs and activities receiving assistance under section 633, and the monitoring of programs and activities used by the State to carry out this part, whether or not such programs or activities are receiving assistance made available under section 633, to ensure that the State complies with this part;

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

[(C) the assignment of financial responsibility in accordance with section 637(a)(2) to the appropriate agencies;

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

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

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

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

[(12) A procedure of securing timely reimbursements of funds used under this part in accordance with section 640(a).

[(13) Procedural safeguards with respect to programs under this part, as required by section 639.

[(14) A system for compiling data requested by the Secretary under section 618 that relates to this part.

[(15) A State interagency coordinating council that meets the requirements of section 641.

[(16) Policies and procedures to ensure that, consistent with section 636(d)(5)—

[(A) to the maximum extent appropriate, early intervention services are provided in natural environments; and

[(B) the provision of early intervention services for any infant or toddler occurs in a setting other than a natural environment only when early intervention cannot be achieved satisfactorily for the infant or toddler in a natural environment.

[(b) POLICY.—In implementing subsection (a)(9), a State may adopt a policy that includes making ongoing good-faith efforts to recruit and hire appropriately and adequately trained personnel to provide early intervention services to infants and toddlers with disabilities, including, in a geographic area of the State where there is a shortage of such personnel, the most qualified individuals available who are making satisfactory progress toward completing applicable course work necessary to meet the standards described in subsection (a)(9), consistent with State law within 3 years.

**[SEC 636. INDIVIDUALIZED FAMILY SERVICE PLAN.**

[(a) ASSESSMENT AND PROGRAM DEVELOPMENT.—A statewide system described in section 633 shall provide, at a minimum, for each infant or toddler with a disability, and the infant's or toddler's family, to receive—

[(1) a multidisciplinary assessment of the unique strengths and needs of the infant or toddler and the identification of services appropriate to meet such needs;

[(2) a family-directed assessment of the resources, priorities, and concerns of the family and the identification of the supports and services necessary to enhance the family's capacity to meet the developmental needs of the infant or toddler; and

[(3) a written individualized family service plan developed by a multidisciplinary team, including the parents, as required by subsection (e).

[(b) PERIODIC REVIEW.—The individualized family service plan shall be evaluated once a year and the family shall be provided a review of the plan at 6-month intervals (or more often where appropriate based on infant or toddler and family needs).

[(c) PROMPTNESS AFTER ASSESSMENT.—The individualized family service plan shall be developed within a reasonable time after the assessment required by subsection (a)(1) is completed. With the

parents' consent, early intervention services may commence prior to the completion of the assessment.

[(d) **CONTENT OF PLAN.**—The individualized family service plan shall be in writing and contain—

[(1) a statement of the infant's or toddler's present levels of physical development, cognitive development, communication development, social or emotional development, and adaptive development, based on objective criteria;

[(2) a statement of the family's resources, priorities, and concerns relating to enhancing the development of the family's infant or toddler with a disability;

[(3) a statement of the major outcomes expected to be achieved for the infant or toddler and the family, and the criteria, procedures, and timelines used to determine the degree to which progress toward achieving the outcomes is being made and whether modifications or revisions of the outcomes or services are necessary;

[(4) a statement of specific early intervention services necessary to meet the unique needs of the infant or toddler and the family, including the frequency, intensity, and method of delivering services;

[(5) a statement of the natural environments in which early intervention services shall appropriately be provided, including a justification of the extent, if any, to which the services will not be provided in a natural environment;

[(6) the projected dates for initiation of services and the anticipated duration of the services;

[(7) the identification of the service coordinator from the profession most immediately relevant to the infant's or toddler's or family's needs (or who is otherwise qualified to carry out all applicable responsibilities under this part) who will be responsible for the implementation of the plan and coordination with other agencies and persons; and

[(8) the steps to be taken to support the transition of the toddler with a disability to preschool or other appropriate services.

[(e) **PARENTAL CONSENT.**—The contents of the individualized family service plan shall be fully explained to the parents and informed written consent from the parents shall be obtained prior to the provision of early intervention services described in such plan. If the parents do not provide consent with respect to a particular early intervention service, then the early intervention services to which consent is obtained shall be provided.

**[SEC. 637 STATE APPLICATION AND ASSURANCES.**

[(a) **APPLICATION.**—A State desiring to receive a grant under section 633 shall submit an application to the Secretary at such time and such manner as the Secretary may reasonably require. The application shall contain—

[(1) a designation of the lead agency in the State that will be responsible for the administration of funds provided under section 633;

[(2) a designation of an individual or entity responsible for assigning financial responsibility among appropriate agencies;

[(3) information demonstrating eligibility of the State under section 634, including—

[(A) information demonstrating to the Secretary's satisfaction that the State has in effect the statewide system required by section 633; and

[(B) a description of services to be provided to infants and toddlers with disabilities and their families through the system;

[(4) if the State provides services to at-risk infants and toddlers through the system, a description of such services;

[(5) a description of the uses for which funds will be expended in accordance with this part;

[(6) a description of the procedure used to ensure that resources are made available under this part for all geographic areas within the State;

[(7) a description of State policies and procedures that ensure that, prior to the adoption by the State of any other policy or procedure necessary to meet the requirements of this part, there are public hearings, adequate notice of the hearings, and an opportunity for comment available to the general public, including individuals with disabilities and parents of infants and toddlers with disabilities;

[(8) a description of the policies and procedures to be used—

[(A) to ensure a smooth transition for toddlers receiving early intervention services under this part to preschool or other appropriate services, including a description of how—

[(i) the families of such toddlers will be included in the transition plans required by subparagraph (C); and

[(ii) the lead agency designated or established under section 635(a)(10) will—

[(I) notify the local educational agency for the area in which such a child resides that the child will shortly reach the age of eligibility for preschool services under part B, as determined in accordance with State law;

[(II) in the case of a child who may be eligible for such preschool services, with the approval of the family of the child, convene a conference among the lead agency, the family, and the local educational agency at least 90 days (and at the discretion of all such parties, up to 6 months) before the child is eligible for the preschool services, to discuss any such services that the child may receive; and

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

[(B) to review the child's program options for the period from the child's third birthday through the remainder of the school year; and



- [(C) to establish a transition plan; and
- [(9) such other information and assurances as the Secretary may reasonably require.
- [(b) ASSURANCES.—The application described in subsection (a)—
- [(1) shall provide satisfactory assurance that Federal funds made available under section 643 to the State will be expanded in accordance with this part;
- [(2) shall contain an assurance that the State will comply with the requirements of section 640;
- [(3) shall provide satisfactory assurance that the control of funds provided under section 643, and title to property derived from those funds, will be in a public agency for the uses and purposes provided in this part and that a public agency will administer such funds and property;
- [(4) shall provide for—
- [(A) making such reports in such form and containing such information as the Secretary may require to carry out the Secretary's functions under this part; and
- [(B) keeping such records and affording such access to correctness and verification of those reports and proper disbursement of Federal funds under this part;
- [(5) provide satisfactory assurance that Federal funds made available under section 643 to the State—
- [(A) will not be commingled with State funds; and
- [(B) will be used so as to supplement the level of State and local funds expended for infants and toddlers with disabilities and their families and in no case to supplant those State and local funds;
- [(6) shall provide satisfactory assurance that such fiscal control and fund accounting procedures will be adopted as may be necessary to ensure proper disbursement of, and accounting for, Federal funds paid under section 643 to the State;
- [(7) shall provide satisfactory assurance that policies and procedures have been adopted to ensure meaningful involvement of underserved groups, including minority, low-income, and rural families, in the planning and implementation of all the requirements of this part; and
- [(8) shall contain such other information and assurances as the Secretary may reasonably require by regulation.
- [(c) STANDARD FOR DISAPPROVAL OF APPLICATION.—The Secretary may not disapprove such an application unless the Secretary determines, after notice and opportunity for a hearing, that the application fails to comply with the requirements of this section.
- [(d) SUBSEQUENT STATE APPLICATION.—If a State has on file with the Secretary a policy, procedure, or assurance that demonstrates that the State meets a requirement of this section, including any policy or procedure filed under part H (as in effect before July 1, 1998), the Secretary shall consider the State to have met the requirement for purposes of receiving a grant under this part.
- [(e) MODIFICATION OF APPLICATION.—An application submitted by a State in accordance with this section shall remain in effect until the State submits to the Secretary such modifications as the State determines necessary. This section shall apply to a modifica-

tion of an application to the same extent and in the same manner as this section applies to the original application.

**[(f) MODIFICATIONS REQUIRED BY THE SECRETARY.**—The Secretary may require a State to modify its application under this section, but only to the extent necessary to ensure that State’s compliance with this part, if—

**[(1)** an amendment is made to this Act, or a Federal regulation issued under this Act;

**[(2)** a new interpretation of this Act is made by a Federal court or the State’s highest court; or

**[(3)** an official finding of noncompliance with Federal law or regulations is made with respect to the State.

**[SEC. 638. USES OF FUNDS.**

**[In addition to using funds provided under section 633 to maintain and implement the statewide system required by such section, a State may use such funds—**

**[(1)** for direct early intervention services for infants and toddlers with disabilities, and their families, under this part that are not otherwise funded through other public or private sources;

**[(2)** to expand and improve on services for infants and toddlers and their families under this part are otherwise available;

**[(3)** to provide a free appropriate public education, in accordance with part B, to children with disabilities from their third birthday to the beginning of the following school year; and

**[(4)** in any State that does not provide services for at-risk infants and toddlers under section 637(a)(4), to strengthen the statewide system by initiating, expanding, or improving collaborative efforts related to at-risk infants and toddlers, including establishing linkages with appropriate public or private community-based organizations, services, and personnel for the purposes of—

**[(A)** identifying and evaluating at-risk infants and toddlers;

**[(B)** making referrals of the infants and toddlers identified and evaluated under subparagraph (A); and

**[(C)** conducting periodic follow-up on each such referral to determine if the status of the infant or toddler involved has changed with respect to the eligibility of the infant or toddler for service under this part.

**SEC. 639. PROCEDURAL SAFEGUARDS.**

**[(a) MINIMUM PROCEDURES.**—The procedural safeguards required to be included in a statewide system under section 635(a)(13) shall provide, at a minimum, the following:

**[(1)** The timely administrative resolution of complaints by parents. Any party aggrieved by the findings and decision regarding an administrative complaint shall have the right to bring a civil action with respect to the complaint in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy. In any action brought under this paragraph, the court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and, basing its

decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.

[(2) The right to confidentiality of personally identifiable information, including the right of parents to written notice of and written consent to the exchange of such information among agencies consistent with Federal and State law.

[(3) The right of the parents to determine whether they, their infant or toddler, or other family members will accept or decline any early intervention service under this part in accordance with State law without jeopardizing other early intervention services under this part.

[(4) The opportunity for parents to examine records relating to assessment, screening, eligibility determinations, and the development and implementation of the individualized family service plan.

[(5) Procedures to protect the rights of the infant or toddler whenever the parents of the infant or toddler are not known or cannot be found or the infant or toddler is a ward of the State, including the assignment of an individual (who shall not be an employee of the State lead agency, or other State agency, and who shall not be any person, or any employee of a person, providing early intervention services to the infant or toddler or any family member of the infant or toddler) to act as a surrogate for the parents.

[(6) Written prior notice to the parents of the infant or toddler with a disability whenever the State agency or service provider proposed to initiate or change or refuses to initiate or change the identification, evaluation, or placement of the infant or toddler with a disability, or the provision of appropriate early intervention services to the infant or toddler.

[(7) Procedures designed to ensure that the notice required by paragraph (6) fully informs the parents, in the parents' native language, unless it clearly is not feasible to do so, of all procedures available pursuant to this section.

[(8) The right of parents to use mediation in accordance with section 615(e), except that—

[(A) any reference in the section to a State educational agency shall be considered to be a reference to a State's lead agency established or designated under section 635(a)(10);

[(B) any reference in the section to a local educational agency shall be considered to be a reference to a local service provider or the State's lead agency under this part, as the case may be; and

[(C) any reference in the section to the provision of free appropriate public education to children with disabilities shall be considered to be a reference to the provision of appropriate early intervention services to infants and toddler with disabilities.

[(b) SERVICES DURING PENDENCY OF PROCEEDINGS.—During the pendency of any proceeding or action involving a complaint by the parents of an infant or toddler with a disability, unless the State agency and the parents otherwise agree, the infant or toddler shall continue to receive the appropriate early intervention service cur-

rently being provided or, if applying for initial services, shall receive the services not in dispute.

**SEC. 640. PAYOR OF LAST RESORT.**

[(a) NONSUBSTITUTION.—Funds provided under section 643 may not be used to satisfy a financial commitment for services that would have been paid for from another public or private source, including any medical program administered by the Secretary of Defense, but for the enactment of this part, except that whenever considered necessary to prevent a delay in the receipt of appropriate early intervention services by an infant, toddler, or family in a timely fashion, funds provided under section 643 may be used to pay the provider of services pending reimbursement from the agency that has ultimate responsibility for the payment.

[REDUCTION OF OTHER BENEFITS.—Nothing in this part shall be construed to permit the State to reduce medical or other assistance available or to alter eligibility under title V of the Social Security Act (relating to maternal and child health) or title XIX of the Social Security Act (relating to Medicaid for infants or toddlers with disabilities) within the State.

**[SEC. 641. STATE INTERAGENCY COORDINATING COUNCIL.**

[(a) ESTABLISHMENT.—

[(1) IN GENERAL.—A State that desires to receive financial assistance under this part shall establish a State interagency coordinating council.

[(2) APPOINTMENT.—The council shall be appointed by the Governor. In making appointments to the council, the Governor shall ensure that the membership of the council reasonably represents the population of the State.

[(3) CHAIRPERSON.—The Governor shall designate a member of the council to serve as the chairperson of the council, or shall require the council to so designate such a member. Any member of the council who is a representative of the lead agency designated under section 635(a)(10) may not serve as the chairperson of the council.

[(b) COMPOSITION.—

[(1) IN GENERAL.—The council shall be composed as follows:

[(A) PARENTS.—At least 20 percent of the members shall be parents of infants or toddlers with disabilities or children with disabilities aged 12 or younger, with knowledge of, or experience with, programs for infants and toddlers with disabilities. At least one such member shall be a parent of an infant or toddler with a disability or a child with a disability aged 6 or younger.

[(B) SERVICE PROVIDERS.—At least 20 percent of the members shall be public or private providers of early intervention services.

[(C) STATE LEGISLATURE.—At least one member shall be from the State legislature.

[(D) PERSONNEL PREPARATION.—At least one member shall be involved in personnel preparation.

[(E) AGENCY FOR EARLY INTERVENTION SERVICES.—At least one member shall be from each of the State agencies involved in the provision of, or payment for, early intervention services to infants and toddlers with disabilities and

their families and shall have sufficient authority to engage in policy planning and implementation on behalf of such agencies.

[(F) AGENCY FOR PRESCHOOL SERVICES.—At least one member shall be from the State educational agency responsible for preschool services to children with disabilities and shall have sufficient authority to engage in policy planning and implementation on behalf of such agency.

[(G) AGENCY FOR HEALTH INSURANCE.—At least one member shall be from the agency responsible for the State governance of health insurance.

[(H) HEAD START AGENCY.—At least one representative from a Head Start agency or program in the State.

[(I) CHILD CARE AGENCY.—At least one representative from a State agency responsible for child care.

[(2) OTHER MEMBERS.—The council may include other members selected by the Governor, including a representative from the Bureau of Indian Affairs, or where there is no BIA-operated or BIA-funded school, from the Indian Health Service or the tribe or tribal council.

[(c) MEETINGS.—The council shall meet at least quarterly and in such places as it deems necessary. The meetings shall be publicly announced, and, to the extent appropriate, open and accessible to the general public.

[(d) MANAGEMENT AUTHORITY.—Subject to the approval of the Governor, the council may prepare and approve a budget using funds under this part to conduct hearings and forums, to reimburse members of the council for reasonable and necessary expenses for attending council meetings and performing council duties (including child care for parent representatives), to pay compensation to a member of the council if the member is not employed or must forfeit wages from other employment when performing official council business, to hire staff, and to obtain the services of such professional, technical, and clerical personnel as may be necessary to carry out its functions under this part.

[(e) FUNCTIONS OF COUNCIL.—

[(1) DUTIES.—The council shall—

[(A) advise and assist the lead agency designated or established under section 635(a)(10) in the performance of the responsibilities set forth in such section, particularly the identification of the sources of fiscal and other support for services for early intervention programs, assignment of financial responsibility to the appropriate agency, and the promotion of the interagency agreements;

[(B) advise and assist the lead agency in the preparation of applications and amendments thereto;

[(C) advise and assist the State educational agency regarding the transition of toddlers with disabilities to preschool and other appropriate services; and

[(D) prepare and submit an annual report to the Governor and to the Secretary on the status of early intervention programs for infants and toddlers with disabilities and their families operated within the State.

[(2) AUTHORIZED ACTIVITY.—The council may advise and assist the lead agency and the State educational agency regard-

ing the provision of appropriate services for children from birth through age 5. The council may advise appropriate agencies in the State with respect to the integration of services for infants and toddlers with disabilities and at-risk infants and toddlers and their families, regardless of whether at-risk infants and toddlers are eligible for early intervention services in the State.

[(f) CONFLICT OF INTEREST.—No member of the council shall cast a vote on any matter that would provide direct financial benefit to that member or otherwise give the appearance of a conflict of interest under State law.

**[SEC. 642. FEDERAL ADMINISTRATION.**

[Sections 616, 617, and 618 shall, to the extent not inconsistent with this part, apply to the program authorized by this part, except that—

[(1) any reference in such sections to a State educational agency shall be considered to be a reference to a State's lead agency established or designated under section 635(a)(10);

[(2) any reference in such sections to a local educational agency, educational service agency, or a State agency shall be considered to be a reference to an early intervention service provider under this part; and

[(3) any reference to the education of children with disabilities or the education of all children with disabilities shall be considered to be a reference to the provision of appropriate early intervention services to infants and toddlers with disabilities.

**[SEC. 643. ALLOCATIONS OF FUNDS.**

[(a) RESERVATION OF FUNDS FOR OUTLYING AREAS.—

[(1) IN GENERAL.—From the sums appropriated to carry out this part for any fiscal year, the Secretary may reserve up to one percent for payments to Guam, American Samoa, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands in accordance with their respective needs.

[(2) CONSOLIDATION OF FUNDS.—The provisions of Public Law 95-134, permitting the consolidation of grants to the outlying areas, shall not apply to funds those areas receive under this part.

[(b) PAYMENTS TO INDIANS.—

[(1) IN GENERAL.—The Secretary shall, subject to this subsection, make payments to the Secretary of the Interior to be distributed to tribes, tribal organizations (as defined under section 4 of the Indian Self-Determination and Education Assistance Act), or consortia of the above entities for the coordination of assistance in the provision of early intervention services by the States to infants and toddlers with disabilities and their families on reservations served by elementary and secondary schools for Indian children operated or funded by the Department of the Interior. The amount of such payment for any fiscal year shall be 1.25 percent of the aggregate of the amount available to all States under this part for such fiscal year.

[(2) ALLOCATION.—For each fiscal year, the Secretary of the Interior shall distribute the entire payment received under paragraph (1) by providing to each tribe, tribal organization, or consortium an amount based on the number of infants and tod-

dlers residing on the reservation, as determined annually, divided by the total of such children served by all tribes, tribal organizations, or consortia.

[(3) INFORMATION.—To receive a payment under this subsection, the tribe, tribal organization, or consortium shall submit such information to the Secretary of the Interior as is needed to determine the amounts to be distributed under paragraph (2).

[(4) USE OF FUNDS.—The funds received by a tribe, tribal organization, or consortium shall be used to assist States in child find, screening, and other procedures for the early identification of Indian children under 3 years of age and for parent training. Such funds may also be used to provide early intervention services in accordance with this part. Such activities may be carried out directly or through contracts or cooperative agreements with the BIA, local educational agencies, and other public or private nonprofit organizations. The tribe, tribal organization, or consortium is encouraged to involve Indian parents in the development and implementation of these activities. The above entities shall, as appropriate, make referrals to local State, or Federal entities for the provision of services or further diagnosis.

[(5) REPORTS.—To be eligible to receive a grant under paragraph (2), a tribe, tribal organization, or consortium shall make a biennial report to the Secretary of the Interior of activities undertaken under this subsection, including the number of contracts and cooperative agreements entered into, the number of children contacted and receiving services for each year, and the estimated number of children needing services during the 2 years following the year in which the report is made. The Secretary of the Interior shall include a summary of this information on a biennial basis to the Secretary of Education along with such other information as required under section 611(i)(3)(E). The Secretary of Education may require any additional information from the Secretary of the Interior.

[(6) PROHIBITED USES OF FUNDS.—None of the funds under this subsection may be used by the Secretary of the Interior for administrative purposes, including child count, and the provision of technical assistance.

[(c) STATE ALLOTMENTS.—

[(1) IN GENERAL.—Except as provided in paragraphs (2), (3), and (4), from the funds remaining for each fiscal year after the reservation and payments under subsections (a) and (b), the Secretary shall first allot to each State an amount that bears the same ratio to the amount of such remainder as the number of infants and toddlers in the State bears to the number of infants and toddlers in all States.

[(2) MINIMUM ALLOTMENTS.—Except as provided in paragraphs (3) and (4), no State shall receive an amount under this section for any fiscal year that is less than the greatest of—

[(A) one-half of one percent of the remaining amount described in paragraph (1); or

[(B) \$500,000.

[(3) SPECIAL RULE FOR 1998 AND 1999.—

[(A) IN GENERAL.—Except as provided in paragraph (4), no State may receive an amount under this section for either fiscal year 1998 or 1999 that is less than the sum of the amounts such State received for fiscal year 1994 under—

[(i) part H (as in effect for such fiscal year); and

[(ii) subpart 2 of part D of chapter 1 of title I of the Elementary and Secondary Education Act of 1965 (as in effect on the day before the date of the enactment of the Improving America's Schools Act of 1994) for children with disabilities under 3 years of age.

[(B) EXCEPTION.—If, for fiscal year 1998 or 1999, the number of infants and toddlers in a State, as determined under paragraph (1), is less than the number of infants and toddlers so determined for fiscal year 1994, the amount determined under subparagraph (A) for the State shall be reduced by the same percentage by which the number of such infants and toddlers so declined.

[(4) RATABLY REDUCTION.—

[(A) IN GENERAL.—If the sums made available under this part for any fiscal year are insufficient to pay the full amounts that all States are eligible to receive under this subsection for such year, the Secretary shall ratably reduce the allotments to such States for such year.

[(B) ADDITIONAL FUNDS.—If additional funds become available for making payments under this subsection for a fiscal year, allotments that were reduced under subparagraph (A) shall be increased on the same basis they were reduced.

[(5) DEFINITIONS.—For the purpose of this subsection—

[(A) the terms “infants” and “toddlers” mean children under 3 years of age; and

[(B) the term “State” means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

[(d) REALLOTMENT OF FUNDS.—If a State elects not to receive its allotment under subsection (c), the Secretary shall reallocate, among the remaining States, amounts from such State in accordance with such subsection.

**[SEC. 644. FEDERAL INTERAGENCY COORDINATING COUNCIL.**

[(a) ESTABLISHMENT AND PURPOSE.—

[(1) IN GENERAL.—The Secretary shall establish a Federal Interagency Coordinating Council in order to—

[(A) minimize duplication of programs and activities across Federal, State, and local agencies, relating to—

[(i) early intervention services for infants and toddlers with disabilities (including at-risk infants and toddlers) and their families; and

[(ii) preschool or other appropriate services for children with disabilities;

[(B) ensure the effective coordination of Federal early intervention and preschool programs and policies across Federal agencies;

[(C) coordinate the provision of Federal technical assistance and support activities to States;



[(D) identify gaps in Federal agency programs and services; and

[(E) identify barriers to Federal interagency cooperation.

[(2) APPOINTMENTS.—The council established under paragraph (1) (hereafter in this section referred to as the “Council”) and the chairperson of the Council shall be appointed by the Secretary in consultation with other appropriate Federal agencies. In making the appointments, the Secretary shall ensure that each member has sufficient authority to engage in policy planning and implementation on behalf of the department, agency, or program that the member represents.

[(b) COMPOSITION.—The Council shall be composed of—

[(1) a representative of the Office of Special Education Programs;

[(2) a representative of the National Institute on Disability and Rehabilitation Research and a representative of the Office of Educational Research and Improvement;

[(3) a representative of the Maternal and Child Health Services Block Grant Program;

[(4) a representative of programs administered under the Developmental Disabilities Assistance and Bill of Rights Act of 2000;

[(5) a representative of the Health Care Financing Administration;

[(6) a representative of the Division of Birth Defects and Developmental Disabilities of the Centers for Disease Control;

[(7) a representative of the Social Security Administration;

[(8) a representative of the special supplemental nutrition program for women, infants, and children of the Department of Agriculture;

[(9) a representative of the National Institute of Mental Health;

[(10) a representative of the National Institute of Child Health and Human Development;

[(11) a representative of the Bureau of Indian Affairs of the Department of the Interior;

[(12) a representative of the Indian Health Service;

[(13) a representative of the Surgeon General;

[(14) a representative of the Department of Defense;

[(15) a representative of the Children’s Bureau, and a representative of the Head Start Bureau, of the Administration for Children and Families;

[(16) a representative of the Substance Abuse and Mental Health Services Administration;

[(17) a representative of the Pediatric AIDS Health Care Demonstration Program in the Public Health Service;

[(18) parents of children with disabilities age 12 or under (who shall constitute at least 20 percent of the members of the Council) of whom at least one must have a child with a disability under the age of 6;

[(19) at least two representatives of State lead agencies for early intervention services to infants and toddlers, one of whom must be a representative of a State educational agency and the other a representatives of a non-educational agency;

[(20) other members representing appropriate agencies involved in the provision of, or payment for, early intervention services and special education and related services to infants and toddlers with disabilities and their families and preschool children with disabilities; and

[(21) other persons appointed by the Secretary.

[(c) MEETINGS.—The Council shall meet at least quarterly and in such places as the Council deems necessary. The meetings shall be publicly announced, and, to the extent appropriate, open and accessible in the general public.

[(d) FUNCTIONS OF THE COUNCIL.—The Council shall—

[(1) advise and assist the Secretary of Education, the Secretary of Health and Human Services, the Secretary of Defense, the Secretary of the Interior, the Secretary of Agriculture, and the commissioner of Social Security in the performance of their responsibilities related to serving children from birth through age 5 who are eligible for services under this part or under part B;

[(2) conduct policy analyses of Federal programs related to the provision of early intervention services and special educational and related services to infants and toddlers with disabilities and their families, and preschool children with disabilities, in order to determine areas of conflict, overlap, duplication, or inappropriate omission;

[(3) identify strategies to address issues described in paragraph (2);

[(4) develop and recommend joint policy memoranda concerning effective interagency collaboration, including modifications to regulations, and the elimination of barriers to interagency programs and activities;

[(5) coordinate technical assistance and disseminate information on best practices, effective program coordination strategies, and recommendations for improved early intervention programming for infants and toddlers with disabilities and their families and preschool children with disabilities; and

[(6) facilitate activities in support of States' interagency coordination efforts.

[(e) CONFLICT OF INTEREST.—No member of the Council shall cast a vote on any matter that would provide direct financial benefit to that member or otherwise give the appearance of a conflict of interest under Federal law.

[(f) FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the establishment or operation of the Council.】

## **PART C—INFANTS AND TODDLERS WITH DISABILITIES**

### **SEC. 631. FINDINGS AND POLICY.**

(a) *FINDINGS.*—Congress finds that there is an urgent and substantial need—

(1) *to enhance the development of infants and toddlers with disabilities, to minimize their potential for developmental delay,*

and to recognize the significant brain development which occurs during a child's first 3 years of life;

(2) to reduce the educational costs to our society, including our Nation's schools, by minimizing the need for special education and related services after infants and toddlers with disabilities reach school age;

(3) to maximize the potential for individuals with disabilities to live independently in society;

(4) to enhance the capacity of families to meet the special needs of their infants and toddlers with disabilities; and

(5) to enhance the capacity of State and local agencies and service providers to identify, evaluate, and meet the needs of all children, particularly minority, low-income, inner city, and rural children.

(b) **POLICY.**—It is the policy of the United States to provide financial assistance to States—

(1) to develop and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system that provides early intervention services for infants and toddlers with disabilities and their families;

(2) to facilitate the coordination of payment for early intervention services from Federal, State, local, and private sources (including public and private insurance coverage);

(3) to enhance State capacity to provide high quality early intervention services and expand and improve existing early intervention services being provided to infants and toddlers with disabilities and their families; and

(4) to encourage States to expand opportunities for children under 3 years of age who would be at risk of having substantial developmental delay if they did not receive early intervention services.

**SEC. 632. DEFINITIONS.**

As used in this part:

(1) **AT-RISK INFANT OR TODDLER.**—The term “at-risk infant or toddler” means an individual under 3 years of age who would be at risk of experiencing a substantial developmental delay if early intervention services were not provided to the individual.

(2) **COUNCIL.**—The term “council” means a State interagency coordinating council established under section 641.

(3) **DEVELOPMENTAL DELAY.**—The term “developmental delay”, when used with respect to an individual residing in a State, has the meaning given such term by the State under section 635(a)(1).

(4) **EARLY INTERVENTION SERVICES.**—The term “early intervention services” means developmental services that—

(A) are provided under public supervision;

(B) are provided at no cost except where Federal or State law provides for a system of payments by families, including a schedule of sliding fees;

(C) are designed to meet the developmental needs of an infant or toddler with a disability in any 1 or more of the following areas:

(i) physical development;

(ii) cognitive development;

(iii) communication development;

- (iv) *social or emotional development; or*
  - (v) *adaptive development;*
  - (D) *meet the standards of the State in which the services are provided, including the requirements of this part;*
  - (E) *include—*
    - (i) *family training, counseling, and home visits;*
    - (ii) *special instruction;*
    - (iii) *speech-language pathology and audiology services, and sign language and cued language services;*
    - (iv) *occupational therapy;*
    - (v) *physical therapy;*
    - (vi) *psychological services;*
    - (vii) *service coordination services;*
    - (viii) *medical services only for diagnostic or evaluation purposes;*
    - (ix) *early identification, screening, and assessment services;*
    - (x) *health services necessary to enable the infant or toddler to benefit from the other early intervention services;*
    - (xi) *social work services;*
    - (xii) *vision services;*
    - (xiii) *assistive technology devices and assistive technology services; and*
    - (xiv) *transportation and related costs that are necessary to enable an infant or toddler and the infant's or toddler's family to receive another service described in this paragraph;*
  - (F) *are provided by qualified personnel, including—*
    - (i) *special educators;*
    - (ii) *speech-language pathologists and audiologists;*
    - (iii) *teachers of the deaf;*
    - (iv) *occupational therapists;*
    - (v) *physical therapists;*
    - (vi) *psychologists;*
    - (vii) *social workers;*
    - (viii) *nurses;*
    - (ix) *nutritionists;*
    - (x) *family therapists;*
    - (xi) *orientation and mobility specialists;*
    - (xii) *vision specialists, including ophthalmologists and optometrists; and*
    - (xiii) *pediatricians and other physicians;*
  - (G) *to the maximum extent appropriate, are provided in natural environments, including the home, and community settings in which children without disabilities participate; and*
  - (H) *are provided in conformity with an individualized family service plan adopted in accordance with section 636.*
- (5) **INFANT OR TODDLER WITH A DISABILITY.**—*The term “infant or toddler with a disability”—*
- (A) *means an individual under 3 years of age who needs early intervention services because the individual—*
    - (i) *is experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures*

*in 1 or more of the areas of cognitive development, physical development, communication development, social or emotional development, and adaptive development; or*

*(ii) has a diagnosed physical or mental condition which has a high probability of resulting in developmental delay; and*

*(B) may also include, at a State's discretion—*

*(i) at-risk infants and toddlers; and*

*(ii) children with disabilities who are eligible for services under section 619 and who previously received services under this part until such children enter, or are eligible under State law to enter, kindergarten.*

**SEC. 633. GENERAL AUTHORITY.**

*The Secretary shall, in accordance with this part, make grants to States (from their allotments under section 643) to assist each State to maintain and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system to provide early intervention services for infants and toddlers with disabilities and their families.*

**SEC. 634. ELIGIBILITY.**

*In order to be eligible for a grant under section 633, a State shall demonstrate to the Secretary that the State—*

*(1) has adopted a policy that appropriate early intervention services are available to all infants and toddlers with disabilities in the State and their families, including Indian infants and toddlers with disabilities and their families residing on a reservation geographically located in the State; and*

*(2) has in effect a statewide system that meets the requirements of section 635.*

**SEC. 635. REQUIREMENTS FOR STATEWIDE SYSTEM.**

*(a) IN GENERAL.—A statewide system described in section 633 shall include, at a minimum, the following components:*

*(1) A definition of the term 'developmental delay' that—*

*(A) will be used by the State in carrying out programs under this part; and*

*(B) covers, at a minimum, all infants and toddlers with—*

*(i) a developmental delay of 35 percent or more in 1 of the developmental areas described in section 632(5)(A)(i); or*

*(ii) a developmental delay of 25 percent or more in 2 or more of the developmental areas described in section 632(5)(A)(i).*

*(2) A State policy that is in effect and that ensures that appropriate early intervention services are available to all infants and toddlers with disabilities and their families, including Indian infants and toddlers and their families residing on a reservation geographically located in the State.*

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

(4) *For each infant or toddler with a disability in the State, an individualized family service plan in accordance with section 636, including service coordination services in accordance with such service plan.*

(5) *A comprehensive child find system, consistent with part B, including a system for making referrals to service providers that includes timelines and provides for participation by primary referral sources.*

(6) *A public awareness program focusing on early identification of infants and toddlers with disabilities, including the preparation and dissemination by the lead agency designated or established under paragraph (10) to all primary referral sources, especially hospitals and physicians, of information for parents on the availability of early intervention services, and procedures for determining the extent to which such sources disseminate such information to parents of infants and toddlers.*

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

(8) *A comprehensive system of personnel development, including the training of paraprofessionals and the training of primary referral sources with respect to the basic components of early intervention services available in the State, which comprehensive system may include—*

*(A) implementing innovative strategies and activities for the recruitment and retention of early education service providers;*

*(B) promoting the preparation of early intervention providers who are fully and appropriately qualified to provide early intervention services under this part;*

*(C) training personnel to work in rural and inner-city areas; and*

*(D) training personnel to coordinate transition services for infants and toddlers served under this part from an early intervention program under this part to preschool or other appropriate services.*

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

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

*(A) the general administration and supervision of programs and activities receiving assistance under section 633,*

*and the monitoring of programs and activities used by the State to carry out this part, whether or not such programs or activities are receiving assistance made available under section 633, to ensure that the State complies with this part;*

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

*(C) the assignment of financial responsibility in accordance with section 637(a)(2) to the appropriate agencies;*

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

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

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

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

*(12) A procedure for securing timely reimbursements of funds used under this part in accordance with section 640(a).*

*(13) Procedural safeguards with respect to programs under this part, as required by section 639.*

*(14) A system for compiling data requested by the Secretary under section 618 that relates to this part.*

*(15) A State interagency coordinating council that meets the requirements of section 641.*

*(16) Policies and procedures to ensure that, consistent with section 636(d)(5) to the maximum extent appropriate, early intervention services are provided in natural environments unless a specific outcome cannot be met satisfactorily for the infant or toddler in a natural environment.*

**(b) FLEXIBILITY TO SERVE CHILDREN 3 YEARS OF AGE TO UNDER 6 YEARS OF AGE.—**

*(1) IN GENERAL.—A statewide system described in section 633 may include a State policy, developed and implemented jointly by the lead agency and the State educational agency, under which parents of children with disabilities who are eligible for services under section 619 and previously received services under this part, may choose the continuation of early intervention services (which shall include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills) for such children under this part until such children enter, or are eligible under State law to enter, kindergarten.*

(2) *REQUIREMENTS.*—If a statewide system includes a State policy described in paragraph (1), the statewide system shall ensure—

(A) that parents of infants or toddlers with disabilities (as defined in section 632(5)(A)) provide informed written consent to the State, before such infants and toddlers reach 3 years of age, as to whether such parents intend to choose the continuation of early intervention services pursuant to this subsection for such infants or toddlers;

(B) that the State policy will not affect the right of any child served pursuant to this subsection to instead receive a free appropriate public education under part B;

(C) that parents of children served pursuant to this subsection are provided with annual notice—

(i) of such parents' right to elect services pursuant to this subsection or under part B; and

(ii) fully explaining the differences between receiving services pursuant to this subsection and receiving services under part B, including—

(I) the types of services available under both provisions;

(II) applicable procedural safeguards under both provisions, including due-process protections and mediation or other dispute resolution options; and

(III) the possible costs, if any (including any fees to be charged to families as described in section 632(4)(B)) to parents under both provisions;

(D) that the conference under section 637(a)(9)(A)(ii)(II), the review under section 637(a)(9)(B), and the establishment of a transition plan under section 637(a)(9)(C) occur not less than 90 days (and at the discretion of the parties to the conference, not more than 9 months) before each of the following:

(i) the time the child will first be eligible for services under part B, including under section 619; and

(ii) if the child is receiving services in accordance with this subsection, the time the child will no longer receive those services;

(E) the continuance of all early intervention services outlined in the child's individualized family service plan under section 636 while any eligibility determination is being made for services under this subsection;

(F) that services provided pursuant to this subsection include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills and are provided in accordance with an individualized family service plan under section 636; and

(G) the referral for evaluation for early intervention services of a child below the age of 3 who experiences a substantiated case of exposure to violence or trauma.

(3) *REPORTING REQUIREMENT.*—If a statewide system includes a State policy described in paragraph (1), the State shall submit to the Secretary, in the State's report under section 637(b)(4)(A), a report on—



(A) the percentage of children with disabilities who are eligible for services under section 619 but whose parents choose for such children to continue to receive early intervention services under this part; and

(B) the number of children who are eligible for services under section 619 who instead continue to receive early intervention services under this part.

(4) **RULE OF CONSTRUCTION.**—Nothing in this subsection shall be construed to require a provider of services under this part to provide a child served under this part with a free appropriate public education.

(5) **AVAILABLE FUNDS.**—If a statewide system includes a State policy described in paragraph (1), the policy shall describe the funds (including an identification as Federal, State, or local funds) that will be used to ensure that the option described in paragraph (1) is available to eligible children and families who provide the consent described in paragraph (2)(A), including fees to be charged to families as described in section 632(4)(B).

**SEC. 636. INDIVIDUALIZED FAMILY SERVICE PLAN.**

(a) **ASSESSMENT AND PROGRAM DEVELOPMENT.**—A statewide system described in section 633 shall provide, at a minimum, for each infant or toddler with a disability, and the infant's or toddler's family, to receive—

(1) a multidisciplinary assessment of the unique strengths and needs of the infant or toddler and the identification of services appropriate to meet such needs;

(2) a family-directed assessment of the resources, priorities, and concerns of the family and the identification of the supports and services necessary to enhance the family's capacity to meet the developmental needs of the infant or toddler; and

(3) a written individualized family service plan developed by a multidisciplinary team, including the parents, as required by subsection (e), including a description of the appropriate transition services for the child.

(b) **PERIODIC REVIEW.**—The individualized family service plan shall be evaluated once a year and the family shall be provided a review of the plan at 6-month intervals (or more often where appropriate based on infant or toddler and family needs).

(c) **PROMPTNESS AFTER ASSESSMENT.**—The individualized family service plan shall be developed within a reasonable time after the assessment required by subsection (a)(1) is completed. With the parents' consent, early intervention services may commence prior to the completion of the assessment.

(d) **CONTENT OF PLAN.**—The individualized family service plan shall be in writing and contain—

(1) a statement of the infant's or toddler's present levels of physical development, cognitive development, communication development, social or emotional development, and adaptive development, based on objective criteria;

(2) a statement of the family's resources, priorities, and concerns relating to enhancing the development of the family's infant or toddler with a disability;

(3) a statement of the measurable outcomes expected to be achieved for the infant or toddler and the family, including, as appropriate, preliteracy and language skills, and the criteria,

*procedures, and timelines used to determine the degree to which progress toward achieving the outcomes is being made and whether modifications or revisions of the outcomes or services are necessary;*

*(4) a statement of specific early intervention services necessary to meet the unique needs of the infant or toddler and the family, including the frequency, intensity, and method of delivering services;*

*(5) a statement of the natural environments in which early intervention services will appropriately be provided, including a justification of the extent, if any, to which the services will not be provided in a natural environment;*

*(6) the projected dates for initiation of services and the anticipated length, duration, and frequency of the services;*

*(7) the identification of the service coordinator from the profession most immediately relevant to the infant's or toddler's or family's needs (or who is otherwise qualified to carry out all applicable responsibilities under this part) who will be responsible for the implementation of the plan and coordination with other agencies and persons, including transition services; and*

*(8) the steps to be taken to support the transition of the toddler with a disability to preschool or other appropriate services.*

*(e) PARENTAL CONSENT.—The contents of the individualized family service plan shall be fully explained to the parents and informed written consent from the parents shall be obtained prior to the provision of early intervention services described in such plan. If the parents do not provide consent with respect to a particular early intervention service, then only the early intervention services to which consent is obtained shall be provided.*

**SEC. 637. STATE APPLICATION AND ASSURANCES.**

*(a) APPLICATION.—A State desiring to receive a grant under section 633 shall submit an application to the Secretary at such time and in such manner as the Secretary may reasonably require. The application shall contain—*

*(1) a designation of the lead agency in the State that will be responsible for the administration of funds provided under section 633;*

*(2) a certification to the Secretary that the arrangements to establish financial responsibility for services provided under this part pursuant to section 640(b) are current as of the date of submission of the certification;*

*(3) information demonstrating eligibility of the State under section 634, including—*

*(A) information demonstrating to the Secretary's satisfaction that the State has in effect the statewide system required by section 633; and*

*(B) a description of services to be provided to infants and toddlers with disabilities and their families through the system;*

*(4) if the State provides services to at-risk infants and toddlers through the system, a description of such services;*

*(5) a description of the uses for which funds will be expended in accordance with this part;*

(6) a description of the State policies and procedures that require the referral for evaluation for early intervention services of a child under the age of 3 who—

(A) is involved in a substantiated case of child abuse or neglect; or

(B) is identified as affected by illegal substance abuse, or withdrawal symptoms resulting from prenatal drug exposure;

(7) a description of the procedure used to ensure that resources are made available under this part for all geographic areas within the State;

(8) a description of State policies and procedures that ensure that, prior to the adoption by the State of any other policy or procedure necessary to meet the requirements of this part, there are public hearings, adequate notice of the hearings, and an opportunity for comment available to the general public, including individuals with disabilities and parents of infants and toddlers with disabilities;

(9) a description of the policies and procedures to be used—

(A) to ensure a smooth transition for toddlers receiving early intervention services under this part (and children receiving those services under section 635(b)) to preschool, other appropriate services, or exiting the program, including a description of how—

(i) the families of such toddlers and children will be included in the transition plans required by subparagraph (C); and

(ii) the lead agency designated or established under section 635(a)(10) will—

(I) notify the local educational agency for the area in which such a child resides that the child will shortly reach the age of eligibility for preschool services under part B, as determined in accordance with State law;

(II) in the case of a child who may be eligible for such preschool services, with the approval of the family of the child, convene a conference among the lead agency, the family, and the local educational agency at least 90 days (and at the discretion of all such parties, not more than 9 months) before the child is eligible for the preschool services, to discuss any such services that the child may receive; and

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

(B) to review the child's program options for the period from the child's third birthday through the remainder of the school year; and

- (C) to establish a transition plan, including, as appropriate, steps to exit from the program; and
- (10) such other information and assurances as the Secretary may reasonably require.
- (b) ASSURANCES.—The application described in subsection (a)—
- (1) shall provide satisfactory assurance that Federal funds made available under section 643 to the State will be expended in accordance with this part;
- (2) shall contain an assurance that the State will comply with the requirements of section 640;
- (3) shall provide satisfactory assurance that the control of funds provided under section 643, and title to property derived from those funds, will be in a public agency for the uses and purposes provided in this part and that a public agency will administer such funds and property;
- (4) shall provide for—
- (A) making such reports in such form and containing such information as the Secretary may require to carry out the Secretary's functions under this part; and
- (B) keeping such reports and affording such access to the reports as the Secretary may find necessary to ensure the correctness and verification of the reports and proper disbursement of Federal funds under this part;
- (5) provide satisfactory assurance that Federal funds made available under section 643 to the State—
- (A) will not be commingled with State funds; and
- (B) will be used so as to supplement the level of State and local funds expended for infants and toddlers with disabilities and their families and in no case to supplant those State and local funds;
- (6) shall provide satisfactory assurance that such fiscal control and fund accounting procedures will be adopted as may be necessary to ensure proper disbursement of, and accounting for, Federal funds paid under section 643 to the State;
- (7) shall provide satisfactory assurance that policies and procedures have been adopted to ensure meaningful involvement of underserved groups, including minority, low-income, and rural families, in the planning and implementation of all the requirements of this part; and
- (8) shall contain such other information and assurances as the Secretary may reasonably require by regulation.
- (c) STANDARD FOR DISAPPROVAL OF APPLICATION.—The Secretary may not disapprove such an application unless the Secretary determines, after notice and opportunity for a hearing, that the application fails to comply with the requirements of this section.
- (d) SUBSEQUENT STATE APPLICATION.—If a State has on file with the Secretary a policy, procedure, or assurance that demonstrates that the State meets a requirement of this section, including any policy or procedure filed under part C, as in effect before the date of enactment of the Individuals with Disabilities Education Improvement Act of 2003, the Secretary shall consider the State to have met the requirement for purposes of receiving a grant under this part.
- (e) MODIFICATION OF APPLICATION.—An application submitted by a State in accordance with this section shall remain in effect until

the State submits to the Secretary such modifications as the State determines necessary. This section shall apply to a modification of an application to the same extent and in the same manner as this section applies to the original application.

(f) **MODIFICATIONS REQUIRED BY THE SECRETARY.**—The Secretary may require a State to modify its application under this section, but only to the extent necessary to ensure the State's compliance with this part, if—

(1) an amendment is made to this Act, or a Federal regulation issued under this Act;

(2) a new interpretation of this Act is made by a Federal court or the State's highest court; or

(3) an official finding of noncompliance with Federal law or regulations is made with respect to the State.

**SEC. 638. USES OF FUNDS.**

In addition to using funds provided under section 633 to maintain and implement the statewide system required by such section, a State may use such funds—

(1) for direct early intervention services for infants and toddlers with disabilities, and their families, under this part that are not otherwise funded through other public or private sources;

(2) to expand and improve on services for infants and toddlers and their families under this part that are otherwise available;

(3) to provide a free appropriate public education, in accordance with part B, to children with disabilities from their third birthday to the beginning of the following school year;

(4) with the written consent of the parents, to continue to provide early intervention services under this part to children with disabilities from their 3rd birthday to the beginning of the following school year, in lieu of a free appropriate public education provided in accordance with part B; and

(5) in any State that does not provide services for at-risk infants and toddlers under section 637(a)(4), to strengthen the statewide system by initiating, expanding, or improving collaborative efforts related to at-risk infants and toddlers, including establishing linkages with appropriate public or private community-based organizations, services, and personnel for the purposes of—

(A) identifying and evaluating at-risk infants and toddlers;

(B) making referrals of the infants and toddlers identified and evaluated under subparagraph (A); and

(C) conducting periodic follow-up on each such referral to determine if the status of the infant or toddler involved has changed with respect to the eligibility of the infant or toddler for services under this part.

**SEC. 639. PROCEDURAL SAFEGUARDS.**

(a) **MINIMUM PROCEDURES.**—The procedural safeguards required to be included in a statewide system under section 635(a)(13) shall provide, at a minimum, the following:

(1) The timely administrative resolution of complaints by parents. Any party aggrieved by the findings and decision regard-

ing an administrative complaint shall have the right to bring a civil action with respect to the complaint in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy. In any action brought under this paragraph, the court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and, basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.

(2) The right to confidentiality of personally identifiable information, including the right of parents to written notice of and written consent to the exchange of such information among agencies consistent with Federal and State law.

(3) The right of the parents to determine whether they, their infant or toddler, or other family members will accept or decline any early intervention service under this part in accordance with State law without jeopardizing other early intervention services under this part.

(4) The opportunity for parents to examine records relating to assessment, screening, eligibility determinations, and the development and implementation of the individualized family service plan.

(5) Procedures to protect the rights of the infant or toddler whenever the parents of the infant or toddler are not known or cannot be found or the infant or toddler is a ward of the State, including the assignment of an individual (who shall not be an employee of the State lead agency, or other State agency, and who shall not be any person, or any employee of a person, providing early intervention services to the infant or toddler or any family member of the infant or toddler) to act as a surrogate for the parents.

(6) Written prior notice to the parents of the infant or toddler with a disability whenever the State agency or service provider proposes to initiate or change, or refuses to initiate or change, the identification, evaluation, or placement of the infant or toddler with a disability, or the provision of appropriate early intervention services to the infant or toddler.

(7) Procedures designed to ensure that the notice required by paragraph (6) fully informs the parents, in the parents' native language, unless it clearly is not feasible to do so, of all procedures available pursuant to this section.

(8) The right of parents to use mediation in accordance with section 615, except that—

(A) any reference in the section to a State educational agency shall be considered to be a reference to a State's lead agency established or designated under section 635(a)(10);

(B) any reference in the section to a local educational agency shall be considered to be a reference to a local service provider or the State's lead agency under this part, as the case may be; and

(C) any reference in the section to the provision of free appropriate public education to children with disabilities shall be considered to be a reference to the provision of ap-

*appropriate early intervention services to infants and toddlers with disabilities.*

(b) **SERVICES DURING PENDENCY OF PROCEEDINGS.**—*During the pendency of any proceeding or action involving a complaint by the parents of an infant or toddler with a disability, unless the State agency and the parents otherwise agree, the infant or toddler shall continue to receive the appropriate early intervention services currently being provided or, if applying for initial services, shall receive the services not in dispute.*

**SEC. 640. PAYOR OF LAST RESORT.**

(a) **NONSUBSTITUTION.**—*Funds provided under section 643 may not be used to satisfy a financial commitment for services that would have been paid for from another public or private source, including any medical program administered by the Secretary of Defense, but for the enactment of this part, except that whenever considered necessary to prevent a delay in the receipt of appropriate early intervention services by an infant, toddler, or family in a timely fashion, funds provided under section 643 may be used to pay the provider of services pending reimbursement from the agency that has ultimate responsibility for the payment.*

(b) **OBLIGATIONS RELATED TO AND METHODS OF ENSURING SERVICES.**—

(1) **ESTABLISHING FINANCIAL RESPONSIBILITY FOR SERVICES.**—

(A) **IN GENERAL.**—*The Chief Executive Officer of a State or designee of the officer shall ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each public agency and the State educational agency, in order to ensure—*

*(i) the provision of, and financial responsibility for, services provided under this part; and*

*(ii) such services are consistent with the requirements of section 635 and the State's application pursuant to section 637, including the provision of such services during the pendency of any dispute.*

(B) **CONSISTENCY BETWEEN AGREEMENTS OR MECHANISMS UNDER PARTS B AND D.**—*The Chief Executive Officer of a State or designee of the officer shall ensure that the terms and conditions of such agreement or mechanism are consistent with the terms and conditions of the State's agreement or mechanism under section 612(a)(12).*

(2) **REIMBURSEMENT FOR SERVICES BY PUBLIC AGENCY.**—

(A) **IN GENERAL.**—*If a public agency other than an educational agency fails to provide or pay for the services pursuant to an agreement required under paragraph (1) the local educational agency or State agency (as determined by the Chief Executive Officer or designee) shall provide or pay for the provision of such services to the child.*

(B) **REIMBURSEMENT.**—*Such local educational agency or State agency is authorized to claim reimbursement for the services from the public agency that failed to provide or pay for such services and such public agency shall reimburse the local educational agency or State agency pursuant to the terms of the interagency agreement or other mechanism required under paragraph (1).*

(3) *SPECIAL RULE.*—*The requirements of paragraph (1) may be met through—*

(A) *State statute or regulation;*

(B) *signed agreements between respective agency officials that clearly identify the responsibilities of each agency relating to the provision of services; or*

(C) *other appropriate written methods as determined by the Chief Executive Officer of the State or designee of the officer and approved by the Secretary through the review and approval of the State's application pursuant to section 637.*

(c) *REDUCTION OF OTHER BENEFITS.*—*Nothing in this part shall be construed to permit the State to reduce medical or other assistance available or to alter eligibility under title V of the Social Security Act (relating to maternal and child health) or title XIX of the Social Security Act (relating to Medicaid for infants or toddlers with disabilities) within the State.*

**SEC. 641. STATE INTERAGENCY COORDINATING COUNCIL.**

(a) *ESTABLISHMENT.*—

(1) *IN GENERAL.*—*A State that desires to receive financial assistance under this part shall establish a State interagency coordinating council.*

(2) *APPOINTMENT.*—*The council shall be appointed by the Governor. In making appointments to the council, the Governor shall ensure that the membership of the council reasonably represents the population of the State.*

(3) *CHAIRPERSON.*—*The Governor shall designate a member of the council to serve as the chairperson of the council, or shall require the council to so designate such a member. Any member of the council who is a representative of the lead agency designated under section 635(a)(10) may not serve as the chairperson of the council.*

(b) *COMPOSITION.*—

(1) *IN GENERAL.*—*The council shall be composed as follows:*

(A) *PARENTS.*—*At least 20 percent of the members shall be parents of infants or toddlers with disabilities or children with disabilities aged 12 or younger, with knowledge of, or experience with, programs for infants and toddlers with disabilities. At least 1 such member shall be a parent of an infant or toddler with a disability or a child with a disability aged 6 or younger.*

(B) *SERVICE PROVIDERS.*—*At least 20 percent of the members shall be public or private providers of early intervention services.*

(C) *STATE LEGISLATURE.*—*At least 1 member shall be from the State legislature.*

(D) *PERSONNEL PREPARATION.*—*At least 1 member shall be involved in personnel preparation.*

(E) *AGENCY FOR EARLY INTERVENTION SERVICES.*—*At least 1 member shall be from each of the State agencies involved in the provision of, or payment for, early intervention services to infants and toddlers with disabilities and their families and shall have sufficient authority to engage in policy planning and implementation on behalf of such agencies.*



(F) *AGENCY FOR PRESCHOOL SERVICES.*—At least 1 member shall be from the State educational agency responsible for preschool services to children with disabilities and shall have sufficient authority to engage in policy planning and implementation on behalf of such agency.

(G) *STATE MEDICAID AGENCY.*—At least 1 member shall be from the agency responsible for the State medicaid program.

(H) *HEAD START AGENCY.*—At least 1 representative from a Head Start agency or program in the State.

(I) *CHILD CARE AGENCY.*—At least 1 representative from a State agency responsible for child care.

(J) *AGENCY FOR HEALTH INSURANCE.*—At least 1 member shall be from the agency responsible for the State regulation of health insurance.

(2) *OTHER MEMBERS.*—The council may include other members selected by the Governor, including a representative from the Bureau of Indian Affairs, or where there is no BIA-operated or BIA-funded school, from the Indian Health Service or the tribe or tribal council.

(c) *MEETINGS.*—The council shall meet at least quarterly and in such places as the council determines necessary. The meetings shall be publicly announced, and, to the extent appropriate, open and accessible to the general public.

(d) *MANAGEMENT AUTHORITY.*—Subject to the approval of the Governor, the council may prepare and approve a budget using funds under this part to conduct hearings and forums, to reimburse members of the council for reasonable and necessary expenses for attending council meetings and performing council duties (including child care for parent representatives), to pay compensation to a member of the council if the member is not employed or must forfeit wages from other employment when performing official council business, to hire staff, and to obtain the services of such professional, technical, and clerical personnel as may be necessary to carry out its functions under this part.

(e) *FUNCTIONS OF COUNCIL.*—

(1) *DUTIES.*—The council shall—

(A) advise and assist the lead agency designated or established under section 635(a)(10) in the performance of the responsibilities set forth in such section, particularly the identification of the sources of fiscal and other support for services for early intervention programs, assignment of financial responsibility to the appropriate agency, and the promotion of the interagency agreements;

(B) advise and assist the lead agency in the preparation of applications and amendments thereto;

(C) advise and assist the State educational agency regarding the transition of toddlers with disabilities to preschool and other appropriate services; and

(D) prepare and submit an annual report to the Governor and to the Secretary on the status of early intervention programs for infants and toddlers with disabilities and their families operated within the State.

(2) *AUTHORIZED ACTIVITY.*—The council may advise and assist the lead agency and the State educational agency regarding

*the provision of appropriate services for children from birth through age 5. The council may advise appropriate agencies in the State with respect to the integration of services for infants and toddlers with disabilities and at-risk infants and toddlers and their families, regardless of whether at-risk infants and toddlers are eligible for early intervention services in the State.*

(f) *CONFLICT OF INTEREST.—No member of the council shall cast a vote on any matter that is likely to provide a direct financial benefit to that member or otherwise give the appearance of a conflict of interest under State law.*

**SEC. 642. FEDERAL ADMINISTRATION.**

*Sections 616, 617, and 618 shall, to the extent not inconsistent with this part, apply to the program authorized by this part, except that—*

(1) *any reference in such sections to a State educational agency shall be considered to be a reference to a State's lead agency established or designated under section 635(a)(10);*

(2) *any reference in such sections to a local educational agency, educational service agency, or a State agency shall be considered to be a reference to an early intervention service provider under this part; and*

(3) *any reference to the education of children with disabilities or the education of all children with disabilities shall be considered to be a reference to the provision of appropriate early intervention services to infants and toddlers with disabilities.*

**SEC. 643. ALLOCATION OF FUNDS.**

(a) **RESERVATION OF FUNDS FOR OUTLYING AREAS.—**

(1) *IN GENERAL.—From the sums appropriated to carry out this part for any fiscal year, the Secretary may reserve not more than 1 percent for payments to Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands in accordance with their respective needs.*

(2) *CONSOLIDATION OF FUNDS.—The provisions of Public Law 95-134, permitting the consolidation of grants to the outlying areas, shall not apply to funds those areas receive under this part.*

(b) **PAYMENTS TO INDIANS.—**

(1) *IN GENERAL.—The Secretary shall, subject to this subsection, make payments to the Secretary of the Interior to be distributed to tribes, tribal organizations (as defined under section 4 of the Indian Self-Determination and Education Assistance Act), or consortia of the above entities for the coordination of assistance in the provision of early intervention services by the States to infants and toddlers with disabilities and their families on reservations served by elementary schools and secondary schools for Indian children operated or funded by the Department of the Interior. The amount of such payment for any fiscal year shall be 1.25 percent of the aggregate of the amount available to all States under this part for such fiscal year.*

(2) *ALLOCATION.—For each fiscal year, the Secretary of the Interior shall distribute the entire payment received under paragraph (1) by providing to each tribe, tribal organization, or consortium an amount based on the number of infants and tod-*

dlers residing on the reservation, as determined annually, divided by the total of such children served by all tribes, tribal organizations, or consortia.

(3) *INFORMATION.*—To receive a payment under this subsection, the tribe, tribal organization, or consortium shall submit such information to the Secretary of the Interior as is needed to determine the amounts to be distributed under paragraph (2).

(4) *USE OF FUNDS.*—The funds received by a tribe, tribal organization, or consortium shall be used to assist States in child find, screening, and other procedures for the early identification of Indian children under 3 years of age and for parent training. Such funds may also be used to provide early intervention services in accordance with this part. Such activities may be carried out directly or through contracts or cooperative agreements with the BIA, local educational agencies, and other public or private nonprofit organizations. The tribe, tribal organization, or consortium is encouraged to involve Indian parents in the development and implementation of these activities. The above entities shall, as appropriate, make referrals to local, State, or Federal entities for the provision of services or further diagnosis.

(5) *REPORTS.*—To be eligible to receive a grant under paragraph (2), a tribe, tribal organization, or consortium shall make a biennial report to the Secretary of the Interior of activities undertaken under this subsection, including the number of contracts and cooperative agreements entered into, the number of children contacted and receiving services for each year, and the estimated number of children needing services during the 2 years following the year in which the report is made. The Secretary of the Interior shall include a summary of this information on a biennial basis to the Secretary of Education along with such other information as required under section 611(h)(3)(E). The Secretary of Education may require any additional information from the Secretary of the Interior.

(6) *PROHIBITED USES OF FUNDS.*—None of the funds under this subsection may be used by the Secretary of the Interior for administrative purposes, including child count, and the provision of technical assistance.

(c) *STATE ALLOTMENTS.*—

(1) *IN GENERAL.*—Except as provided in paragraphs (2) and (3), from the funds remaining for each fiscal year after the reservation and payments under subsections (a), (b), and (e), the Secretary shall first allot to each State an amount that bears the same ratio to the amount of such remainder as the number of infants and toddlers in the State bears to the number of infants and toddlers in all States.

(2) *MINIMUM ALLOTMENTS.*—Except as provided in paragraph (3), no State shall receive an amount under this section for any fiscal year that is less than the greater of—

(A)  $\frac{1}{2}$  of 1 percent of the remaining amount described in paragraph (1); or

(B) \$500,000.

(3) *RATABLE REDUCTION.*—

(A) *IN GENERAL.*—If the sums made available under this part for any fiscal year are insufficient to pay the full

amounts that all States are eligible to receive under this subsection for such year, the Secretary shall ratably reduce the allotments to such States for such year.

(B) *ADDITIONAL FUNDS.*—If additional funds become available for making payments under this subsection for a fiscal year, allotments that were reduced under subparagraph (A) shall be increased on the same basis the allotments were reduced.

(4) *DEFINITIONS.*—For the purpose of this subsection—

(A) the terms “infants” and “toddlers” mean children under 3 years of age; and

(B) the term “State” means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(d) *REALLOTMENT OF FUNDS.*—If a State elects not to receive its allotment under subsection (c), the Secretary shall reallocate, among the remaining States, amounts from such State in accordance with such subsection.

(e) *RESERVATION FOR STATE BONUS GRANTS.*—The Secretary shall reserve 10 percent of the amount by which the amount appropriated under section 644 for any fiscal year exceeds \$434,159,000 to make allotments to States that are carrying out the policy described in section 635(b), in accordance with the formula described in subsection (c)(1) without regard to subsections (c) (2) and (3).

**SEC. 644. AUTHORIZATION OF APPROPRIATIONS.**

For the purpose of carrying out this part, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2004 through 2009.

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

**[Subpart 1—State Program Improvement Grants for Children with Disabilities**

**[SEC. 651. FINDINGS AND PURPOSE.**

[(a) *FINDINGS.*—The Congress finds the following:

[(1) States are responding with some success to multiple pressures to improve educational and transitional services and results for children with disabilities in response to growing demands imposed by ever-changing factors, such as demographics, social policies, and labor and economic markets.

[(2) In order for States to address such demands and to facilitate lasting systemic change that is of benefit to all students, including children with disabilities, States must involve local educational agencies, parents, individuals with disabilities and their families, teachers and other service providers, and other interested individuals and organizations in carrying out comprehensive strategies to improve educational results for children with disabilities.

[(3) Targeted Federal financial resources are needed to assist States, working in partnership with others, to identify and

make needed changes to address the needs of children with disabilities into the next century.

[(4) State educational agencies, in partnership with local educational agencies and other individuals and organizations, are in the best position to identify and design ways to meet emerging and expanding demands to improve education for children with disabilities and to address their special needs.

[(5) Research, demonstration, and practice over the past 20 years in special education and related disciplines have built a foundation of knowledge on which State and local systemic-change activities can now be based.

[(6) Such research, demonstration, and practice in special education and related disciplines have demonstrated that an effective educational system now and in the future must—

[(A) maintain high academic standards and clear performance goals for children with disabilities, consistent with the standards and expectations for all students in the educational system, and provide for appropriate and effective strategies and methods to ensure that students who are children with disabilities have maximum opportunities to achieve those standards and goals;

[(B) create a system that fully addresses the needs of all students, including children with disabilities, by addressing the needs of children with disabilities in carrying out educational reform activities;

[(C) clearly define, in measurable terms, the school and post-school results that children with disabilities are expected to achieve;

[(D) promote service integration, and the coordination of State and local education, social, health, mental health, and other services, in addressing the full range of student needs, particularly the needs of children with disabilities who require significant levels of support to maximize their participation and learning in school and the community;

[(E) ensure that children with disabilities are provided assistance and support in making transitions as described in section 675(b)(3)(C);

[(F) promote comprehensive programs of professional development to ensure that the persons responsible for the education or a transition of children with disabilities possess the skills and knowledge necessary to address the educational and related needs of those children;

[(G) disseminate to teachers and other personnel serving children with disabilities research-based knowledge about successful teaching practices and models and provide technical assistance to local educational agencies and schools on how to improve results for children with disabilities;

[(H) create school-based disciplinary strategies that will be used to reduce or eliminate the need to use suspension and expulsion as disciplinary options for children with disabilities;

[(I) establish placement-neutral funding formulas and cost-effective strategies for meeting the needs of children with disabilities; and

[(J) involve individuals with disabilities and parents of children with disabilities in planning, implementing, and evaluating systemic-change activities and educational reforms.

[(b) PURPOSE.—The purpose of this subpart is to assist State educational agencies, and their partners referred to in section 652(b), in reforming and improving their systems for providing educational, early intervention, and transitional services, including their systems for professional development, technical assistance, and dissemination of knowledge about best practices, to improve results for children with disabilities.

**[SEC. 652 ELIGIBILITY AND COLLABORATIVE PROCESS.**

[(a) ELIGIBLE APPLICANTS.—A State educational agency may apply for a grant under this subpart for a grant period of not less than 1 year and not more than 5 years.

[(b) PARTNERS.—

[(1) REQUIRED PARTNERS.—

[(A) CONTRACTUAL PARTNERS.—In order to be considered for a grant under this subpart, a State educational agency shall establish a partnership with local educational agencies and other State agencies involved in, or concerned with, the education of children with disabilities.

[(B) OTHER PARTNERS.—In order to be considered for a grant under this subpart, a State educational agency shall work in partnership with other persons and organizations involved in, and concerned with, the education of children with disabilities, including—

[(i) the Governor;

[(ii) parents of children with disabilities;

[(iii) parents of nondisabled children;

[(iv) individuals with disabilities;

[(v) organizations representing individuals with disabilities and their parents, such as parent training and information centers;

[(vi) community-based and other nonprofit organizations involved in the education and employment of individuals with disabilities;

[(vii) the lead State agency for part C;

[(viii) general and special education teachers, and early intervention personnel;

[(ix) the State advisory panel established under part C;

[(x) the State interagency coordinating council established under part C; and

[(xi) institutions of higher education within the State.

[(2) OPTIONAL PARTNERS.—A partnership under subparagraph (A) or (B) of paragraph (1) may also include—

[(A) individuals knowledgeable about vocational education;

[(B) the State agency for higher education;

[(C) the State vocational rehabilitation agency;

[(D) public agencies with jurisdiction in the areas of health, mental health, social services, and juvenile justice; and

[(E) other individuals.

**[SEC. 653. APPLICATIONS.**

**[(a) IN GENERAL.—**

**[(1) SUBMISSION.—**A State educational agency that desires to receive a grant under this subpart shall submit to the Secretary an application at such time, in such manner, and including such information as the Secretary may require.

**[(2) STATE IMPROVEMENT PLAN.—**The application shall include a State improvement plan that—

**[(A)** is integrated, to the maximum extent possible, with State plans under the Elementary and Secondary Education Act of 1965 and the Rehabilitation Act of 1973, as appropriate; and

**[(B)** meets the requirements of this section.

**[(b) DETERMINING CHILD AND PROGRAM NEEDS.—**

**[(1) IN GENERAL.—**Each State improvement plan shall identify those critical aspects of early intervention, general education, and special education programs (including professional development, based on an assessment of State and local needs) that must be improved to enable children with disabilities to meet the goals established by the State under section 612(a)(16).

**[(2) REQUIRED ANALYSES.—**To meet the requirement of paragraph (1), the State improvement plan shall include at least—

**[(A)** an analysis of all information, reasonably available to the State educational agency, on the performance of children with disabilities in the State, including—

**[(i)** their performance on State assessments and other performance indicators established for all children, including drop-out rates and graduation rates;

**[(ii)** their participation in postsecondary education and employment; and

**[(iii)** how their performance on the assessments and indicators described in clause (i) compares to that of non-disabled children;

**[(B)** an analysis of State and local needs for professional development for personnel to serve children with disabilities that includes, at a minimum—

**[(i)** the number of personnel providing special education and related services; and

**[(ii)** relevant information on current and anticipated personnel vacancies and shortages (including the number of individuals described in clause (i) with temporary certification), and on the extent of certification or retraining necessary to eliminate such shortages, that is based, to the maximum extent possible, on existing assessments of personnel needs;

**[(C)** an analysis of the major findings of the Secretary's most recent reviews of State compliance, as they relate to improving results for children with disabilities; and

**[(D)** an analysis of other information, reasonably available to the State, on the effectiveness of the State's systems of early intervention, special education, and general education in meeting the needs of children with disabilities.

[(c) IMPROVEMENT STRATEGIES.—Each State improvement plan shall—

[(1) describe a partnership agreement that—

[(A) specifies—

[(i) the nature and extent of the partnership among the State educational agency, local educational agencies, and other State agencies involved in, or concerned with, the education of children with disabilities, and the respective roles of each member of the partnership; and

[(ii) how such agencies will work in partnership with other persons and organizations involved in, and concerned with, the education of children with disabilities, including the respective roles of each of these persons and organizations; and

[(B) is in effect for the period of the grant;

[(2) describe how grant funds will be used in undertaking the systemic-change activities, and the amount and nature of funds from any other sources, including part B funds retained for use at the State level under sections 611(f) and 619(d), that will be committed to the systemic-change activities;

[(3) describe the strategies the State will use to address the needs identified under subsection (b), including—

[(A) how the State will change State policies and procedures to address systemic barriers to improving results for children with disabilities;

[(B) how the State will hold local educational agencies and schools accountable for educational progress of children with disabilities;

[(C) how the State will provide technical assistance to local educational agencies and schools to improve results for children with disabilities;

[(D) how the State will address the identified needs for in-service and pre-service preparation to ensure that all personnel who work with children with disabilities (including both professional and paraprofessional personnel who provide special education, general education, related services, or early intervention services) have the skills and knowledge necessary to meet the needs of children with disabilities, including a description of how—

[(i) the State will prepare general and special education personnel with the content knowledge and collaborative skills needed to meet the needs of children with disabilities, including how the State will work with other States on common certification criteria;

[(ii) the State will prepare professionals and paraprofessionals in the area of early intervention with the content knowledge and collaborative skills needed to meet the needs of infants and toddlers with disabilities;

[(iii) the State will work with institutions of higher education and other entities that (on both a pre-service and an in-service basis) prepare personnel who work with children with disabilities to ensure that those institutions and entities develop the capacity to



support quality professional development programs that meet State and local needs;

[(iv) the State will work to develop collaborative agreements with other States for the joint support and development of programs to prepare personnel for which there is not sufficient demand within a single State to justify support or development of such a program of preparation;

[(v) the State will work in collaboration with other States, particularly neighboring States, to address the lack of uniformity and reciprocity in the credentialing of teachers and other personnel;

[(vi) the State will enhance the ability of teachers and others to use strategies, such as behavioral interventions, to address the conduct of children with disabilities that impedes the learning of children with disabilities and others;

[(vii) the State will acquire and disseminate, to teachers, administrators, school board members, and related services personnel, significant knowledge derived from educational research and other sources, and how the State will, when appropriate adopt promising practices, materials, and technology;

[(viii) the State will recruit, prepare, and retain qualified personnel, including personnel with disabilities and personnel from groups that are underrepresented in the fields of regular education, special education, and related services;

[(ix) the plan is integrated, to the maximum extent possible, with other professional development plans and activities, including plans and activities developed and carried out under other Federal and State laws that address personnel recruitment and training; and

[(x) the State will provide for the joint training of parents and special education, related services, and general education personnel;

[(E) strategies that will address systemic problems identified in Federal compliance reviews, including shortages of qualified personnel;

[(F) how the State will disseminate results of the local capacity-building and improvement projects funded under section 611(f)(4);

[(G) how the State will address improving results for children with disabilities in the geographic areas of greatest need; and

[(H) how the State will assess, on a regular basis, the extent to which the strategies implemented under this subpart have been effective; and

[(4) describe how the improvement strategies described in paragraph (3) will be coordinated with public and private sector resources.

[(d) COMPETITIVE AWARDS.—

[(1) IN GENERAL.—The Secretary shall make grants under this subpart on a competitive basis.

[(2) PRIORITY.—The Secretary may give priority to applications on the basis of need, as indicated by such information as the findings of Federal compliance reviews.

[(e) PEER REVIEW.—

[(1) IN GENERAL.—The Secretary shall use a panel of experts who are competent, by virtue of their training, expertise, or experience, to evaluate applications under this subpart.

[(2) COMPOSITION OF PANEL.—A majority of a panel described in paragraph (1) shall be composed of individuals who are not employees of the Federal Government.

[(3) PAYMENT OF FEES AND EXPENSES OF CERTAIN MEMBERS.—The Secretary may use available funds appropriated to carry out this subpart to pay the expenses and fees of panel members who are not employees of the Federal Government.

[(f) REPORTING PROCEDURES.—Each State educational agency that receives a grant under this subpart shall submit performance reports to the Secretary pursuant to a schedule to be determined by the Secretary, but not more frequently than annually. The reports shall describe the progress of the State in meeting the performance goals established under section 612(a)(16), analyze the effectiveness of the State's strategies in meeting those goals, and identify any changes in the strategies needed to improve its performance.

**[SEC. 654. USE OF FUNDS.**

[(a) IN GENERAL.—

[(1) ACTIVITIES.—A State educational agency that receives a grant under this subpart may use the grant to carry out any activities that are described in the State's application and that are consistent with the purpose of this subpart.

[(2) CONTRACTS AND SUBGRANTS.—Each such State educational agency—

[(A) shall, consistent with its partnership agreement under section 652(b), award contracts or subgrants to local educational agencies, institutions of higher education, and parent training and information centers, as appropriate, to carry out its State improvement plan under this subpart; and

[(B) may award contracts and subgrants to other public and private entities, including the lead agency under part C, to carry out such plan.

[(b) USE OF FUNDS FOR PROFESSIONAL DEVELOPMENT.—A State educational agency that receives a grant under this subpart—

[(1) shall use not less than 75 percent of the funds it receives under the grant for any fiscal year—

[(A) to ensure that there are sufficient regular education, special education, and related services personnel who have the skills and knowledge necessary to meet the needs of children with disabilities and developmental goals of young children; or

[(B) to work with other States on common certification criteria; or

[(2) shall use not less than 50 percent of such funds for such purposes, if the State demonstrates to the Secretary's satisfaction that it has the personnel described in paragraph (1)(A).

[(c) GRANTS TO OUTLYING AREAS.—Public Law 95–134, permitting the consolidation of grants to the outlying areas, shall not apply to funds received under this subpart.

**[SEC. 655. MINIMUM STATE GRANT AMOUNTS.**

[(a) IN GENERAL.—The Secretary shall make a grant to each State educational agency whose application the Secretary has selected for funding under this subpart in an amount for each fiscal year that is—

[(1) not less than \$500,000, nor more than \$2,000,000, in the case of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico; and

[(2) not less than \$80,000, in the case of an outlying area.

[(b) INFLATION ADJUSTMENT.—Beginning with fiscal year 1999, the Secretary may increase the maximum amount described in subsection (a)(1) to account for inflation.

[(c) FACTORS.—The Secretary shall set the amount of each grant under subsection (a) after considering—

[(1) the amount of funds available for making the grants;

[(2) the relative population of the State or outlying area; and

[(3) the types of activities proposed by the State or outlying area.

**[SEC. 656. AUTHORIZATION OF APPROPRIATIONS.**

[There are authorized to be appropriated to carry out this subpart such sums as may be necessary for each of the fiscal years 1998 through 2002.

**[Subpart 2—Coordinated Research, Personnel Preparation, Technical Assistance, Support, and Dissemination of Information**

**[SEC. 661. ADMINISTRATIVE PROVISIONS.**

[(a) COMPREHENSIVE PLAN.—

[(1) IN GENERAL.—The Secretary shall develop and implement a comprehensive plan for activities carried out under this subpart in order to enhance the provision of educational, related, transitional, and early intervention services to children with disabilities under parts B and C. The plan shall include mechanisms to address educational, related services, transitional, and early intervention needs identified by State educational agencies in applications submitted for State program improvement grants under subpart 1.

[(2) PARTICIPANTS IN PLAN DEVELOPMENT.—In developing the plan described in paragraph (1), the Secretary shall consult with—

[(A) individuals with disabilities;

[(B) parents of children with disabilities;

[(C) appropriate professionals; and

[(D) representatives of State and local educational agencies, private schools, institutions of higher education, other Federal agencies, the National Council on Disability, and national organizations with an interest in, and expertise in, providing services to children with disabilities and their families.

[(3) PUBLIC COMMENT.—The Secretary shall take public comment on the plan.

[(4) DISTRIBUTION OF FUNDS.—In implementing the plan, the Secretary shall, to the extent appropriate, ensure that funds are awarded to recipients under this subpart to carry out activities that benefit, directly or indirectly, children with disabilities of all ages.

[(5) REPORTS TO CONGRESS.—The Secretary shall periodically report to the Congress on the Secretary's activities under this subsection, including an initial report not later than the date that is 18 months after the date of the enactment of the Individuals with Disabilities Education Act Amendments of 1997.

[(b) ELIGIBLE APPLICANTS.—

[(1) IN GENERAL.—Except as otherwise provided in this subpart, the following entities are eligible to apply for a grant, contract, or cooperative agreement under this subpart:

[(A) A State educational agency.

[(B) A local educational agency.

[(C) An institution of higher education.

[(D) Any other public agency.

[(E) A private nonprofit organization.

[(F) An outlying area.

[(G) An Indian tribe or a tribal organization (as defined under section 4 of the Indian Self-Determination and Education Assistance Act).

[(H) A for-profit organization, if the Secretary finds it appropriate in light of the purposes of a particular competition for a grant, contract, or cooperative agreement under this subpart.

[(2) SPECIAL RULE.—The Secretary may limit the entities eligible for an award of a grant, contract, or cooperative agreement to one or more categories of eligible entities described in paragraph (1).

[(c) USE OF FUNDS BY SECRETARY.—Notwithstanding any other provision of law, and in addition to any authority granted the Secretary under chapter 1 or chapter 2, the Secretary may use up to 20 percent of the funds available under either chapter 1 or chapter 2 for any fiscal year to carry out any activity, or combination of activities, subject to such conditions as the Secretary determines are appropriate effectively to carry out the purposes of such chapters, that—

[(1) is consistent with the purposes of chapter 1, chapter 2, or both; and

[(2) involves—

[(A) research;

[(B) personnel preparation;

[(C) parent training and information;

[(D) technical assistance and dissemination;

[(E) technology development, demonstration, and utilization; or

[(F) media services.

[(d) SPECIAL POPULATIONS.—

[(1) APPLICATION REQUIREMENT.—In making an award of a grant, contract, or cooperative agreement under this subpart, the Secretary shall, as appropriate, require an applicant to

demonstrate how the applicant will address the needs of children with disabilities from minority backgrounds.

**[(2) OUTREACH AND TECHNICAL ASSISTANCE.—**

**[(A) REQUIREMENT.—**Notwithstanding any other provision of this Act, the Secretary shall ensure that at least one percent of the total amount of funds appropriated to carry out this subpart is used for either or both of the following activities:

**[(i)** To provide outreach and technical assistance to Historically Black Colleges and Universities, and to institutions of higher education with minority enrollments of at least 25 percent, to promote the participation of such colleges, universities, and institutions in activities under this subpart.

**[(ii)** To enable Historically Black Colleges and Universities, and the institutions described in clause (i), to assist other colleges, universities, institutions, and agencies in improving educational and transitional results for children with disabilities.

**[(B) RESERVATION OF FUNDS.—**The Secretary may reserve funds appropriated under this subpart to satisfy the requirements of subparagraph (A).

**[(e) PRIORITIES.—**

**[(1) IN GENERAL.—**Except as otherwise explicitly authorized in this subpart, the Secretary shall ensure that a grant, contract, or cooperative agreement under chapter 1 or 2 is awarded only—

**[(A)** for activities that are designed to benefit children with disabilities, their families, or the personnel employed to work with such children or their families; or

**[(B)** to benefit other individuals with disabilities that such chapter is intended to benefit.

**[(2) PRIORITY FOR PARTICULAR ACTIVITIES.—**Subject to paragraph (1), the Secretary, in making an award of a grant, contract, or cooperative agreement under this subpart, may, without regard to the rule making<sup>1</sup> procedures under section 553 of title 5, United States Code, limit competitions to, or otherwise give priority to—

**[(A)** projects that address one or more—

**[(i)** age ranges;

**[(ii)** disabilities;

**[(iii)** school grades;

**[(iv)** types of educational placements or early intervention environments;

**[(v)** types of services;

**[(vi)** content areas, such as reading; or

**[(vii)** effective strategies for helping children with disabilities learn appropriated behavior in the school and other community-based educational settings;

**[(B)** projects that address the needs of children based on the severity of their disability;

**[(C)** projects that address the needs of—

**[(i)** low-achieving students;

**[(ii)** underserved populations;

**[(iii)** children from low-income families;

- [(iv) children with limited English proficiency;
- [(v) unserved and underserved areas;
- [(vi) particular types of geographic areas; or
- [(vii) children whose behavior interferes with their learning and socialization;

[(D) projects to reduce inappropriate identification of children as children with disabilities, particularly among minority children;

[(E) projects that are carried out in particular areas of the country, to ensure broad geographic coverage; and

[(F) any activity that is expressly authorized in chapter 1 or 2.

[(f) APPLICANT AND RECIPIENT RESPONSIBILITIES.—

[(1) DEVELOPMENT AND ASSESSMENT OF PROJECTS.—The Secretary shall require that an applicant for, and a recipient of a grant, contract, or cooperative agreement for a project under this subpart—

[(A) involve individuals with disabilities or parents of individuals with disabilities in planning, implementing, and evaluating the project; and

[(B) where appropriate, determine whether the project has any potential for replication and adoption by other entities.

[(2) ADDITIONAL RESPONSIBILITIES.—The Secretary may require a recipient of a grant, contract, or cooperative agreement for a project under this subpart—

[(A) to share in the cost of the project;

[(B) to prepare the research and evaluation findings and products from the project in formats that are useful for specific audiences, including parents, administrators, teachers, early intervention personnel, related services personnel, and individuals with disabilities;

[(C) to disseminate such findings and products; and

[(D) to collaborate with other such recipients in carrying out subparagraphs (B) and (C).

[(g) APPLICATION MANAGEMENT.—

[(1) STANDING PANEL.—

[(A) IN GENERAL.—The Secretary shall establish and use a standing panel of experts who are competent, by virtue of their training, expertise, or experience, to evaluate applications under this subpart that, individually, request more than \$75,000 per year in Federal financial assistance.

[(B) MEMBERSHIP.—The standing panel shall include, at a minimum—

[(i) individuals who are representatives of institutions of higher education that plan, develop, and carry out programs of personnel preparation;

[(ii) individuals who design and carry out programs of research targeted to the improvement of special education programs and services;

[(iii) individuals who have recognized experience and knowledge necessary to integrate and apply research findings to improve educational and transitional results for children with disabilities;

[(iv) individuals who administer programs at the State or local level in which children with disabilities participate;

[(v) individuals who prepare parents of children with disabilities to participate in making decisions about the education of their children;

[(vi) individuals who establish policies that affect the delivery of services to children with disabilities;

[(vii) individuals who are parents of children with disabilities who are benefiting, or have benefited, from coordinated research, personnel preparation, and technical assistance; and

[(viii) individuals with disabilities.

[(C) TRAINING.—The Secretary shall provide training to the individuals who are selected as members of the standing panel under this paragraph.

[(D) TERM.—No individual shall serve on the standing panel for more than 3 consecutive years, unless the Secretary determines that the individual's continued participation is necessary for the sound administration of this subpart.

[(2) PEER-REVIEW PANELS FOR PARTICULAR COMPETITIONS.—

[(A) COMPOSITION.—The Secretary shall ensure that each sub-panel selected from the standing panel that reviews applications under this subpart includes—

[(i) individuals with knowledge and expertise on the issues addressed by the activities authorized by the subpart; and

[(ii) to the extent practicable, parents of children with disabilities, individuals with disabilities, and persons from diverse backgrounds.

[(B) FEDERAL EMPLOYMENT LIMITATION.—A majority of individuals on each sub-panel that reviews an application under this subpart shall be individuals who are not employees of the Federal Government.

[(3) USE OF DISCRETIONARY FUNDS FOR ADMINISTRATIVE PURPOSES.—

[(A) EXPENSES AND FEES AND NON-FEDERAL PANEL MEMBERS.—The Secretary may use funds available under this subpart to pay the expenses and fees of the panel members who are not officers or employees of the Federal Government.

[(B) ADMINISTRATIVE SUPPORT.—The Secretary may use not more than 1 percent of the funds appropriated to carry out this subpart to pay non-Federal entities for administrative support related to management of applications submitted under this subpart.

[(C) MONITORING.—The Secretary may use funds available under this subpart to pay the expenses of Federal employees to conduct on-site monitoring of projects receiving \$500,000 or more for any fiscal year under this subpart.

[(h) PROGRAM EVALUATION.—The Secretary may use funds appropriated to carry out this subpart to evaluate activities carried out under the subpart.

[(i) MINIMUM FUNDING REQUIRED.—

[(1) IN GENERAL.—Subject to paragraph (2), the Secretary shall ensure that, for each fiscal year, at least the following amounts are provided under this subpart to address the following needs:

[(A) \$12,832,000 to address the educational, related services, transitional, and early intervention needs of children with deaf-blindness.

[(B) \$4,000,000 to address the postsecondary, vocational, technical, continuing, and adult education needs of individuals with deafness.

[(C) \$4,000,000 to address the educational, related services, and transitional needs of children with an emotional disturbance and those who are at risk of developing an emotional disturbance.

[(2) RATABLY REDUCED.—If the total amount appropriated to carry out sections 672, 673, and 685 for any fiscal year is less than \$130,000,000, the amounts listed in paragraph (1) shall be ratably reduced.

[(j) ELIGIBILITY FOR FINANCIAL ASSISTANCE.—Effective for fiscal years for which the Secretary may make grants under section 619(b), no State or local educational agency or educational service agency or other public institution or agency may receive a grant under this subpart which relates exclusively to programs, projects, and activities pertaining to children aged 3 through 5, inclusive, unless the State is eligible to receive a grant under section 619(b).

**[CHAPTER 1—IMPROVING EARLY INTERVENTION, EDUCATIONAL, AND TRANSITIONAL SERVICES AND RESULTS FOR CHILDREN WITH DISABILITIES THROUGH COORDINATED RESEARCH AND PERSONNEL PREPARATION**

**[SEC. 671. FINDINGS AND PURPOSE.**

[(a) FINDINGS.—The Congress finds the following:

[(1) The Federal Government has an ongoing obligation to support programs, projects, and activities that contribute to positive results for children with disabilities, enabling them—

[(A) to meet their early intervention, educational, and transitional goals and, to maximum extent possible, educational standards that have been established for all children; and

[(B) to acquire the skills that will empower them to lead productive and independent adult lives.

[(2)(A) As a result of more than 20 years of Federal support for research, demonstration projects, and personnel preparation, there is an important knowledge base for improving results for children with disabilities.

[(B) Such knowledge should be used by States and local educational agencies to design and implement state-of-the-art educational systems that consider the needs of, and include, children with disabilities, especially in environments in which they can learn along with their peers and achieve results measured by the same standards as the results of their peers.

[(3)(A) Continued Federal support is essential for the development and maintenance of a coordinated and high-quality



program of research, demonstration projects, dissemination of information, and personnel preparation.

[(B) Such support—

[(i) enables State educational agencies and local educational agencies to improve their educational systems and results for children with disabilities;

[(ii) enables State and local agencies to improve early intervention services and results for infants and toddlers with disabilities and their families; and

[(iii) enhances the opportunities for general and special education personnel, related services personnel, parents, and paraprofessionals to participate in pre-service and in-service training, to collaborate, and to improve results for children with disabilities and their families.

[(4) The Federal Government plays a critical role in facilitating the availability of an adequate number of qualified personnel—

[(A) to serve effectively the over 5,000,000 children with disabilities;

[(B) to assume leadership positions in administrative and direct-service capacities related to teacher training and research concerning the provision of early intervention services, special education, and related services; and

[(C) to work with children with low-incidence disabilities and their families.

[(5) The Federal Government performs the role described in paragraph (4)—

[(A) by supporting models of personnel development that reflect successful practice, including strategies for recruiting, preparing, and retaining personnel;

[(B) by promoting the coordination and integration of—

[(i) personnel-development activities for teachers of children with disabilities; and

[(ii) other personnel-development activities supported under Federal law, including this chapter;

[(C) by supporting the development and dissemination of information about teaching standards; and

[(D) by promoting the coordination and integration of personnel-development activities through linkage with systemic-change activities within States and nationally.

[(b) PURPOSE.—The purpose of this chapter is to provide Federal funding for coordinated research, demonstration projects, out-reach, and personnel-preparation activities that—

[(1) are described in sections 672 through 675;

[(2) are linked with, and promote, systemic change; and

[(3) improve early intervention, educational, and transitional results for children with disabilities.

**[SEC. 672. RESEARCH AND INNOVATION TO IMPROVE SERVICES AND RESULTS FOR CHILDREN WITH DISABILITIES.**

[(a) IN GENERAL.—The Secretary shall make competitive grants to, or enter into contracts or cooperative agreements with, eligible entities to produce, and advance the use of, knowledge—

[(1) to improve—

[(A) services provided under this Act, including the practices of professionals and others involved in providing such services to children with disabilities; and

[(B) educational results for children with disabilities;

[(2) to address the special needs of preschool-aged children and infants and toddlers with disabilities, including infants and toddlers who would be at risk of having substantial developmental delays if early intervention services were not provided to them;

[(3) to address the specific problems of over-identification and under-identification of children with disabilities;

[(4) to develop and implement effective strategies for addressing inappropriate behavior of students with disabilities in schools, including strategies to prevent children with emotional and behavioral problems from developing emotional disturbances that require the provision of special education and related services;

[(5) to improve secondary and postsecondary education and transitional services for children with disabilities; and

[(6) to address the range of special education, related services, and early intervention needs of children with disabilities who need significant levels of support to maximize their participation and learning in school and in the community.

[(b) NEW KNOWLEDGE PRODUCTION; AUTHORIZED ACTIVITIES.—

[(1) IN GENERAL.—In carrying out this section, the Secretary shall support activities, consistent with the objectives described in subsection (a), that lead to the production of new knowledge.

[(2) AUTHORIZED ACTIVITIES.—Activities that may be carried out under this subsection include activities such as the following:

[(A) Expanding understanding of the relationships between learning characteristics of children with disabilities and the diverse ethnic, cultural, linguistic, social, and economic backgrounds of children with disabilities and their families.

[(B) Developing or identifying innovative, effective, and efficient curricula designs, instructional approaches, and strategies, and developing or identifying positive academic and social learning opportunities, that—

[(i) enable children with disabilities to make effective transitions described in section 674(b)(3)(C) or transitions between educational settings; and

[(ii) improve educational and transitional results for children with disabilities at all levels of the educational system in which the activities are carried out and, in particular, that improve the progress of the children, as measured by assessments within the general education curriculum involved.

[(C) Advancing the design of assessment tools and procedures that will accurately and efficiently determine the special instructional, learning, and behavioral needs of children with disabilities, especially within the context of general education.

[(D) Studying and promoting improved alignment and compatibility of general and special education reforms con-

cerned with curricular and instructional reform, evaluation and accountability of such reforms, and administrative procedures.

[(E) Advancing the design, development, and integration of technology, assistive technology devices, media, and materials, to improve early intervention, educational, and transitional services and results for children with disabilities.

[(F) Improving designs, processes, and results of personnel preparation for personnel who provide services to children with disabilities through the acquisition of information on, and implementation of, research-based practices.

[(G) Advancing knowledge about the coordination of education with health and social services.

[(H) Producing information on the long-term impact of early intervention and education on results for individuals with disabilities through large-scale longitudinal studies.

[(c) INTEGRATION OF RESEARCH AND PRACTICE; AUTHORIZED ACTIVITIES.—

[(1) IN GENERAL.—In carrying out this section, the Secretary shall support activities, consistent with the objectives described in subsection (a), that integrate research and practice, including activities that support State systemic-change and local capacity-building and improvement efforts.

[(2) AUTHORIZED ACTIVITIES.—Activities that may be carried out under this subsection include activities such as the following:

[(A) Model demonstration projects to apply and test research findings in typical service settings to determine the usability, effectiveness, and general applicability of such research findings in such areas as improving instructional methods, curricula, and tools, such as textbooks and media.

[(B) Demonstrating and applying research-based findings to facilitate systemic changes, related to the provision of services to children with disabilities, in policy, procedure, practice, and the training and use of personnel.

[(C) Promoting and demonstrating the coordination of early intervention and educational services for children with disabilities with services provided by health, rehabilitation, and social service agencies.

[(D) Identifying and disseminating solutions that overcome systemic barriers to the effective and efficient delivery of early intervention, educational, and transitional services to children with disabilities.

[(d) IMPROVING THE USE OF PROFESSIONAL KNOWLEDGE; AUTHORIZED ACTIVITIES.—

[(1) IN GENERAL.—In carrying out this section, the Secretary shall support activities, consistent with the objectives described in subsection (a), that improve the use of professional knowledge, including activities that support State systemic-change and local capacity-building and improvement efforts.

[(2) AUTHORIZED ACTIVITIES.—Activities that may be carried out under this subsection include activities such as the following:

[(A) Synthesizing useful research and other information relating to the provision of services to children with disabilities, including effective practices.

[(B) Analyzing professional knowledge bases to advance an understanding of the relationships, and the effectiveness of practices, relating to the provision of services to children with disabilities.

[(C) Ensuring that research and related products are in appropriate formats for distribution to teachers, parents, and individuals with disabilities.

[(D) Enabling professionals, parents of children with disabilities, and other persons, to learn about, and implement, the findings of research, and successful practices developed in model demonstration projects, relating to the provision of services to children with disabilities.

[(E) Conducting outreach, and disseminating information relating to successful approaches to overcoming systemic barriers to the effective and efficient delivery of early intervention, educational, and transitional services, to personnel who provide services to children with disabilities.

[(e) BALANCE AMONG ACTIVITIES AND AGE RANGES.—In carrying out this section, the Secretary shall ensure that there is an appropriate balance—

[(1) among knowledge production, integration of research and practice, and use of professional knowledge; and

[(2) across all age ranges of children with disabilities.

[(f) APPLICATIONS.—An eligible entity that wishes to receive a grant, or enter into a contract or cooperative agreement, under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

[(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary for each of the fiscal years 1998 through 2002.

**[SEC. 673. PERSONNEL PREPARATION TO IMPROVE SERVICES AND RESULTS FOR CHILDREN WITH DISABILITIES.**

[(a) IN GENERAL.—The Secretary shall, on a competitive basis, make grants to, or enter into contracts or cooperative agreements with, eligible entities—

[(1) to help address State-identified needs for qualified personnel in special education, related services, early intervention, and regular education, to work with children with disabilities; and

[(2) to ensure that those personnel have the skills and knowledge, derived from practices that have been determined, through research and experience, to be successful, that are needed to serve those children.

[(b) LOW-INCIDENCE DISABILITIES; AUTHORIZED ACTIVITIES.—

[(1) IN GENERAL.—In carrying out this section, the Secretary shall support activities, consistent with the objectives described

in subsection (a), that benefit children with low-incidence disabilities.

[(2) AUTHORIZED ACTIVITIES.—Activities that may be carried out under this subsection include activities such as the following:

[(A) Preparing persons who—

[(i) have prior training in educational and other related service fields; and

[(ii) are studying to obtain degrees, certificates, or licensure that will enable them to assist children with disabilities to achieve the objectives set out in their individualized education programs described in section 614(d), or to assist infants and toddlers with disabilities to achieve the outcomes described in their individualized family service plans described in section 636.

[(B) Providing personnel from various disciplines with interdisciplinary training that will contribute to improvement in early intervention, educational, and transitional results for children with disabilities.

[(C) Preparing personnel in the innovative uses and application of technology to enhance learning by children with disabilities through early intervention, educational, and transitional services.

[(D) Preparing personnel who provide services to visually impaired or blind children to teach and use Braille in the provision of services to such children.

[(E) Preparing personnel to be qualified educational interpreters, to assist children with disabilities, particularly deaf and hard-of-hearing children in school and school-related activities and deaf and hard-of-hearing infants and toddlers and preschool children in early intervention and preschool programs.

[(F) Preparing personnel who provide services to children with significant cognitive disabilities and children with multiple disabilities.

[(3) DEFINITION.—As used in this section, the term “low-incidence disability” means—

[(A) a visual or hearing impairment, or simultaneous visual and hearing impairments;

[(B) a significant cognitive impairment; or

[(C) any impairment for which a small number of personnel with highly specialized skills and knowledge are needed in order for children with that impairment to receive early intervention services or a free appropriate public education.

[(4) SELECTION OF RECIPIENTS.—In selecting recipients under this subsection, the Secretary may give preference to applications that propose to prepare personnel in more than one low-incidence disability, such as deafness and blindness.

[(5) PREPARATION IN USE OF BRAILLE.—The Secretary shall ensure that all recipients of assistance under this subsection who will use that assistance to prepare personnel to provide services to visually impaired or blind children that can appro-

privately be provided in Braille will prepare those individuals to provide those services in Braille.

**[(c) LEADERSHIP PREPARATION; AUTHORIZED ACTIVITIES.—**

**[(1) IN GENERAL.—**In carrying out this section, the Secretary shall support leadership preparation activities that are consistent with the objectives described in subsection (a).

**[(2) AUTHORIZED ACTIVITIES.—**Activities that may be carried out under this subsection include activities such as the following:

**[(A) Preparing personnel at the advanced graduate, doctoral, and postdoctoral levels of training to administer, enhance, or provide services for children with disabilities.**

**[(B) Providing interdisciplinary training for various types of leadership personnel, including teacher preparation faculty, administrators, researchers, supervisors, principals, and other persons whose work affects early intervention, educational, and transitional services for children with disabilities.**

**[(d) PROJECTS OF NATIONAL SIGNIFICANCE; AUTHORIZED ACTIVITIES.—**

**[(1) IN GENERAL.—**In carrying out this section, the Secretary shall support activities, consistent with the objectives described in subsection (a), that are of national significance and have broad applicability.

**[(2) AUTHORIZED ACTIVITIES.—**Activities that may be carried out under this subsection include activities such as the following:

**[(A) Developing and demonstrating effective and efficient practices for preparing personnel to provide services to children with disabilities, including practices that address any needs identified in the State's improvement plan under part C;**

**[(B) Demonstrating the application of significant knowledge derived from research and other sources in development of programs to prepare personnel to provide services to children with disabilities.**

**[(C) Demonstrating models for the preparation of, and interdisciplinary training of, early intervention, special education, and general education personnel, to enable the personnel—**

**[(i) to acquire the collaboration skills necessary to work within teams to assist children with disabilities; and**

**[(ii) to achieve results that meet challenging standards, particularly within the general education curriculum.**

**[(D) Demonstrating models that reduce shortages of teachers, and personnel from other relevant disciplines, who serve children with disabilities, through reciprocity arrangements between States that are related to licensure and certification.**

**[(E) Developing, evaluating and disseminating model teaching standards for persons working with children with disabilities.**

[(F) Promoting the transferability, across State and local jurisdictions, of licensure and certification of teachers and administrators working with such children.

[(G) Developing and disseminating models that prepare teachers with strategies, including behavioral interventions, for addressing the conduct of children with disabilities that impedes their learning and that of others in the classroom.

[(H) Institutes that provide professional development that addresses the needs of children with disabilities to teachers or teams of teachers, and where appropriate, to school board members, administrators, principals, pupil-service personnel, and other staff from individual schools.

[(I) Projects to improve the ability of general education teachers, principals, and other administrators to meet the needs of children with disabilities.

[(J) Developing, evaluating, and disseminating innovative models for the recruitment, induction, retention, and assessment of new, qualified teachers, especially from groups that are underrepresented in the teaching profession, including individuals with disabilities.

[(K) Supporting institutions of higher education with minority enrollments of at least 25 percent for the purpose of preparing personnel to work with children with disabilities.

[(e) HIGH-INCIDENCE DISABILITIES; AUTHORIZED ACTIVITIES.—

[(1) IN GENERAL.—In carrying out this section, the Secretary shall support activities, consistent with the objectives described in subsection (a), to benefit children with high-incidence disabilities, such as children with specific learning disabilities, speech or language impairment, or mental retardation.

[(2) AUTHORIZED ACTIVITIES.—Activities that may be carried out under this subject include the following:

[(A) Activities undertaken by institutions of higher education, local educational agencies, and other local entities—

[(i) to improve and reform their existing programs to prepare teachers and related services personnel—

[(I) to meet the diverse needs of children with disabilities for early intervention, educational, and transitional services; and

[(III) to work collaboratively in regular classroom settings; and

[(ii) to incorporate best practices and research-based knowledge about preparing personnel so they will have the knowledge and skills to improve educational results for children with disabilities.

[(B) Activities incorporating innovative strategies to recruit and prepare teachers and other personnel to meet the needs of areas in which there are acute and persistent shortages of personnel.

[(C) Developing career opportunities for paraprofessionals to receive training as special education teachers, related services personnel, and early intervention personnel, including interdisciplinary training to enable them

to improve early intervention, educational, and transitional results for children with disabilities.

**[(f) APPLICATIONS.—**

**[(1) IN GENERAL.—**Any eligible entity that wishes to receive a grant, or enter into a contract or cooperative agreement, under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

**[(2) IDENTIFIED STATE NEEDS.—**

**[(A) REQUIREMENT TO ADDRESS IDENTIFIED NEEDS.—**Any application under subsection (b), (c), or (e) shall include information demonstrating to the satisfaction of the Secretary that the activities described in the application will address needs identified by the State or States the applicant proposes to serve.

**[(B) COOPERATION WITH STATE EDUCATIONAL AGENCIES.—**Any applicant that is not a local educational agency or a State educational agency shall include information demonstrating to the satisfaction of the Secretary that the applicant and one or more State educational agencies have engaged in a cooperative effort to plan the project to which the application pertains, and will cooperate in carrying out and monitoring the project.

**[(3) ACCEPTANCE BY STATES OF PERSONNEL PREPARATION REQUIREMENTS.—**The Secretary may require applicants to provide letters from one or more States stating that the States—

**[(A)** intend to accept successful completion of the proposed personnel preparation program as meeting State personnel standards for serving children with disabilities or serving infants and toddlers with disabilities; and

**[(B)** need personnel in the area or areas in which the applicant proposes to provide preparation, as identified in the States' comprehensive systems of personnel development under parts B and C.

**[(g) SELECTION OF RECIPIENTS.—**

**[(1) IMPACT OF PROJECT.—**In selecting recipients under this section, the Secretary may consider the impact of the project proposed in the application in meeting the need for personnel identified by the States.

**[(2) REQUIREMENT ON APPLICANTS TO MEET STATE AND PROFESSIONAL STANDARDS.—**The Secretary shall make grants under this section only to eligible applicants that meet State and professionally-recognized standards for the preparation of special education and related services personnel, if the purpose of the project is to assist personnel in obtaining degrees.

**[(3) PREFERENCES.—**In selecting recipients under this section, the Secretary may—

**[(A)** give preference to institutions of higher education that are educating regular education personnel to meet the needs of children with disabilities in integrated settings and educating special education personnel to work in collaboration with regular educators in integrated settings; and

**[(B)** give preference to institutions of higher education that are successfully recruiting and preparing individuals



with disabilities and individuals from groups that are underrepresented in the profession for which they are preparing individuals.

**[(h) SERVICE OBLIGATION.—**

**[(1) IN GENERAL.—**Each application for funds under subsections (b) and (e), and to the extent appropriate section (d), shall include an assurance that the applicant will ensure that individuals who receive a scholarship under the proposed project will subsequently provide a special education and related services to children with disabilities for a period of 2 years for every year for which assistance was received or repay all or part of the cost of that assistance, in accordance with regulations issued by the Secretary.

**[(2) LEADERSHIP PREPARATION.—**Each application for funds under subsection (c) shall include an assurance that the applicant will ensure that individuals who receive a scholarship under the proposed project will subsequently perform work related to their preparation for a period of 2 years for every year for which assistance was received or repay all or part of such costs, in accordance with regulations issued by the Secretary.

**[(i) SCHOLARSHIPS.—**The Secretary may include funds for scholarships, with necessary stipends and allowances, in awards under subsections (b), (c), (d), and (e).

**[(j) AUTHORIZATION OF APPROPRIATIONS.—**There are authorized to be appropriated to carry out this section such sums as may be necessary for each of the fiscal years 1998 through 2002.

**[SEC. 674. STUDIES AND EVALUATIONS.**

**[(a) STUDIES AND EVALUATIONS.—**

**[(1) IN GENERAL.—**The Secretary shall, directly or through grants, contracts, or cooperative agreements, assess the progress in the implementation of this Act, including the effectiveness of State and local efforts to provide—

**[(A)** a free appropriate public education to children with disabilities; and

**[(B)** early intervention services to infants and toddlers with disabilities and infants and toddlers who would be at risk of having substantial developmental delays if early intervention services were not provided to them.

**[(2) AUTHORIZED ACTIVITIES.—**In carrying out this subsection, the Secretary may support studies, evaluations, and assessments, including studies that—

**[(A)** analyze measurable impact, outcomes, and results achieved by State educational agencies and local educational agencies through their activities to reform policies, procedures, and practices designed to improve educational and transitional services and results for children with disabilities;

**[(B)** analyze State and local needs for professional development, parent training, and other appropriate activities; that can reduce the need for disciplinary actions involving children with disabilities;

**[(C)** assess educational and transitional services and results for children with disabilities from minority backgrounds, including—

**[(i)** data on—

[(I) the number of minority children who are referred for special education evaluation;

[(II) the number of minority children who are receiving special education and related services and their educational or other service placement; and

[(III) the number of minority children who graduated from secondary and postsecondary education programs; and

[(ii) the performance of children with disabilities from minority backgrounds on State assessments and other performance indicators established for all students;

[(D) measure educational and transitional services and results of children with disabilities under this Act, including longitudinal studies that—

[(i) examine educational and transitional services and results for children with disabilities who are 3 through 17 years of age and are receiving special education and related services under this Act, using a national, representative sample of distinct age cohorts and disability categories; and

[(ii) examine educational results, postsecondary placement, and employment status of individuals with disabilities, 18 through 21 years of age, who are receiving or have received special education and related services under this Act; and

[(E) identify and report on the placement of children with disabilities by disability category.

[(b) NATIONAL ASSESSMENT.—

[(1) IN GENERAL.—The Secretary shall carry out a national assessment of activities carried out with Federal funds under this Act in order—

[(A) to determine the effectiveness of this Act in achieving its purposes;

[(B) to provide information to the President, the Congress, the States, local educational agencies, and the public on how to implement the Act more effectively; and

[(C) to provide the President and the Congress with information that will be useful in developing legislation to achieve the purposes of this Act more effectively.

[(2) CONSULTATION.—The Secretary shall plan, review, and conduct the national assessment under this subsection in consultation with researchers, State practitioners, local practitioners, parents of children with disabilities, individuals with disabilities, and other appropriate individuals.

[(3) SCOPE OF ASSESSMENT.—The national assessment shall examine how well schools, local educational agencies, States, other recipients of assistance under this Act, and the Secretary are achieving the purposes of this Act, including—

[(A) improving the performance of children with disabilities in general scholastic activities and assessments as compared to nondisabled children;

[(B) providing for the participation of children with disabilities in the general curriculum;

[(C) helping children with disabilities make successful transitions from—

[(i) early intervention services to preschool education;

[(ii) preschool education to elementary school; and

[(iii) secondary school to adult life;

[(D) placing and serving children with disabilities, including minority children, in the least restrictive environment appropriate;

[(E) preventing children with disabilities, especially children with emotional disturbances and specific learning disabilities, from dropping out of school;

[(F) addressing behavior problems of children with disabilities as compared to nondisabled children;

[(G) coordinating services provided under this Act with each other, with other educational and pupil services (including preschool services), and with health and social services funded from other sources;

[(H) providing for the participation of parents of children with disabilities in the education of their children; and

[(I) resolving disagreements between education personnel and parents through activities such as mediation.

[(4) INTERIM AND FINAL REPORTS.—The Secretary shall submit to the President and the Congress—

[(A) an interim report that summarizes the preliminary findings of the assessment not later than October 1, 1999; and

[(B) a final report of the findings of the assessment not later than October 1, 2001.

[(c) ANNUAL REPORT.—The Secretary shall report annually to the Congress to—

[(1) an analysis and summary of the data reported by the States and the Secretary of the Interior under section 618;

[(2) the results of activities conducted under subsection (a);

[(3) the findings and determinations resulting from reviews of State implementation of this Act.

[(d) TECHNICAL ASSISTANCE TO LEAS.—The Secretary shall provide directly, or through grants, contracts, or cooperative agreements, technical assistance to local educational agencies to assist them in carrying out local capacity-building and improvement projects under section 611(f)(4) and other LEA systemic improvement activities under this Act.

[(d) RESERVATION FOR STUDIES AND TECHNICAL ASSISTANCE.—

[(1) IN GENERAL.—Except as provided in paragraph (2) and notwithstanding any other provision of this Act, the Secretary may reserve up to one-half of one percent of the amount appropriated under parts B and C for each fiscal year to carry out this section.

[(2) MAXIMUM AMOUNT.—For the first fiscal year in which the amount described in paragraph (1) is at least \$20,000,000, the maximum amount the Secretary may reserve under paragraph (1) is \$20,000,000. For each subsequent fiscal year, the maximum amount the Secretary may reserve under paragraph

(1) is \$20,000,000, increased by the cumulative rate of inflation since the fiscal year described in the previous sentence.

[(3) USE OF MAXIMUM AMOUNT.—In any fiscal year described in paragraph (2) for which the Secretary reserves the maximum amount described in that paragraph, the Secretary shall use at least half of the reserved amount for activities under subsection (d).

**[CHAPTER 2—IMPROVING EARLY INTERVENTION, EDUCATIONAL, AND TRANSITIONAL SERVICES AND RESULTS FOR CHILDREN WITH DISABILITIES THROUGH COORDINATED TECHNICAL ASSISTANCE, SUPPORT, AND DISSEMINATION OF INFORMATION**

**[SEC. 681. FINDINGS AND PURPOSES.**

[(a) IN GENERAL.—The Congress finds as follows:

[(1) National technical assistance, support, and dissemination activities are necessary to ensure that parts B and C are fully implemented and achieve quality early intervention, educational, and transitional results for children with disabilities and their families.

[(2) Parents, teachers, administrators, and related services personnel need technical assistance and information in a timely, coordinated, and accessible manner in order to improve early intervention, educational, and transitional services and results at the State and local levels for children with disabilities and their families.

[(3) Parent training and information activities have taken on increased importance in efforts to assist parents of a child with a disability in dealing with the multiple pressures of rearing such a child and are of particular importance in—

[(A) ensuring the involvement of such parents in planning and decisionmaking with respect to early intervention, educational, and transitional services;

[(B) achieving quality early intervention, educational, and transitional results for children with disabilities;

[(C) providing such parents information on their rights and protections under this Act to ensure improved early intervention, educational, and transitional results for children with disabilities;

[(D) assisting such parents in the development of skills to participate effectively in the education and development of their children and in the transitions described in section 674(b)(3)(C); and

[(E) supporting the roles of such parents as participants within partnerships seeking to improve early interventions, educational, and transitional services and results for children with disabilities and their families.

[(4) Providers of parent training and information activities need to ensure that such parents who have limited access to services and supports, due to economic, cultural, or linguistic barriers, are provided with access to appropriate parent training and information activities.

[(5) Parents of children with disabilities need information that helps the parents to understand the rights and responsibilities of their children under part B.

[(6) The provision of coordinated technical assistance and dissemination of information to State and local agencies, institutions of higher education, and other providers of services to children with disabilities is essential in—

[(A) supporting the process of achieving systemic change;

[(B) supporting actions in areas of priority specific to the improvement of early intervention, educational, and transitional results for children with disabilities;

[(C) conveying information and assistance that are—

[(i) based on current research (as of the date the information and assistance are conveyed);

[(ii) accessible and meaningful for use in supporting systemic-change activities of State and local partnerships; and

[(iii) linked directly to improving early intervention, educational, and transitional services and results for children with disabilities and their families; and

[(D) organizing systems and information networks for such information, based on modern technology related to)

[(i) storing and gaining access to information; and

[(ii) distributing information in a systematic manner to parents, students, professionals, and policy-makers.

[(7) Federal support for carrying out technology research, technology development, and educational media services and activities has resulted in major innovations that have significantly improved early intervention, educational, and transitional services and results for children with disabilities and their families.

[(8) Such Federal support is needed—

[(A) to stimulate the development of software, interactive learning tools, and devices to address early intervention, educational, and transitional needs of children with disabilities who have certain disabilities;

[(B) to make information available on technology research, technology development, and educational media services and activities to individuals involved in the provision of early intervention, educational, and transitional services to children with disabilities;

[(C) to promote the integration of technology into curricula results for children with disabilities;

[(D) to provide incentives for the development of technology and media devices and tools that are not readily found or available because of the small size of potential markets;

[(E) to make resources available to pay for such devices and tools and educational media services and activities;

[(F) to promote the training of personnel—

[(i) to provide such devices, tools, services, and activities in a competent manner; and

[(ii) to assist children with disabilities and their families in using such devices, tools, services, and activities; and

[(G) to coordinate the provision of such devices, tools, services, and activities—

[(i) among State human services programs; and

[(ii) between such programs and private agencies.

[(b) PURPOSES.—The purposes of this chapter are to ensure that—

[(1) children with disabilities, and their parents, receive training and information on their rights and protections under this Act, in order to develop the skills necessary to effectively participate in planning and decision making relating to early intervention, educational, and transitional services and in systemic-change activities;

[(2) parents, teachers, administrators, early intervention personnel, related services personnel, and transition personnel receive coordinated and accessible technical assistance and information to assist such persons, through systemic-change activities and other efforts, to improve early intervention, educational, and transitional services and results for children with disabilities and their families;

[(3) appropriate technology and media are researched, developed, demonstrated, and made available in timely and accessible formats to parents, teachers, and all types of personnel providing services to children with disabilities to support their roles as partners in the improvement and implementation of early intervention, educational, and transitional services, and results for children with disabilities and their families;

[(4) on reaching the age of majority under State law, children with disabilities understand their rights and responsibilities under part B, if the State provides for the transfer of parental rights under section 615(m); and

[(5) the general welfare of deaf and hard-of-hearing individuals is promoted by—

[(A) bringing to such individuals understanding and appreciation of the films and television programs that play an important part in the general and cultural advancement of hearing individuals;

[(B) providing, through those films and television programs, enriched educational and cultural experiences through which deaf and hard-of-hearing individuals can better understand the realities of their environment; and

[(C) providing wholesome and rewarding experiences that deaf and hard-of-hearing individuals may share.

**[SEC. 682. PARENT TRAINING AND INFORMATION CENTERS.**

[(a) PROGRAM AUTHORIZED.—The Secretary may make grants to, and enter into contracts and cooperative agreements with, parent organizations to support parent training and information centers to carry out activities under this section.

[(b) REQUIRED ACTIVITIES.—Each parent training and information center that receives assistance under this section shall—

[(1) provide training and information that meets the training and information needs of parents of children with disabilities living the area served by the center, particularly underserved parents and parents of children who may be inappropriately identified;

[(2) assist parents to understand the availability of, and how to effectively use, procedural safeguards under this Act, including encouraging the use, and explaining the benefits, of alternative methods of dispute resolution, such as the mediation process described in section 615(e);

[(3) serve the parents of infants, toddlers, and children with the full range of disabilities;

[(4) assist parents to—

[(A) better understand the nature of their children's disabilities and their educational and developmental needs;

[(B) communicate effectively with personnel responsible for providing special education, early intervention, and related services;

[(C) participate in decision making processes and the development of individualized education programs under part B and individualized family service plans under part C;

[(D) obtain appropriate information about the range of options, programs, services, and resources available to assist children with disabilities and their families;

[(E) understand the provisions of early intervention services to, children with disabilities; and

[(F) participate in school reform activities;

[(5) in State where the State elects to contract with the parent training and information center, contract with State educational agencies to provide, consistent with subparagraphs (B) and (D) of section 615(e)(2), individuals who meet with parents to explain the mediation process to them;

[(6) network with appropriate clearinghouses, including organizations conducting national dissemination activities under section 685(d), and with other national, State, and local organizations and agencies, such as protection and advocacy agencies, that serve parents and families of children with the full range of disabilities; and

[(7) annually report to the Secretary on—

[(A) the number of parents to whom it provided information and training in the most recently concluded fiscal year; and

[(B) the effectiveness of strategies used to reach and serve parents, including underserved parents of children with disabilities.

[(c) OPTIONAL ACTIVITIES.—A parent training and information center that receives assistance under this section may—

[(1) provide information to teachers and other professionals who provide special education and related services to children with disabilities;

[(2) assist students with disabilities to understand their rights and responsibilities under section 615(m) on reaching the age of majority; and;

[(3) assist parents of children with disabilities to be informed participants in the development and implementation of the State's State improvement plan under subpart 1.

[(d) APPLICATION REQUIREMENTS.—Each application for assistance under this section shall identify with specificity the special efforts that the applicant will undertake—

[(1) to ensure that the needs for training and information of underserved parents of children with disabilities in the area to be served are effectively met; and

[(2) to work with community-based organizations.

[(e) DISTRIBUTION OF FUNDS.—

[(1) IN GENERAL.—The Secretary shall make at least 1 award to a parent organization in each State, unless the Secretary does not receive an application from such an organization in each State of sufficient quality to warrant approval.

[(2) SELECTION REQUIREMENT.—The Secretary shall select among applications submitted by parent organizations in a State in a manner that ensures the most effective assistance to parents, including parents in urban and rural areas, in the State.

[(f) QUARTERLY REVIEW.—

[(1) REQUIREMENTS.—

[(A) MEETINGS.—The board of directors or special governing committee of each organization that receives an award under this section shall meet at least once in each calendar quarter to review the activities for which the award was made.

[(B) ADVISING BOARD.—Each special governing committee shall directly advise the organization's governing board of its views and recommendations.

[(2) CONTINUATION AWARD.—When an organization requests a continuation award under this section, the board of directors or special governing committee shall submit to the Secretary a written review of the parent training and information program conducted by the organization during the preceding fiscal year.

[(g) DEFINITION OF PARENT ORGANIZATION.—As used in this section, the term "parent organization" means a private nonprofit organization (other than an institution of higher education) that—

[(1) has a board of directors—

[(A) the majority of whom are parents of children with disabilities;

[(B) that includes—

[(i) individuals working in the fields of special education, related services, and early intervention; and

[(ii) individuals with disabilities; and

[(C) the parent and professional members of which are broadly representative of the population to be served; or

[(2) has—

[(A) a membership that represents the interests of individuals with disabilities and has established a special governing committee that meets the requirements of paragraph (1); and

[(B) a memorandum of understanding between the special governing committee and the board of directors of the organization that clearly outlines the relationship between the board and the committee and the decisionmaking responsibilities and authority of each.

**[SEC. 683. COMMUNITY PARENT RESOURCE CENTERS.**

[(a) IN GENERAL.—The Secretary may make grants to, and enter into contracts and cooperative agreements with, local parent organizations to support parent training and information centers that



will help ensure that underserved parents of children with disabilities, including low-income parents, parents of children with limited English proficiency, and parents with disabilities, have the training and information they need to enable them to participate effectively in helping their children with disabilities—

[(1) to meet developmental goals and, to the maximum extent possible, those challenging standards that have been established for all children; and

[(2) to be prepared to lead productive independent adult lives, to the maximum extent possible.

[(b) REQUIRED ACTIVITIES.—Each parent training and information center assisted under this section shall—

[(1) provide training and information that meets the training and information needs of parents of children with disabilities proposed to be served by the grant, contract, or cooperative agreement;

[(2) carry out the activities required of parent training and information centers under paragraphs (2) through (7) of section 682(b);

[(3) establish cooperative partnerships with the parent training and information centers funded under section 682; and

[(4) be designed to meet the specific needs of families who experience significant isolation from available sources of information and support.

[(c) DEFINITION.—As used in this section, the term “local parent organization” means a parent organization, as defined in section 682(g), that either—

[(1) has a board of directors the majority of whom are from the community to be served; or

[(2) has—

[(A) as a part of its mission, serving the interests of individuals with disabilities from such community; and

[(B) a special governing committee to administer the grant, contract, or cooperative agreement, a majority of the members of which are individuals from such community.

**[SEC. 684. TECHNICAL ASSISTANCE FOR PARENT TRAINING AND INFORMATION CENTERS.**

[(a) IN GENERAL.—The Secretary may, directly or through awards to eligible entities, provide technical assistance for developing, assisting, and coordinating parent training and information programs carried out by parent training and information centers receiving assistance under sections 682 and 683.

[(b) AUTHORIZED ACTIVITIES.—The Secretary may provide technical assistance to a parent training and information center under this section in areas such as—

[(1) effective coordination of parent training efforts;

[(2) dissemination of information;

[(3) evaluation by the center of itself;

[(4) promotion of the use of technology, including assistive technology devices and assistive technology services;

[(5) reaching underserved populations;

[(6) including children with disabilities in general education programs;

[(7) facilitation of transitions from—

[(A) early intervention services to preschool;

[(B) preschool to school; and

[(C) secondary school to postsecondary environments;  
and

[(8) promotion of alternative methods of dispute resolution.

**[SEC. 685. COORDINATED TECHNICAL ASSISTANCE AND DISSEMINATION.**

[(a) IN GENERAL.—The Secretary shall, by competitively making grants or entering into contracts and cooperative agreements with eligible entities, provide technical assistance and information, through such mechanisms as institutes, Regional Resource Centers, clearinghouses, and programs that support States and local entities in building capacity, to improve early intervention, educational, and transitional services and results for children with disabilities and their families, and address systemic-change goals and priorities.

[(b) SYSTEMIC TECHNICAL ASSISTANCE; AUTHORIZED ACTIVITIES.—

[(1) IN GENERAL.—In carrying out this section, the Secretary shall carry out or support technical assistance activities, consistent with the objectives described in subsection (a), relating to systemic change.

[(2) AUTHORIZED ACTIVITIES.—Activities that may be carried out under this subsection include activities such as the following:

[(A) Assisting States, local education agencies, and other participants in partnerships established under subpart 1 with the process of planning systemic changes that will promote improved early intervention, educational, and transitional results for children with disabilities.

[(B) Promoting change through a multistate or regional framework that benefits States, local educational agencies, and other participants in partnerships that are in the process of achieving systemic-change outcomes.

[(C) Increasing the depth and utility of information in ongoing and emerging areas of priority need identified by States, local educational agencies, and other participants in partnerships that are in the process of achieving systemic-change outcomes.

[(D) Promoting communication and information exchange among States, local educational agencies, and other participants in partnerships, based on the needs and concerns identified by the participants in the partnerships, rather than on externally imposed criteria or topics, regarding—

[(i) the practices, procedures, and policies of the States, local educational agencies, and other participants in partnerships; and

[(ii) accountability of the States, local educational agencies, and other participants for improved early intervention, educational, and transitional results for children with disabilities.

[(c) SPECIALIZED TECHNICAL ASSISTANCE; AUTHORIZED ACTIVITIES.—

[(1) IN GENERAL.—In carrying out this section, the Secretary shall carry out or support activities, consistent with the objec-

tives described in subsection (a), relating to areas of priority or specific populations.

[(2) AUTHORIZED ACTIVITIES.—Examples of activities that may be carried out under this subsection include activities that—

[(A) focus on specific areas of high-priority need that—

[(i) are identified by States, local educational agencies and other participants in partnerships;

[(ii) require the development of new knowledge, or the analysis and synthesis of substantial bodies of information not readily available to the States, agencies, and other participants in partnerships; and

[(iii) will contribute significantly to the improvement of early intervention, educational, and transitional services and results for children with disabilities and their families;

[(B) focus on needs and issues that are specific to a population of children with disabilities, such as the provision of single-State and multi-State technical assistance and in-service training—

[(i) to schools and agencies serving deaf-blind children and their families; and

[(ii) to programs and agencies serving other groups of children with low-incidence disabilities and their families; or

[(C) address the postsecondary education needs of individuals who are deaf or hard-of-hearing.

[(d) NATIONAL INFORMATION DISSEMINATION; AUTHORIZED ACTIVITIES.

[(1) IN GENERAL.—In carrying out this section, the Secretary shall carry out or support information dissemination activities that are consistent with the objectives described in subsection (a), including activities that address national needs for the preparation and dissemination of information relating to eliminating barriers to systemic-change and improving early intervention, educational, and transitional results for children with disabilities.

[(2) AUTHORIZED ACTIVITIES.—Examples of activities that may be carried out under this subsection include activities relating to—

[(A) infants and toddlers with disabilities and their families, and children with disabilities and their families;

[(B) services for populations of children with low-incidence disabilities, including deaf-blind children, and targeted age groupings;

[(C) the provision of postsecondary services to individuals with disabilities;

[(D) the need for and use of personnel to provide services to children with disabilities, and personnel recruitment, retention, and preparation;

[(E) issues that are of critical interest to State educational agencies and local educational agencies, other agency personnel, parents of children with disabilities, and individuals with disabilities;

[(F) educational reform and systemic change within States; and

[(G) promoting schools that are safe and conducive to learning.

[(3) LINKING STATES TO INFORMATION SOURCES.—In carrying out this subsection, the Secretary may support projects that link States to technical assistance resources, including special education and general education resources, and may make research and related products available through libraries, electronic networks, parent training projects, and other information sources.

[(e) APPLICATIONS.—An eligible entity that wishes to receive a grant, or enter into a contract or cooperative agreement, under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

**[SEC. 686. AUTHORIZATION OF APPROPRIATIONS.**

[There are authorized to be appropriated to carry out sections 681 through 685 such sums as may be necessary for each of the fiscal years 1998 through 2003.

**[SEC. 687. TECHNOLOGY DEVELOPMENT, DEMONSTRATION, AND UTILIZATION; AND MEDIA SERVICES.**

[(a) IN GENERAL.—The Secretary shall competitively make grants to, and enter into contracts and cooperative agreements with, eligible entities to support activities described in subsections (b) and (c).

[(b) TECHNOLOGY DEVELOPMENT, DEMONSTRATION, AND UTILIZATION; AUTHORIZED ACTIVITIES.—

[(1) IN GENERAL.—In carrying out this section, the Secretary shall support activities to promote the development, demonstration, and utilization of technology.

[(2) AUTHORIZED ACTIVITIES.—Activities that may be carried out under this subsection include activities such as the following:

[(A) Conducting research and development activities on the use of innovative and emerging technologies for children with disabilities.

[(B) Promoting the demonstration and use of innovative and emerging technologies for children with disabilities by improving and expanding the transfer of technology from research and development to practice.

[(C) Providing technical assistance to recipients of other assistance under this section, concerning the development of accessible, effective, and usable products.

[(D) Communicating information on available technology and the uses of such technology to assist children with disabilities.

[(E) Supporting the implementation of research programs on captioning or video description.

[(F) Supporting research, development, and dissemination of technology with universal-design features, so that the technology is accessible to individuals with disabilities without further modification or adaptation.

- [(G) Demonstrating the use of publicly-funded telecommunications systems to provide parents and teachers with information and training concerning early diagnosis of, intervention for, and effective teaching strategies for, young children with reading disabilities.
- [(c) EDUCATIONAL MEDIA SERVICES; AUTHORIZED ACTIVITIES.—In carrying out this section, the Secretary shall support—
- [(1) educational media activities that are designed to be of educational value to children with disabilities;
  - [(2) providing video description, open captioning, or closed captioning of television programs, videos, or educational materials through September 30, 2001; and after fiscal year 2001, providing video description, open captioning, or closed captioning of educational, news, and informational television, videos, or materials;
  - [(3) distributing captioned and described videos or educational materials through such mechanisms as a loan service;
  - [(4) providing free educational materials, including textbooks, in accessible media for visually impaired and print-disabled students in elementary, secondary, postsecondary, and graduate schools;
  - [(5) providing cultural experiences through appropriate non-profit organizations, such as the National Theater of the Deaf, that—
    - [(A) enrich the lives of deaf and hard-of-hearing children and adults;
    - [(B) increase public awareness and understanding of deafness and of the artistic and intellectual achievements of deaf and hard-of-hearing persons; or
    - [(C) promote the integration of hearing, deaf, and hard-of-hearing persons through shared cultural, educational, and social experiences; and
  - [(6) compiling and analyzing appropriate data relating to the activities described in paragraphs (1) through (5).
- [(d) APPLICATIONS.—Any eligible entity that wishes to receive a grant, or enter into a contract or cooperative agreement, under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.
- [(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary for each of the fiscal years 1998 through 2002.]

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

### ***SEC. 650. FINDINGS.***

*Congress finds the following:*

- (1) *The Federal Government has an ongoing obligation to support activities that contribute to positive results for children with disabilities, enabling them to lead productive and independent adult lives.*
- (2) *Systemic change benefiting all students, including children with disabilities, requires the involvement of States, local educational agencies, parents, individuals with disabilities and*

*their families, teachers and other service providers, and other interested individuals and organizations to develop and implement comprehensive strategies that improve educational results for children with disabilities.*

*(3) State educational agencies, in partnership with local educational agencies, parents of children with disabilities, and other individuals and organizations, are in the best position to improve education for children with disabilities and to address their special needs.*

*(4) An effective educational system serving students with disabilities should—*

*(A) maintain high academic achievement standards and clear performance goals for children with disabilities, consistent with the standards and expectations for all students in the educational system, and provide for appropriate and effective strategies and methods to ensure that all children with disabilities have the opportunity to achieve those standards and goals;*

*(B) clearly define, in objective, measurable terms, the school and post-school results that children with disabilities are expected to achieve; and*

*(C) promote transition services and coordinate State and local education, social, health, mental health, and other services, in addressing the full range of student needs, particularly the needs of children with disabilities who need significant levels of support to participate and learn in school and the community.*

*(5) The availability of an adequate number of qualified personnel is critical to serve effectively children with disabilities, to assume leadership positions in administration and direct services, to provide teacher training, and to conduct high quality research to improve special education.*

*(6) High quality, comprehensive professional development programs are essential to ensure that the persons responsible for the education or transition of children with disabilities possess the skills and knowledge necessary to address the educational and related needs of those children.*

*(7) Models of professional development should be scientifically based and reflect successful practices, including strategies for recruiting, preparing, and retaining personnel.*

*(8) Continued support is essential for the development and maintenance of a coordinated and high quality program of research to inform successful teaching practices and model curricula for educating children with disabilities.*

*(9) A comprehensive research agenda should be established and pursued to promote the highest quality and rigor in special education research, and to address the full range of issues facing children with disabilities, parents of children with disabilities, school personnel, and others.*

*(10) Training, technical assistance, support, and dissemination activities are necessary to ensure that parts B and C are fully implemented and achieve high quality early intervention, educational, and transitional results for children with disabilities and their families.*

(11) Parents, teachers, administrators, and related services personnel need technical assistance and information in a timely, coordinated, and accessible manner in order to improve early intervention, educational, and transitional services and results at the State and local levels for children with disabilities and their families.

(12) Parent training and information activities assist parents of a child with a disability in dealing with the multiple pressures of parenting such a child and are of particular importance in—

(A) playing a vital role in creating and preserving constructive relationships between parents of children with disabilities and schools by facilitating open communication between the parents and schools; encouraging dispute resolution at the earliest possible point in time; and discouraging the escalation of an adversarial process between the parents and schools;

(B) ensuring the involvement of parents in planning and decisionmaking with respect to early intervention, educational, and transitional services;

(C) achieving high quality early intervention, educational, and transitional results for children with disabilities;

(D) providing such parents information on their rights, protections, and responsibilities under this Act to ensure improved early intervention, educational, and transitional results for children with disabilities;

(E) assisting such parents in the development of skills to participate effectively in the education and development of their children and in the transitions described in section 673(b)(6);

(F) supporting the roles of such parents as participants within partnerships seeking to improve early intervention, educational, and transitional services and results for children with disabilities and their families; and

(G) supporting such parents who may have limited access to services and supports, due to economic, cultural, or linguistic barriers.

(13) Support is needed to improve technological resources and integrate technology, including universally designed technologies, into the lives of children with disabilities, parents of children with disabilities, school personnel, and others through curricula, services, and assistive technologies.

### **Subpart 1—State Personnel Preparation and Professional Development Grants**

#### **SEC. 651. PURPOSE; DEFINITION; PROGRAM AUTHORITY.**

(a) *PURPOSE.*—The purpose of this subpart is to assist State educational agencies in reforming and improving their systems for personnel preparation and professional development in early intervention, educational, and transition services in order to improve results for children with disabilities.

(b) *DEFINITION.*—In this subpart, the term “personnel” means special education teachers, regular education teachers, principals, ad-

ministrators, related services personnel, paraprofessionals, and early intervention personnel serving infants, toddlers, preschoolers, or children with disabilities, except where a particular category of personnel, such as related services personnel, is identified.

(c) **COMPETITIVE GRANTS.**—

(1) **IN GENERAL.**—Except as provided in subsection (d), for any fiscal year for which the amount appropriated under section 655, that remains after the Secretary reserves funds under subsection (e) for the fiscal year, is less than \$100,000,000, the Secretary shall award grants, on a competitive basis, to State educational agencies to carry out the activities described in the State plan submitted under section 653.

(2) **PRIORITY.**—In awarding grants under paragraph (1), the Secretary may give priority to State educational agencies that—

- (A) are in States with the greatest personnel shortages; or
- (B) demonstrate the greatest difficulty meeting the requirements of section 612(a)(14).

(3) **MINIMUM.**—The Secretary shall make a grant to each State educational agency selected under paragraph (1) in an amount for each fiscal year that is—

- (A) not less than \$500,000, nor more than \$4,000,000, in the case of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico; and
- (B) not less than \$80,000 in the case of an outlying area.

(4) **INCREASES.**—The Secretary may increase the amounts under in paragraph (3) to account for inflation.

(5) **FACTORS.**—The Secretary shall set the amount of each grant under paragraph (1) after considering—

- (A) the amount of funds available for making the grants;
- (B) the relative population of the State or outlying area;
- (C) the types of activities proposed by the State or outlying area;
- (D) the alignment of proposed activities with section 612(a)(14);
- (E) the alignment of proposed activities with the State plans and applications submitted under sections 1111 and 2112, respectively, of the Elementary and Secondary Education Act of 1965; and
- (F) the use, as appropriate, of scientifically based activities.

(d) **FORMULA GRANTS.**—

(1) **IN GENERAL.**—Except as provided in paragraphs (2) and (3), for the first fiscal year for which the amount appropriated under section 655, that remains after the Secretary reserves funds under subsection (e) for the fiscal year, is equal to or greater than \$100,000,000, and for each fiscal year thereafter, the Secretary shall allot to each State educational agency, whose application meets the requirements of this subpart, an amount that bears the same relation to the amount appropriated as the amount the State received under section 611(d) for that fiscal year bears to the amount of funds received by all States (whose applications meet the requirements of this subpart) under section 611(d) for that fiscal year.

(2) **MINIMUM ALLOTMENTS FOR STATES THAT RECEIVED COMPETITIVE GRANTS.**—



(A) *IN GENERAL.*—The amount allotted under this subsection to any State that received a competitive multi-year grant under subsection (c) for which the grant period has not expired shall be at least the amount specified for that fiscal year in the State's grant award document under that subsection.

(B) *SPECIAL RULE.*—Each such State shall use the minimum amount described in subparagraph (A) for the activities described in its competitive grant award document for that year, unless the Secretary approves a request from the State to spend the funds on other activities.

(3) *MINIMUM ALLOTMENT.*—The amount of any State educational agency's allotment under this subsection for any fiscal year shall not be less than—

(A) the greater of \$500,000 or 1/2 of 1 percent of the total amount available under this subsection for that year, in the case of each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico; and

(B) \$80,000, in the case of an outlying area.

(e) *CONTINUATION AWARDS.*—

(1) *IN GENERAL.*—Notwithstanding any other provision of this subpart, from funds appropriated under section 655 for each fiscal year, the Secretary shall reserve the amount that is necessary to make a continuation award to any State (at the request of the State) that received a multi-year award under this part (as this part was in effect on the day before the date of enactment of the Individuals with Disabilities Education Improvement Act of 2003), to enable the State to carry out activities in accordance with the terms of the multi-year award.

(2) *PROHIBITION.*—A State that receives a continuation award under paragraph (1) for any fiscal year may not receive any other award under this subpart for that fiscal year.

**SEC. 652. ELIGIBILITY AND COLLABORATIVE PROCESS.**

(a) *ELIGIBLE APPLICANTS.*—A State educational agency may apply for a grant under this subpart for a grant period of not less than 1 year and not more than 5 years.

(b) *PARTNERS.*—

(1) *IN GENERAL.*—In order to be considered for a grant under this subpart, a State educational agency shall establish a partnership with local educational agencies and other State agencies involved in, or concerned with, the education of children with disabilities, including institutions of higher education and the State agencies responsible for administering part C, child care, and vocational rehabilitation programs.

(2) *OTHER PARTNERS.*—In order to be considered for a grant under this subpart, a State educational agency shall work in partnership with other persons and organizations involved in, and concerned with, the education of children with disabilities, which may include—

(A) the Governor;

(B) parents of children with disabilities ages birth through 26;

(C) parents of nondisabled children ages birth through 26;

(D) individuals with disabilities;

(E) parent training and information centers or community parent resource centers funded under sections 671 and 672, respectively;

(F) community based and other nonprofit organizations involved in the education and employment of individuals with disabilities;

(G) personnel as defined in section 651(b);

(H) the State advisory panel established under part B;

(I) the State interagency coordinating council established under part C;

(J) individuals knowledgeable about vocational education;

(K) the State agency for higher education;

(L) public agencies with jurisdiction in the areas of health, mental health, social services, and juvenile justice;

(M) other providers of professional development that work with infants, toddlers, preschoolers, and children with disabilities; and

(N) other individuals.

(3) **REQUIRED PARTNER.**—If State law assigns responsibility for teacher preparation and certification to an individual, entity, or agency other than the State educational agency, the State educational agency shall—

(A) include that individual, entity, or agency as a partner in the partnership under this subsection; and

(B) ensure that any activities the State will carry out under this subpart that are within that partner's jurisdiction (which may include activities described in section 654(b)) are carried out by that partner.

#### **SEC. 653. APPLICATIONS.**

(a) **IN GENERAL.**—

(1) **SUBMISSION.**—A State educational agency that desires to receive a grant under this subpart shall submit to the Secretary an application at such time, in such manner, and including such information as the Secretary may require.

(2) **STATE PLAN.**—The application shall include a plan that identifies and addresses the State and local needs for the personnel preparation and professional development of administrators, principals, and teachers, as well as individuals who provide direct supplementary aids and services to children with disabilities, and that—

(A) is designed to enable the State to meet the requirements of section 612(a)(14) and section 635(a) (8) and (9);

(B) is based on an assessment of State and local needs that identifies critical aspects and areas in need of improvement related to the preparation, ongoing training, and professional development of personnel that serve infants, toddlers, preschoolers, and children with disabilities within the State, including—

(i) current and anticipated personnel vacancies and shortages; and

(ii) the number of preservice programs; and

(C) is integrated and aligned, to the maximum extent possible, with State plans and activities under the Elemen-

*tary and Secondary Education Act of 1965, the Rehabilitation Act of 1973, and the Higher Education Act of 1965.*

(3) *REQUIREMENT.—The State application shall contain an assurance that the State educational agency will carry out each of the strategies described in subsection (b)(4).*

(b) *ELEMENTS OF STATE PERSONNEL PREPARATION AND PROFESSIONAL DEVELOPMENT PLAN.—Each professional development plan under subsection (a)(2) shall—*

(1) *describe a partnership agreement that is in effect for the period of the grant, which agreement shall specify—*

(A) *the nature and extent of the partnership described in section 652(b) and the respective roles of each member of the partnership, including the partner described in section 652(b)(3) if applicable; and*

(B) *how the State will work with other persons and organizations involved in, and concerned with, the education of children with disabilities, including the respective roles of each of the persons and organizations;*

(2) *describe how the strategies and activities described in paragraph (4) will be coordinated with other public resources (including part B and part C funds retained for use at the State level for personnel and professional development purposes) and private resources;*

(3) *describe how the State will align its professional development plan under this subpart with the plan and application submitted under sections 1111 and 2112, respectively, of the Elementary and Secondary Education Act of 1965;*

(4) *describe what strategies the State will use to address the professional development and personnel needs identified under subsection (a)(2) and how those strategies will be implemented, including—*

(A) *a description of the preservice and inservice programs and activities to be supported under this subpart that will provide personnel with the knowledge and skills to meet the needs of, and improve the performance and achievement of, infants, toddlers, preschoolers, and children with disabilities; and*

(B) *how such strategies shall be integrated, to the maximum extent possible, with other activities supported by grants funded under this part, including those under section 664;*

(5) *provide an assurance that the State will provide technical assistance to local educational agencies to improve the quality of professional development available to meet the needs of personnel who serve children with disabilities;*

(6) *provide an assurance that the State will provide technical assistance to entities that provide services to infants and toddlers with disabilities to improve the quality of professional development available to meet the needs of personnel serving such children;*

(7) *describe how the State will recruit and retain highly qualified teachers and other qualified personnel in geographic areas of greatest need;*

(8) describe the steps the State will take to ensure that poor and minority children are not taught at higher rates by teachers who are not highly qualified; and

(9) describe how the State will assess, on a regular basis, the extent to which the strategies implemented under this subpart have been effective in meeting the performance goals described in section 612(a)(15).

(c) **PEER REVIEW.**—

(1) **IN GENERAL.**—The Secretary shall use a panel of experts who are competent, by virtue of their training, expertise, or experience, to evaluate applications for grants under section 651(c)(1).

(2) **COMPOSITION OF PANEL.**—A majority of a panel described in paragraph (1) shall be composed of individuals who are not employees of the Federal Government.

(3) **PAYMENT OF FEES AND EXPENSES OF CERTAIN MEMBERS.**—The Secretary may use available funds appropriated to carry out this subpart to pay the expenses and fees of panel members who are not employees of the Federal Government.

(d) **REPORTING PROCEDURES.**—Each State educational agency that receives a grant under this subpart shall submit annual performance reports to the Secretary. The reports shall describe the progress of the State in implementing its plan and analyze the effectiveness of the State's activities under this subpart.

**SEC. 654. USE OF FUNDS.**

(a) **PROFESSIONAL DEVELOPMENT ACTIVITIES.**—A State educational agency that receives a grant under this subpart shall use the grant funds to support activities in accordance with the State's plan described in section 653, including 1 or more of the following:

(1) Carrying out programs that provide support to both special education and regular education teachers of children with disabilities and principals, such as programs that—

(A) provide teacher mentoring, team teaching, reduced class schedules and case loads, and intensive professional development; and

(B) use standards or assessments for guiding beginning teachers that are consistent with challenging State student academic achievement and functional standards and with the requirements for professional development as defined in section 9101(34) of the Elementary and Secondary Education Act of 1965.

(2) Encouraging and supporting the training of special education and regular education teachers and administrators to effectively use and integrate technology—

(A) into curricula and instruction, including training to improve the ability to collect, manage, and analyze data to improve teaching, decisionmaking, school improvement efforts, and accountability;

(B) to enhance learning by children with disabilities; and

(C) to effectively communicate with parents.

(3) Providing professional development activities that—

(A) improve the knowledge of special education and regular education teachers concerning—

(i) the academic and developmental or functional needs of students with disabilities; or

(ii) effective instructional strategies, methods, and skills, and the use of State academic content standards and student academic achievement and functional standards, and State assessments, to improve teaching practices and student academic achievement;

(B) improve the knowledge of special education and regular education teachers and principals and, in appropriate cases, paraprofessionals, concerning effective instructional practices and that—

(i) provide training in how to teach and address the needs of children with different learning styles and children with limited English proficiency;

(ii) involve collaborative groups of teachers and administrators;

(iii) provide training in methods of—

(I) positive behavioral interventions and supports to improve student behavior in the classroom;

(II) scientifically based reading instruction, including early literacy instruction;

(III) early and appropriate interventions to identify and help children with disabilities;

(IV) effective instruction for children with low incidence disabilities;

(V) successful transitioning to postsecondary opportunities; and

(VI) using classroom-based techniques to assist children prior to referral for special education;

(iv) provide training to enable personnel to work with and involve parents in their child's education, including parents of low income and limited English proficient children with disabilities;

(v) provide training for special education personnel and regular education personnel in planning, developing, and implementing effective and appropriate IEPs; and

(vi) providing training to meet the needs of students with significant health, mobility, or behavioral needs prior to serving such students; and

(C) train administrators, principals, and other relevant school personnel in conducting effective IEP meetings.

(4) Developing and implementing initiatives to promote the recruitment and retention of highly qualified special education teachers, particularly initiatives that have been proven effective in recruitment and retaining highly qualified teachers, including programs that provide—

(A) teacher mentoring from exemplary special education teachers, principals, or superintendents;

(B) induction and support for special education teachers during their first 3 years of employment as teachers; or

(C) incentives, including financial incentives, to retain special education teachers who have a record of success in helping students with disabilities.

(5) Carrying out programs and activities that are designed to improve the quality of personnel who serve children with disabilities, such as—

(A) innovative professional development programs (which may be provided through partnerships that include institutions of higher education), including programs that train teachers and principals to integrate technology into curricula and instruction to improve teaching, learning, and technology literacy, which professional development shall be consistent with the definition of professional development in section 9101(34) of the Elementary and Secondary Education Act of 1965; and

(B) the development and use of proven, cost effective strategies for the implementation of professional development activities, such as through the use of technology and distance learning.

(6) Carrying out programs and activities that are designed to improve the quality of early intervention personnel, including paraprofessionals and primary referral sources, such as—

(A) professional development programs to improve the delivery of early intervention services;

(B) initiatives to promote the recruitment and retention of early intervention personnel; and

(C) interagency activities to ensure that personnel are adequately prepared and trained.

(b) OTHER ACTIVITIES.—A State educational agency that receives a grant under this subpart shall use the grant funds to support activities in accordance with the State's plan described in section 653, including 1 or more of the following:

(1) Reforming special education and regular education teacher certification (including recertification) or licensing requirements to ensure that—

(A) special education and regular education teachers have—

(i) the training and information necessary to address the full range of needs of children with disabilities across disability categories; and

(ii) the necessary subject matter knowledge and teaching skills in the academic subjects that they teach;

(B) special education and regular education teacher certification (including recertification) or licensing requirements are aligned with challenging State academic content standards; and

(C) special education and regular education teachers have the subject matter knowledge and teaching skills, including technology literacy, necessary to help students with disabilities meet challenging State student academic achievement and functional standards.

(2) Programs that establish, expand, or improve alternative routes for State certification of special education teachers for highly qualified individuals with a baccalaureate or master's degree, including mid-career professionals from other occupations, paraprofessionals, and recent college or university graduates with records of academic distinction who demonstrate the potential to become highly effective special education teachers.

(3) Teacher advancement initiatives for special education teachers that promote professional growth and emphasize mul-

*tiple career paths (such as paths to becoming a career teacher, mentor teacher, or exemplary teacher) and pay differentiation.*

*(4) Developing and implementing mechanisms to assist local educational agencies and schools in effectively recruiting and retaining highly qualified special education teachers.*

*(5) Reforming tenure systems, implementing teacher testing for subject matter knowledge, and implementing teacher testing for State certification or licensing, consistent with title II of the Higher Education Act of 1965.*

*(6) Funding projects to promote reciprocity of teacher certification or licensing between or among States for special education teachers, except that no reciprocity agreement developed under this paragraph or developed using funds provided under this subpart may lead to the weakening of any State teaching certification or licensing requirement.*

*(7) Developing or assisting local educational agencies to serve children with disabilities through the development and use of proven, innovative strategies to deliver intensive professional development programs that are both cost effective and easily accessible, such as strategies that involve delivery through the use of technology, peer networks, and distance learning.*

*(8) Developing, or assisting local educational agencies in developing, merit based performance systems, and strategies that provide differential and bonus pay for special education teachers.*

*(9) Supporting activities that ensure that teachers are able to use challenging State academic content standards and student academic and functional achievement standards, and State assessments for all children with disabilities, to improve instructional practices and improve the academic achievement of children with disabilities.*

*(10) When applicable, coordinating with, and expanding centers established under, section 2113(c)(18) of the Elementary and Secondary Education Act of 1965 to benefit special education teachers.*

*(c) CONTRACTS AND SUBGRANTS.—Each such State educational agency—*

*(1) shall award contracts or subgrants to local educational agencies, institutions of higher education, parent training and information centers, or community parent resource centers, as appropriate, to carry out its State plan under this subpart; and*

*(2) may award contracts and subgrants to other public and private entities, including the lead agency under part C, to carry out such plan.*

*(d) USE OF FUNDS FOR PROFESSIONAL DEVELOPMENT.—A State educational agency that receives a grant under this subpart shall use—*

*(1) not less than 75 percent of the funds the State educational agency receives under the grant for any fiscal year for activities under subsection (a); and*

*(2) not more than 25 percent of the funds the State educational agency receives under the grant for any fiscal year for activities under subsection (b).*

(e) *GRANTS TO OUTLYING AREAS.*—Public Law 95–134, permitting the consolidation of grants to the outlying areas, shall not apply to funds received under this subpart.

**SEC. 655. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated to carry out this subpart such sums as may be necessary for each of the fiscal years 2004 through 2009.

**Subpart 2—Scientifically Based Research, Technical Assistance, Model Demonstration Projects, and Dissemination of Information**

**SEC. 660. PURPOSE.**

The purpose of this subpart is—

- (1) to provide Federal funding for scientifically based research, technical assistance, model demonstration projects, and information dissemination to improve early intervention, educational, and transitional results for children with disabilities; and
- (2) to assist State educational agencies and local educational agencies in improving their education systems.

**SEC. 661. ADMINISTRATIVE PROVISIONS.**

(a) **COMPREHENSIVE PLAN.**—

(1) **IN GENERAL.**—After receiving input from interested individuals with relevant expertise, the Secretary shall develop and implement a comprehensive plan for activities carried out under this subpart (other than activities assisted under section 665 and subpart 3) in order to enhance the provision of early intervention, educational, related and transitional services to children with disabilities under parts B and C. The plan shall be coordinated with the plan developed pursuant to section 177(c) of the Education Sciences Reform Act of 2002 and shall include mechanisms to address early intervention, educational, related service and transitional needs identified by State educational agencies in applications submitted for State Personnel and Professional Development grants under subpart 1 and for grants under this subpart.

(2) **PUBLIC COMMENT.**—The Secretary shall provide a public comment period of at least 60 days on the plan.

(3) **DISTRIBUTION OF FUNDS.**—In implementing the plan, the Secretary shall, to the extent appropriate, ensure that funds are awarded to recipients under this subpart, subpart 3, and subpart 4 to carry out activities that benefit, directly or indirectly, children with the full range of disabilities and of all ages.

(4) **REPORTS TO CONGRESS.**—The Secretary shall annually report to Congress on the Secretary's activities under this subpart, subpart 3, and subpart 4, including an initial report not later than 12 months after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2003.

(b) **ELIGIBLE APPLICANTS.**—

(1) **IN GENERAL.**—Except as otherwise provided in this subpart, the following entities are eligible to apply for a grant, contract, or cooperative agreement under this subpart:

- (A) A State educational agency.



(B) A local educational agency.

(C) A public charter school that is a local educational agency under State law.

(D) An institution of higher education.

(E) Any other public agency.

(F) A private nonprofit organization.

(G) An outlying area.

(H) An Indian tribe or a tribal organization (as defined under section 4 of the Indian Self-Determination and Education Assistance Act).

(I) A for-profit organization.

(2) SPECIAL RULE.—The Secretary may limit the entities eligible for an award of a grant, contract, or cooperative agreement to 1 or more categories of eligible entities described in paragraph (1).

(c) SPECIAL POPULATIONS.—

(1) APPLICATION REQUIREMENT.—In making an award of a grant, contract, or cooperative agreement under this subpart, subpart 3, and subpart 4, the Secretary shall, as appropriate, require an applicant to meet the criteria set forth by the Secretary under this subpart and demonstrate how the applicant will address the needs of children with disabilities from minority backgrounds.

(2) OUTREACH AND TECHNICAL ASSISTANCE.—Notwithstanding any other provision of this Act, the Secretary shall reserve at least 1 percent of the total amount of funds made available to carry out this subpart, subpart 3, or subpart 4 for 1 or both of the following activities:

(A) To provide outreach and technical assistance to Historically Black Colleges and Universities, and to institutions of higher education with minority enrollments of at least 25 percent, to promote the participation of such colleges, universities, and institutions in activities under this subpart.

(B) To enable Historically Black Colleges and Universities, and the institutions described in subparagraph (A), to assist other colleges, universities, institutions, and agencies in improving educational and transitional results for children with disabilities.

(d) PRIORITIES.—The Secretary, in making an award of a grant, contract, or cooperative agreement under this subpart, subpart 3, or subpart 4, may, without regard to the rulemaking procedures under section 553(a) of title 5, United States Code, limit competitions to, or otherwise give priority to—

(1) projects that address 1 or more—

(A) age ranges;

(B) disabilities;

(C) school grades;

(D) types of educational placements or early intervention environments;

(E) types of services;

(F) content areas, such as reading; or

(G) effective strategies for helping children with disabilities learn appropriate behavior in the school and other community based educational settings;

(2) projects that address the needs of children based on the severity or incidence of their disability;

(3) projects that address the needs of—

(A) low achieving students;

(B) underserved populations;

(C) children from low income families;

(D) limited English proficient children;

(E) unserved and underserved areas;

(F) rural or urban areas;

(G) children whose behavior interferes with their learning and socialization;

(H) children with reading difficulties;

(I) children in charter schools; or

(J) children who are gifted and talented;

(4) projects to reduce inappropriate identification of children as children with disabilities, particularly among minority children;

(5) projects that are carried out in particular areas of the country, to ensure broad geographic coverage;

(6) projects that promote the development and use of universally designed technologies, assistive technology devices, and assistive technology services to maximize children with disabilities' access to and participation in the general education curriculum; and

(7) any activity that is authorized in this subpart or subpart 3.

(e) **APPLICANT AND RECIPIENT RESPONSIBILITIES.**—

(1) **DEVELOPMENT AND ASSESSMENT OF PROJECTS.**—The Secretary shall require that an applicant for, and a recipient of, a grant, contract, or cooperative agreement for a project under this subpart, subpart 3, or subpart 4—

(A) involve individuals with disabilities or parents of individuals with disabilities ages birth through 26 in planning, implementing, and evaluating the project; and

(B) where appropriate, determine whether the project has any potential for replication and adoption by other entities.

(2) **ADDITIONAL RESPONSIBILITIES.**—The Secretary may require a recipient of a grant, contract, or cooperative agreement under this subpart, subpart 3, or subpart 4 to—

(A) share in the cost of the project;

(B) prepare any findings and products from the project in formats that are useful for specific audiences, including parents, administrators, teachers, early intervention personnel, related services personnel, and individuals with disabilities;

(C) disseminate such findings and products; and

(D) collaborate with other such recipients in carrying out subparagraphs (B) and (C).

(f) **APPLICATION MANAGEMENT.**—

(1) **STANDING PANEL.**—

(A) **IN GENERAL.**—The Secretary shall establish and use a standing panel of experts who are competent, by virtue of their training, expertise, or experience, to evaluate applications under this subpart (other than applications for assistance under section 665), subpart 3, and subpart 4 that, in

dividually, request more than \$75,000 per year in Federal financial assistance.

(B) *MEMBERSHIP.*—The standing panel shall include, at a minimum—

(i) individuals who are representatives of institutions of higher education that plan, develop, and carry out high quality programs of personnel preparation;

(ii) individuals who design and carry out scientifically based research targeted to the improvement of special education programs and services;

(iii) individuals who have recognized experience and knowledge necessary to integrate and apply scientifically based research findings to improve educational and transitional results for children with disabilities;

(iv) individuals who administer programs at the State or local level in which children with disabilities participate;

(v) individuals who prepare parents of children with disabilities to participate in making decisions about the education of their children;

(vi) individuals who establish policies that affect the delivery of services to children with disabilities;

(vii) parents of children with disabilities ages birth through 26 who are benefiting, or have benefited, from coordinated research, personnel preparation, and technical assistance; and

(viii) individuals with disabilities.

(C) *TERM.*—Unless approved by the Secretary due to extenuating circumstances related to shortages of experts in a particular area of expertise or for a specific competition, no individual shall serve on the standing panel for more than 3 consecutive years.

(2) *PEER REVIEW PANELS FOR PARTICULAR COMPETITIONS.*—

(A) *COMPOSITION.*—The Secretary shall ensure that each sub panel selected from the standing panel that reviews applications under this subpart (other than section 665), subpart 3, and subpart 4 includes—

(i) individuals with knowledge and expertise on the issues addressed by the activities authorized by the relevant subpart; and

(ii) to the extent practicable, parents of children with disabilities ages birth through 26, individuals with disabilities, and persons from diverse backgrounds.

(B) *FEDERAL EMPLOYMENT LIMITATION.*—A majority of the individuals on each sub panel that reviews an application under this subpart (other than an application under section 665), subpart 3, and subpart 4 shall be individuals who are not employees of the Federal Government.

(3) *USE OF DISCRETIONARY FUNDS FOR ADMINISTRATIVE PURPOSES.*—

(A) *EXPENSES AND FEES OF NON-FEDERAL PANEL MEMBERS.*—The Secretary may use funds made available under this subpart, subpart 3, and subpart 4 to pay the expenses and fees of the panel members who are not officers or employees of the Federal Government.

(B) *ADMINISTRATIVE SUPPORT.*—The Secretary may use not more than 1 percent of the funds made available to carry out this subpart, subpart 3, or subpart 4 to pay non-Federal entities for administrative support related to management of applications submitted under this subpart.

(4) *AVAILABILITY OF CERTAIN PRODUCTS.*—The Secretary shall ensure that recipients of grants, cooperative agreements, or contracts under this subpart, subpart 3, and subpart 4 make available in formats that are accessible to individuals with disabilities any products developed under such grants, cooperative agreements, or contracts that the recipient is making available to the public.

(g) *PROGRAM EVALUATION.*—The Secretary may use funds made available to carry out this subpart, subpart 3, and subpart 4 to evaluate activities carried out under this subpart.

(h) *MINIMUM FUNDING REQUIRED.*—

(1) *IN GENERAL.*—Subject to paragraph (2), the Secretary shall ensure that, for each fiscal year, at least the following amounts are provided under this subpart and subpart 3 to address the following needs:

(A) \$12,832,000 to address the educational, related services, transitional, and early intervention needs of children with deaf-blindness.

(B) \$4,000,000 to address the postsecondary, vocational, technical, continuing, and adult education needs of individuals with deafness.

(C) \$4,000,000 to address the educational, related services, and transitional needs of children with an emotional disturbance and those who are at risk of developing an emotional disturbance.

(2) *RATABLE REDUCTION.*—If the total amount appropriated to carry out this subpart, subpart 3, and part E of the Education Sciences Reform Act of 2002 for any fiscal year is less than \$130,000,000, the amounts listed in paragraph (1) shall be ratably reduced.

(i) *ELIGIBILITY FOR FINANCIAL ASSISTANCE.*—No State or local educational agency, or other public institution or agency, may receive a grant or enter into a contract or cooperative agreement under this subpart that relates exclusively to programs, projects, and activities pertaining to children aged 3 through 5, inclusive, unless the State is eligible to receive a grant under section 619(b).

**SEC. 662. RESEARCH COORDINATION TO IMPROVE RESULTS FOR CHILDREN WITH DISABILITIES.**

The Secretary shall coordinate research carried out under this subpart with research carried out under part E of the Education Sciences Reform Act of 2002.

**SEC. 663. TECHNICAL ASSISTANCE, DEMONSTRATION PROJECTS, DISSEMINATION OF INFORMATION, AND IMPLEMENTATION OF SCIENTIFICALLY BASED RESEARCH.**

(a) *IN GENERAL.*—From amounts made available under section 675, the Secretary, on a competitive basis, shall award grants to, or enter into contracts or cooperative agreements with, eligible entities to provide technical assistance, carry out model demonstration projects, disseminate useful information, and implement activities that are supported by scientifically based research.

(b) *REQUIRED ACTIVITIES.*—The Secretary shall support activities to improve services provided under this Act, including the practices of professionals and others involved in providing such services to children with disabilities, that promote academic achievement and functional performance to improve educational results and functional outcomes for children with disabilities through—

(1) implementing effective strategies that are conducive to learning and for addressing inappropriate behavior of students with disabilities in schools, including strategies to prevent children with emotional and behavioral problems from developing emotional disturbances that require the provision of special education and related services;

(2) improving the alignment, compatibility, and development of valid and reliable assessment methods, including alternate assessment methods and evaluation methods, for assessing adequately yearly progress as described in section 1111(b)(2) of the Elementary and Secondary Education Act of 1965;

(3) providing information to both regular education teachers and special education teachers to address the different learning styles and disabilities of students;

(4) disseminating information on innovative, effective, and efficient curricula, materials (including those that are universally designed), instructional approaches, and strategies that—

(A) support effective transitions between educational settings or from school to post-school settings;

(B) support effective inclusion of students with disabilities in general education settings, especially students with low-incidence disabilities; and

(C) improve educational and transitional results at all levels of the educational system in which the activities are carried out and, in particular, that improve the progress of children with disabilities, as measured by assessments within the general education curriculum involved; and

(5) demonstrating and applying scientifically-based findings to facilitate systematic changes related to the provision of services to children with disabilities.

(c) *AUTHORIZED ACTIVITIES.*—Activities that may be carried out under this section include activities to improve services provided under this Act, including the practices of professionals and others involved in providing such services to children with disabilities, that promote increased academic achievement and enhanced functional outcomes for children with disabilities through—

(1) supporting and promoting the coordination of early intervention, education, and transitional services for children with disabilities with services provided by health, rehabilitation, and social service agencies;

(2) promoting improved alignment and compatibility of general and special education reforms concerned with curriculum and instructional reform, and evaluating of such reforms;

(3) enabling professionals, parents of children with disabilities, and other persons, to learn about, and implement, the findings of scientifically based research and effective practices relating to the provision of services to children with disabilities;

(4) disseminating information relating to successful approaches to overcoming systemic barriers to the effective and ef-

*efficient delivery of early intervention, educational, and transitional services, to personnel who provide services to children with disabilities;*

*(5) assisting States and local educational agencies with the process of planning systemic changes that will promote improved early intervention, educational, and transitional results for children with disabilities;*

*(6) promoting change through a multi-State or regional framework that benefits States, local educational agencies, and other participants in partnerships that are in the process of achieving systemic change;*

*(7) focusing on the needs and issues that are specific to a population of children with disabilities, such as providing single-State and multi-State technical assistance and in-service training—*

*(A) to schools and agencies serving deaf-blind children and their families;*

*(B) to programs and agencies serving other groups of children with low-incidence disabilities and their families;*

*(C) to address the postsecondary education needs of individuals who are deaf or hard-of-hearing; and*

*(D) to schools and personnel providing special education and related services for children with autism spectrum disorders;*

*(8) demonstrating models of personnel preparation to ensure appropriate placements and services for all students with disabilities and to reduce disproportionality in eligibility, placement, and disciplinary actions for minority and limited English proficient children: and*

*(9) disseminating information on how to reduce racial and ethnic disproportionalities.*

*(d) BALANCE AMONG DISABILITIES AND AGE RANGES.—In carrying out this section, the Secretary shall ensure that there is an appropriate balance across all age ranges and disabilities.*

*(e) LINKING STATES TO INFORMATION SOURCES.—In carrying out this section, the Secretary may support projects that link States to technical assistance resources, including special education and general education resources, and may make research and related products available through libraries, electronic networks, parent training projects, and other information sources.*

*(f) APPLICATIONS.—*

*(1) IN GENERAL.—An eligible entity that desires to receive a grant, or to enter into a contract or cooperative agreement, under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.*

*(2) CONTENTS.—The Secretary may, as appropriate, require eligible entities to demonstrate that the projects described in their applications are supported by scientifically based research that has been carried out in conjunction with the standards for the conduct and evaluation of all research and development established by the National Center for Education Research under sections 133 and 134 of the Education Sciences Reform Act of 2002.*

(3) *PRIORITY.*—As appropriate, the Secretary shall give priority to applications that propose to serve teachers and school personnel directly in the school environment or that strengthen State and local agency capacity to improve instructional practices of personnel to improve educational results for children with disabilities in the school environment.

**SEC. 664. PERSONNEL DEVELOPMENT TO IMPROVE SERVICES AND RESULTS FOR CHILDREN WITH DISABILITIES.**

(a) *IN GENERAL.*—The Secretary, on a competitive basis, shall award grants to, or enter into contracts or cooperative agreements with, eligible entities for 1 or more of the following:

(1) To help address the needs identified in the State plan described in section 653(a)(2) for highly qualified personnel, as defined in section 651(b), to work with infants, toddlers, or children with disabilities, consistent with the standards described in section 612(a)(14).

(2) To ensure that those personnel have the necessary skills and knowledge, derived from practices that have been determined, through scientifically based research, to be successful in serving those children.

(3) To encourage increased focus on academics and core content areas in special education personnel preparation programs.

(4) To ensure that regular education teachers have the necessary skills and knowledge to provide instruction to students with disabilities in the regular education classroom.

(5) To ensure that all special education teachers are highly qualified.

(6) To ensure that preservice and in-service personnel preparation programs include training in—

(A) the use of new technologies;

(B) the area of early intervention, educational, and transition services;

(C) effectively involving parents; and

(D) positive behavioral supports.

(7) To provide high-quality professional development for principals, superintendents, and other administrators, including training in—

(A) instructional leadership;

(B) behavioral supports in the school and classroom;

(C) paperwork reduction;

(D) promoting improved collaboration between special education and general education teachers;

(E) assessment and accountability;

(F) ensuring effective learning environments; and

(G) fostering positive relationships with parents.

(b) *PERSONNEL DEVELOPMENT; AUTHORIZED ACTIVITIES.*—

(1) *IN GENERAL.*—In carrying out this section, the Secretary shall support activities to prepare personnel, including activities for the preparation of personnel who will serve children with high-incidence and low-incidence disabilities, consistent with the objectives described in subsection (a).

(2) *AUTHORIZED ACTIVITIES.*—Activities that may be carried out under this subsection include the following:

(A) *Supporting collaborative personnel preparation activities undertaken by institutions of higher education, local educational agencies, and other local entities—*

*(i) to improve and reform their existing programs, to support effective existing programs, to support the development of new programs, and to prepare teachers, principals, administrators, and related services personnel—*

*(I) to meet the diverse needs of children with disabilities for early intervention, educational, and transitional services; and*

*(II) to work collaboratively in regular classroom settings; and*

*(ii) to incorporate best practices and scientifically based research about preparing personnel—*

*(I) so the personnel will have the knowledge and skills to improve educational results for children with disabilities; and*

*(II) to implement effective teaching strategies and interventions to prevent the misidentification, overidentification, or underidentification of children as having a disability, especially minority and limited English proficient children.*

(B) *Developing, evaluating, and disseminating innovative models for the recruitment, induction, retention, and assessment of highly qualified teachers to reduce teachers shortages.*

(C) *Providing continuous personnel preparation, training, and professional development designed to provide support and ensure retention of teachers and personnel who teach and provide related services to children with disabilities.*

(D) *Developing and improving programs for paraprofessionals to become special education teachers, related services personnel, and early intervention personnel, including interdisciplinary training to enable the paraprofessionals to improve early intervention, educational, and transitional results for children with disabilities.*

(E) *Demonstrating models for the preparation of, and interdisciplinary training of, early intervention, special education, and general education personnel, to enable the personnel to acquire the collaboration skills necessary to work within teams and to improve results for children with disabilities, particularly within the general education curriculum.*

(F) *Promoting effective parental involvement practices to enable the personnel to work with parents and involve parents in the education of such parents' children.*

(G) *Promoting the transferability, across State and local jurisdictions, of licensure and certification of teachers, principals, and administrators working with such children.*

(H) *Developing and disseminating models that prepare teachers with strategies, including positive behavioral interventions, for addressing the conduct of children with disabilities that impedes their learning and that of others in the classroom.*



(I) Developing and improving programs to enhance the ability of general education teachers, principals, school administrators, and school board members to improve results for children with disabilities.

(J) Supporting institutions of higher education with minority enrollments of at least 25 percent for the purpose of preparing personnel to work with children with disabilities.

(K) Preparing personnel to work in high need elementary schools and secondary schools, including urban schools, rural schools, and schools operated by an entity described in section 7113(d)(1)(A)(ii) of the Elementary and Secondary Education Act of 1965, and schools that serve high numbers or percentages of limited English proficient children.

(L) Developing, evaluating, and disseminating innovative models for the recruitment, induction, retention, and assessment of new, highly qualified teachers, especially from groups that are underrepresented in the teaching profession, including individuals with disabilities.

(M) Developing and improving programs to train special education teachers to develop an expertise in autism spectrum disorders.

(c) **LOW INCIDENCE DISABILITIES; AUTHORIZED ACTIVITIES.**—

(1) **IN GENERAL.**—In carrying out this section, the Secretary shall support activities, consistent with the objectives described in subsection (a), that benefit children with low incidence disabilities.

(2) **AUTHORIZED ACTIVITIES.**—Activities that may be carried out under this subsection include activities such as the following:

(A) Preparing persons who—

(i) have prior training in educational and other related service fields; and

(ii) are studying to obtain degrees, certificates, or licensure that will enable the persons to assist children with low incidence disabilities to achieve the objectives set out in their individualized education programs described in section 614(d), or to assist infants and toddlers with low incidence disabilities to achieve the outcomes described in their individualized family service plans described in section 636.

(B) Providing personnel from various disciplines with interdisciplinary training that will contribute to improvement in early intervention, educational, and transitional results for children with low incidence disabilities.

(C) Preparing personnel in the innovative uses and application of technology, including universally designed technologies, assistive technology devices, and assistive technology services—

(i) to enhance learning by children with low incidence disabilities through early intervention, educational, and transitional services; and

(ii) to improve communication with parents.

(D) *Preparing personnel who provide services to visually impaired or blind children to teach and use Braille in the provision of services to such children.*

(E) *Preparing personnel to be qualified educational interpreters, to assist children with low incidence disabilities, particularly deaf and hard of hearing children in school and school related activities, and deaf and hard of hearing infants and toddlers and preschool children in early intervention and preschool programs.*

(F) *Preparing personnel who provide services to children with significant cognitive disabilities and children with multiple disabilities.*

(3) *DEFINITION.—As used in this section, the term “low incidence disability” means—*

(A) *a visual or hearing impairment, or simultaneous visual and hearing impairments;*

(B) *a significant cognitive impairment; or*

(C) *any impairment for which a small number of personnel with highly specialized skills and knowledge are needed in order for children with that impairment to receive early intervention services or a free appropriate public education.*

(4) *SELECTION OF RECIPIENTS.—In selecting recipients under this subsection, the Secretary may give preference to eligible entities submitting applications that include 1 or more of the following:*

(A) *A proposal to prepare personnel in more than 1 low incidence disability, such as deafness and blindness.*

(B) *A demonstration of an effective collaboration with an eligible entity and a local educational agency that promotes recruitment and subsequent retention of highly qualified personnel to serve children with disabilities.*

(5) *PREPARATION IN USE OF BRAILLE.—The Secretary shall ensure that all recipients of assistance under this subsection who will use that assistance to prepare personnel to provide services to visually impaired or blind children that can appropriately be provided in Braille will prepare those individuals to provide those services in Braille.*

(d) *LEADERSHIP PREPARATION; AUTHORIZED ACTIVITIES.—*

(1) *IN GENERAL.—In carrying out this section, the Secretary shall support leadership preparation activities that are consistent with the objectives described in subsection (a).*

(2) *AUTHORIZED ACTIVITIES.—Activities that may be carried out under this subsection include activities such as the following:*

(A) *Preparing personnel at the graduate, doctoral, and postdoctoral levels of training to administer, enhance, or provide services to improve results for children with disabilities.*

(B) *Providing interdisciplinary training for various types of leadership personnel, including teacher preparation faculty, administrators, researchers, supervisors, principals, related services personnel, and other persons whose work affects early intervention, educational, and transitional services for children with disabilities.*

*(e) ENHANCED SUPPORT AND TRAINING FOR BEGINNING SPECIAL EDUCATORS; AUTHORIZED ACTIVITIES.—*

*(1) IN GENERAL.—In carrying out this section, the Secretary shall support personnel preparation activities that are consistent with the objectives described in subsection (a).*

*(2) AUTHORIZED ACTIVITIES.—Activities that may be carried out under this subsection include—*

*(A) enhancing and restructuring an existing program or developing a preservice teacher education program, to prepare special education teachers, at colleges or departments of education within the institution of higher education, by incorporating an additional 5th year clinical learning opportunity, field experience, or supervised practicum into a program of preparation and coursework for special education teachers; or*

*(B) Creating or supporting professional development schools that provide—*

*(i) high quality mentoring and induction opportunities with ongoing support for beginning special education teachers; or*

*(ii) inservice professional development to veteran special education teachers through the ongoing exchange of information and instructional strategies.*

*(3) ELIGIBLE PARTNERSHIPS.—Eligible recipients of assistance under this subsection are partnerships—*

*(A) that shall consist of—*

*(i) 1 or more institutions of higher education with special education personnel preparation programs; and*

*(ii) 1 or more local educational agencies; and*

*(iii) in the case of activities assisted under paragraph*

*(2)(B), an elementary school or secondary school; and*

*(B) that may include other entities eligible for assistance under this part, such as a State educational agency.*

*(4) PRIORITY.—In awarding grants or entering into contracts or cooperative agreements under this subsection, the Secretary shall give priority to partnerships that include local educational agencies that serve—*

*(A) high numbers or percentages of low-income students;*

*or*

*(B) schools that have failed to make adequate yearly progress toward enabling children with disabilities to meet academic achievement standards.*

*(f) TRAINING TO SUPPORT GENERAL EDUCATORS; AUTHORIZED ACTIVITIES.—*

*(1) IN GENERAL.—In carrying out this section, the Secretary shall support personnel preparation activities that are consistent with the objectives described in subsection (a).*

*(2) AUTHORIZED ACTIVITIES.—Activities that may be carried out under this subsection include—*

*(A) high quality professional development for general educators that develops the knowledge and skills, and enhances the ability, of general educators to—*

*(i) use classroom-based techniques to identify students who may be eligible for special education services, and deliver instruction in a way that meets the in-*

*dividualized needs of children with disabilities through appropriate supports, accommodations, and curriculum modifications;*

*(ii) use classroom-based techniques, such as scientifically based reading instruction;*

*(iii) work collaboratively with special education teachers and related services personnel;*

*(iv) implement strategies, such as positive behavioral interventions—*

*(I) to address the behavior of children with disabilities that impedes the learning of such children and others; or*

*(II) to prevent children from being misidentified as children with disabilities;*

*(v) prepare children with disabilities to participate in statewide assessments (with or without accommodations) and alternate assessments, as appropriate;*

*(vi) develop effective practices for ensuring that all children with disabilities are a part of all accountability systems under the Elementary and Secondary Education Act of 1965;*

*(vii) work with and involve parents of children with disabilities in their child's education;*

*(viii) understand how to effectively construct IEPs, participate in IEP meetings, and implement IEPs; and*

*(ix) in the case of principals and superintendents, be instructional leaders and promote improved collaboration between general educators, special education teachers, and related services personnel; and*

*(B) release and planning time for the activities described in this subsection.*

**(3) ELIGIBLE PARTNERSHIPS.**—*Eligible recipients of assistance under this subsection are partnerships—*

*(A) that consist of—*

*(i) 1 or more institutions of higher education with special education personnel preparation programs; and*

*(ii) 1 or more local educational agencies; and*

*(B) that may include other entities eligible for assistance under this part, such as a State educational agency.*

**(g) APPLICATIONS.**—

**(1) IN GENERAL.**—*Any eligible entity that desires to receive a grant, or enter into a contract or cooperative agreement, under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.*

**(2) IDENTIFIED STATE NEEDS.**—

**(A) REQUIREMENT TO ADDRESS IDENTIFIED NEEDS.**—*Any application under subsection (b), (c), (d), (e), or (f) shall include information demonstrating to the satisfaction of the Secretary that the activities described in the application will address needs identified by the State or States the applicant proposes to serve, consistent with the needs identified in the State plan described in section 653(a)(2).*

**(B) COOPERATION WITH STATE EDUCATIONAL AGENCIES.**—*Any applicant that is not a local educational agency or a*

*State educational agency shall include in the application information demonstrating to the satisfaction of the Secretary that the applicant and 1 or more State educational agencies or local educational agencies have engaged in a cooperative effort to carry out and monitor the project to be assisted.*

(3) **ACCEPTANCE BY STATES OF PERSONNEL PREPARATION REQUIREMENTS.**—*The Secretary may require applicants to provide assurances from 1 or more States that such States intend to accept successful completion of the proposed personnel preparation program as meeting State personnel standards for serving children with disabilities or serving infants and toddlers with disabilities.*

(h) **SELECTION OF RECIPIENTS.**—

(1) **IMPACT OF PROJECT.**—*In selecting award recipients under this section, the Secretary shall consider the impact of the proposed project described in the application in meeting the need for personnel identified by the States.*

(2) **REQUIREMENT FOR APPLICANTS TO MEET STATE AND PROFESSIONAL STANDARDS.**—*The Secretary shall make grants and enter into contracts and cooperative agreements under this section only to eligible applicants that meet State and professionally recognized standards for the preparation of special education and related services personnel, if the purpose of the project is to assist personnel in obtaining degrees.*

(3) **PREFERENCES.**—*In selecting recipients under this section, the Secretary may give preference to institutions of higher education that are—*

(A) *educating regular education personnel to meet the needs of children with disabilities in integrated settings;*

(B) *educating special education personnel to work in collaboration with regular educators in integrated settings; and*

(C) *successfully recruiting and preparing individuals with disabilities and individuals from groups that are underrepresented in the profession for which the institution of higher education is preparing individuals.*

(i) **SERVICE OBLIGATION.**—*Each application for funds under subsections (b), (c), (d), and (e) shall include an assurance that the applicant will ensure that individuals who receive assistance under the proposed project will subsequently provide special education and related services to children with disabilities for a period of 1 year for every year for which assistance was received, or repay all or part of the cost of that assistance, in accordance with regulations issued by the Secretary.*

(j) **SCHOLARSHIPS.**—*The Secretary may include funds for scholarships, with necessary stipends and allowances, in awards under subsections (b), (c), (d), and (e).*

(k) **AUTHORIZATION OF APPROPRIATIONS.**—*There are authorized to be appropriated to carry out this section such sums as may be necessary for each of the fiscal years 2004 through 2009.*

**SEC. 665. STUDIES AND EVALUATIONS.**

(a) **STUDIES AND EVALUATIONS.**—

(1) *DELEGATION.*—The Secretary shall delegate to the Director of the Institute for Education Sciences responsibility to carry out this section, other than subsections (d) and (f).

(2) *ASSESSMENT.*—The Secretary shall, directly or through grants, contracts, or cooperative agreements awarded on a competitive basis, assess the progress in the implementation of this Act, including the effectiveness of State and local efforts to provide—

(A) a free appropriate public education to children with disabilities; and

(B) early intervention services to infants and toddlers with disabilities, and infants and toddlers who would be at risk of having substantial developmental delays if early intervention services were not provided to them.

(b) *NATIONAL ASSESSMENT.*—

(1) *IN GENERAL.*—The Secretary shall carry out a national assessment of activities carried out with Federal funds under this Act in order—

(A) to determine the effectiveness of this Act in achieving its purposes;

(B) to provide timely information to the President, Congress, the States, local educational agencies, and the public on how to implement this Act more effectively; and

(C) to provide the President and Congress with information that will be useful in developing legislation to achieve the purposes of this Act more effectively.

(2) *CONSULTATION.*—The Secretary shall plan, review, and conduct the national assessment under this subsection in consultation with researchers, State practitioners, local practitioners, parents of children with disabilities, and other appropriate individuals.

(3) *SCOPE OF ASSESSMENT.*—The national assessment shall assess the—

(A) implementation of programs assisted under this Act and the impact of those programs on addressing the developmental, educational, and transitional needs of, and improving the academic achievement and functional outcomes of, children with disabilities to enable the children to reach challenging developmental goals and challenging State academic content standards based on State academic assessments, including alternate assessments;

(B) types of programs and services that have demonstrated the greatest likelihood of helping students reach the challenging State academic content standards and developmental goals;

(C) implementation of the personnel preparation and professional development activities assisted under this Act and the impact on instruction, student academic achievement, and teacher qualifications to enhance the ability of special education teachers and regular education teachers to improve results for children with disabilities; and

(D) effectiveness of schools, local educational agencies, States, and other recipients of assistance under this Act, in achieving the purposes of this Act in—

(i) improving the academic achievement of children with disabilities and their performance on regular statewide assessments, and the performance of children with disabilities on alternate assessments;

(ii) improving the participation rate of children with disabilities in the general education curriculum;

(iii) improving the transitions of children with disabilities at natural transition points;

(iv) placing and serving children with disabilities, including minority children, in the least restrictive environment appropriate;

(v) preventing children with disabilities, especially children with emotional disturbances and specific learning disabilities, from dropping out of school;

(vi) addressing the reading and literacy needs of children with disabilities;

(vii) coordinating services provided under this Act with each other, with other educational and pupil services (including preschool services), and with health and social services funded from other sources;

(viii) improving the participation of parents of children with disabilities in the education of their children;

(ix) resolving disagreements between education personnel and parents through alternate dispute resolution activities including mediation; and

(x) reducing the misidentification of children, especially minority and limited English proficient children.

(4) **INTERIM AND FINAL REPORTS.**—The Secretary shall submit to the President and Congress—

(A) an interim report that summarizes the preliminary findings of the national assessment not later than 3 years after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2003; and

(B) a final report of the findings of the assessment not later than 5 years after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2003.

(c) **STUDY ON ENSURING ACCOUNTABILITY FOR STUDENTS WITH SIGNIFICANT DISABILITIES.**—The Secretary shall carry out a national study or studies to examine—

(1) the criteria that States use to determine eligibility for alternate assessments and the number and type of children who take those assessments;

(2) the validity and reliability of alternate assessment instruments and procedures;

(3) the alignment of alternate assessments with State academic content and achievement standards or with alternate academic achievement standards; and

(4) the use and effectiveness of alternate assessments in appropriately measuring student progress and outcomes specific to individualized instructional need.

(d) **ANNUAL REPORT.**—The Secretary shall provide an annual report to Congress that—

(1) summarizes the research conducted under section 662;

(2) analyzes and summarizes the data reported by the States and the Secretary of the Interior under section 618;

(3) summarizes the studies and evaluations conducted under this section and the timeline for their completion;

(4) describes the extent and progress of the national assessment; and

(5) describes the findings and determinations resulting from reviews of State implementation of this Act.

(e) *AUTHORIZED ACTIVITIES.*—In carrying out this section, the Secretary may support objective studies, evaluations, and assessments, including studies that—

(1) analyze measurable impact, outcomes, and results achieved by State educational agencies and local educational agencies through their activities to reform policies, procedures, and practices designed to improve educational and transitional services and results for children with disabilities;

(2) analyze State and local needs for professional development, parent training, and other appropriate activities that can reduce the need for disciplinary actions involving children with disabilities;

(3) assess educational and transitional services and results for children with disabilities from minority backgrounds, including—

(A) data on—

(i) the number of minority children who are referred for special education evaluation;

(ii) the number of minority children who are receiving special education and related services and their educational or other service placement;

(iii) the number of minority children who graduated from secondary programs with a regular diploma in the standard number of years; and

(iv) the number of minority children who drop out of the educational system; and

(B) the performance of children with disabilities from minority backgrounds on State assessments and other performance indicators established for all students;

(4) measure educational and transitional services and results of children with disabilities served under this Act, including longitudinal studies that—

(A) examine educational and transitional services and results for children with disabilities who are 3 through 17 years of age and are receiving special education and related services under this Act, using a national, representative sample of distinct age cohorts and disability categories; and

(B) examine educational results, transition services, post-secondary placement, and employment status of individuals with disabilities, 18 through 21 years of age, who are receiving or have received special education and related services under this Act; and

(5) identify and report on the placement of children with disabilities by disability category.



(f) *STUDY.*—The Secretary shall study, and report to Congress regarding, the extent to which States adopt policies described in section 635(b)(1) and on the effects of those policies.

(g) *RESERVATION FOR STUDIES AND EVALUATIONS.*—

(1) *IN GENERAL.*—Except as provided in paragraph (2) and notwithstanding any other provision of this Act, the Secretary may reserve not more than  $\frac{1}{2}$  of 1 percent of the amount appropriated under parts B and C for each fiscal year to carry out this section, of which not more than \$3,000,000 shall be available to carry out subsection (c).

(2) *MAXIMUM AMOUNT.*—The maximum amount the Secretary may reserve under paragraph (1) for any fiscal year is \$40,000,000, increased by the cumulative rate of inflation since fiscal year 2003.

### **Subpart 3—Supports To Improve Results for Children With Disabilities**

#### **SEC. 670. PURPOSES.**

The purposes of this subpart are to ensure that—

(1) children with disabilities and their parents receive training and information on their rights, responsibilities, and protections under this Act, in order to develop the skills necessary to cooperatively and effectively participate in planning and decision making relating to early intervention, educational, and transitional services;

(2) parents, teachers, administrators, early intervention personnel, related services personnel, and transition personnel receive coordinated and accessible technical assistance and information to assist them in improving early intervention, educational, and transitional services and results for children with disabilities and their families; and

(3) appropriate technology and media are researched, developed, and demonstrated, to improve and implement early intervention, educational, and transitional services and results for children with disabilities and their families.

#### **SEC. 671. PARENT TRAINING AND INFORMATION CENTERS.**

(a) *PROGRAM AUTHORIZED.*—The Secretary may award grants to, and enter into contracts and cooperative agreements with, parent organizations to support parent training and information centers to carry out activities under this section.

(b) *REQUIRED ACTIVITIES.*—Each parent training and information center that receives assistance under this section shall—

(1) provide training and information that meets the needs of parents of children with disabilities living in the area served by the center, particularly underserved parents and parents of children who may be inappropriately identified, to enable their children with disabilities to—

(A) meet developmental and functional goals, and challenging academic achievement goals that have been established for all children; and

(B) be prepared to lead productive independent adult lives, to the maximum extent possible;

(2) *serve the parents of infants, toddlers, and children with the full range of disabilities described in section 602(3);*

(3) *assist parents to—*

(A) *better understand the nature of their children's disabilities and their educational, developmental, and transitional needs;*

(B) *communicate effectively and work collaboratively with personnel responsible for providing special education, early intervention services, transition services, and related services;*

(C) *participate in decisionmaking processes and the development of individualized education programs under part B and individualized family service plans under part C;*

(D) *obtain appropriate information about the range, type, and quality of options, programs, services, technologies, and research based practices and interventions, and resources available to assist children with disabilities and their families in school and at home;*

(E) *understand the provisions of this Act for the education of, and the provision of early intervention services to, children with disabilities; and*

(F) *participate in school reform activities;*

(4) *in States where the State elects to contract with the parent training and information center, contract with State educational agencies to provide, consistent with subparagraphs (B) and (D) of section 615(e)(2), individuals who meet with parents to explain the mediation process to the parents;*

(5) *assist parents in resolving disputes in the most expeditious and effective way possible, including encouraging the use, and explaining the benefits, of alternative methods of dispute resolution, such as the mediation process described in section 615(e);*

(6) *assist parents and students with disabilities to understand their rights and responsibilities under this Act, including those under section 615(m) on the student's reaching the age of majority;*

(7) *assist parents to understand the availability of, and how to effectively use, procedural safeguards under this Act;*

(8) *assist parents in understanding, preparing for, and participating in, the process described in section 615(f)(1)(B);*

(9) *establish cooperative partnerships with community parent resource centers funded under section 672;*

(10) *network with appropriate clearinghouses, including organizations conducting national dissemination activities under section 663, and with other national, State, and local organizations and agencies, such as protection and advocacy agencies, that serve parents and families of children with the full range of disabilities described in section 602(3); and*

(11) *annually report to the Secretary on—*

(A) *the number and demographics of parents to whom the center provided information and training in the most recently concluded fiscal year;*

(B) *the effectiveness of strategies used to reach and serve parents, including underserved parents of children with disabilities; and*

- (C) *the number of parents served who have resolved disputes through alternative methods of dispute resolution.*
- (c) **OPTIONAL ACTIVITIES.**—*A parent training and information center that receives assistance under this section may provide information to teachers and other professionals to assist the teachers and professionals in improving results for children with disabilities.*
- (d) **APPLICATION REQUIREMENTS.**—*Each application for assistance under this section shall identify with specificity the special efforts that the parent organization will undertake—*
- (1) *to ensure that the needs for training and information of underserved parents of children with disabilities in the area to be served are effectively met; and*
  - (2) *to work with community based organizations.*
- (e) **DISTRIBUTION OF FUNDS.**—
- (1) **IN GENERAL.**—*The Secretary shall—*
    - (A) *make at least 1 award to a parent organization in each State for a parent training and information center which is designated as the statewide parent training and information center; or*
    - (B) *in the case of a large State, make awards to multiple parent training and information centers, but only if the centers demonstrate that coordinated services and supports will occur among the multiple centers.*
  - (2) **SELECTION REQUIREMENT.**—*The Secretary shall select among applications submitted by parent organizations in a State in a manner that ensures the most effective assistance to parents, including parents in urban and rural areas, in the State.*
- (f) **QUARTERLY REVIEW.**—
- (1) **MEETINGS.**—*The board of directors of each parent organization that receives an award under this section shall meet at least once in each calendar quarter to review the activities for which the award was made.*
  - (2) **CONTINUATION AWARD.**—*When an organization requests a continuation award under this section, the board of directors shall submit to the Secretary a written review of the parent training and information program conducted by the organization during the preceding fiscal year.*
- (g) **DEFINITION OF PARENT ORGANIZATION.**—*As used in this section, the term “parent organization” means a private nonprofit organization (other than an institution of higher education) that—*
- (1) *has a board of directors—*
    - (A) *the majority of whom are parents of children with disabilities ages birth through 26;*
    - (B) *that includes—*
      - (i) *individuals working in the fields of special education, related services, and early intervention; and*
      - (ii) *individuals with disabilities;*
    - (C) *the parent and professional members of which are broadly representative of the population to be served; and*
  - (2) *has as its mission serving families of children and youth with disabilities who—*
    - (A) *are ages birth through 26; and*
    - (B) *have the full range of disabilities described in section 602(3).*

**SEC. 672. COMMUNITY PARENT RESOURCE CENTERS.**

(a) *IN GENERAL.*—The Secretary may award grants to, and enter into contracts and cooperative agreements with, local parent organizations to support parent training and information centers that will help ensure that underserved parents of children with disabilities, including low income parents, parents of children with limited English proficiency, and parents with disabilities, have the training and information the parents need to enable the parents to participate effectively in helping their children with disabilities—

(1) to meet developmental and functional goals, and challenging academic achievement goals that have been established for all children; and

(2) to be prepared to lead productive independent adult lives, to the maximum extent possible.

(b) *REQUIRED ACTIVITIES.*—Each community parent resource center assisted under this section shall—

(1) provide training and information that meets the training and information needs of parents of children with disabilities proposed to be served by the grant, contract, or cooperative agreement;

(2) carry out the activities required of parent training and information centers under paragraphs (2) through (9) of section 671(b);

(3) establish cooperative partnerships with the parent training and information centers funded under section 671; and

(4) be designed to meet the specific needs of families who experience significant isolation from available sources of information and support.

(c) *DEFINITION.*—As used in this section, the term “local parent organization” means a parent organization, as defined in section 671(g), that—

(1) has a board of directors the majority of whom are parents of children with disabilities ages birth through 26 from the community to be served; and

(2) has as its mission serving parents of children with disabilities who—

(A) are ages birth through 26; and

(B) have the full range of disabilities described in section 602(3).

**SEC. 673. TECHNICAL ASSISTANCE FOR PARENT TRAINING AND INFORMATION CENTERS.**

(a) *IN GENERAL.*—The Secretary may make an award to 1 parent organization (as defined in section 671(g)) that receives assistance under section 671 to enable the parent organization to provide technical assistance for developing, assisting, and coordinating parent training and information programs carried out by parent training and information centers receiving assistance under sections 671 and 672.

(b) *AUTHORIZED ACTIVITIES.*—The Secretary may provide technical assistance to a parent training and information center under this section in areas such as—

(1) effective national coordination of parent training efforts, which includes encouraging collaborative efforts among award recipients under sections 671 and 672;

(2) dissemination of information, scientifically based research, and research based practices and interventions;

(3) promotion of the use of technology, including universally designed technologies, assistive technology devices, and assistive technology services;

(4) reaching underserved populations;

(5) including children with disabilities in general education programs;

(6) facilitation of transitions from—

(A) early intervention services to preschool;

(B) preschool to elementary school;

(C) elementary school to secondary school; and

(D) secondary school to postsecondary environments; and

(7) promotion of alternative methods of dispute resolution, including mediation.

(c) **REGIONAL PARENT CENTERS.**—The recipient of the award described in section 673(a) shall establish no fewer than 4 regional centers from the parent training and information centers and community parent resource centers receiving assistance under sections 671 and 672 for the purpose of carrying out the authorized activities described in subsection (b). These regional centers shall be selected on the basis of the center's—

(1) willingness to be a regional parent center;

(2) demonstrated expertise in the delivery of required parent training and information center activities described in section 671(b);

(3) demonstrated capacity to deliver the authorized activities described in subsection (b);

(4) history of collaboration with other parent training and information centers, community parent resource centers, regional resource centers, clearinghouses, and other projects; and

(5) geographic location.

(d) **COLLABORATION WITH THE RESOURCE CENTERS.**—The recipient of the award described in subsection (a), in conjunction with the regional parent centers described in subsection (c), shall develop collaborative agreements with the geographically appropriate Regional Resource Center to further parent and professional collaboration.

**SEC. 674. TECHNOLOGY DEVELOPMENT, DEMONSTRATION, AND UTILIZATION; AND MEDIA SERVICES.**

(a) **IN GENERAL.**—The Secretary, on a competitive basis, shall award grants to, and enter into contracts and cooperative agreements with, eligible entities to support activities described in subsections (b) and (c).

(b) **TECHNOLOGY DEVELOPMENT, DEMONSTRATION, AND USE.**—

(1) **IN GENERAL.**—In carrying out this section, the Secretary shall support activities to promote the development, demonstration, and use of technology.

(2) **AUTHORIZED ACTIVITIES.**—The following activities may be carried out under this subsection:

(A) Conducting research on and promoting the demonstration and use of innovative, emerging, and universally designed technologies for children with disabilities, by improving the transfer of technology from research and development to practice.

(B) Supporting research, development, and dissemination of technology with universal design features, so that the technology is accessible to the broadest range of individuals with disabilities without further modification or adaptation.

(C) Demonstrating the use of systems to provide parents and teachers with information and training concerning early diagnosis of, intervention for, and effective teaching strategies for, young children with reading disabilities.

(D) Supporting the use of Internet-based communications for students with cognitive disabilities in order to maximize their academic and functional skills.

(c) **EDUCATIONAL MEDIA SERVICES; OPTIONAL ACTIVITIES.**—

(1) **IN GENERAL.**—In carrying out this section, the Secretary shall support—

(A) educational media activities that are designed to be of educational value in the classroom setting to children with disabilities;

(B) providing video description, open captioning, or closed captioning, that is appropriate for use in the classroom setting, of—

(i) television programs;

(ii) videos;

(iii) other materials, including programs and materials associated with new and emerging technologies, such as CDs, DVDs, video streaming, and other forms of multimedia; or

(iv) news (but only until September 30, 2006);

(C) distributing materials described in subparagraphs (A) and (B) through such mechanisms as a loan service; and

(D) providing free educational materials, including textbooks, in accessible media for visually impaired and print disabled students in elementary schools and secondary schools.

(2) **LIMITATION.**—The video description, open captioning, or closed captioning described in paragraph (1)(B) shall only be provided when the description or captioning has not been previously provided by the producer or distributor, or has not been fully funded by other sources.

(d) **APPLICATIONS.**—Any eligible entity that wishes to receive a grant, or enter into a contract or cooperative agreement, under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

(e) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated to carry out this section such sums as may be necessary for each of the fiscal years 2004 through 2009.

**SEC. 675. ACCESSIBILITY OF INSTRUCTIONAL MATERIALS.**

(a) **INSTRUCTIONAL MATERIALS ACCESSIBILITY STANDARD.**—

(1) **ACCESSIBILITY STANDARD.**—Not later than 180 days after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2003, the Secretary shall, by rule-making, promulgate an Instructional Materials Accessibility Standard which shall constitute the technical standards to be

used by publishers for the preparation of electronic files for States under section 612(a)(22).

(2) *RELATIONSHIP TO OTHER LAWS.*—For purposes of this section:

(A) *AUTHORIZED ENTITY.*—Notwithstanding the provisions of section 106 of title 17, United States Code, it is not an infringement of copyright for an authorized entity to reproduce or to distribute copies of the electronic files described in section 612(a)(22)(B), containing the contents of the print instructional materials using the Instructional Materials Accessibility Standard, if such copies are used solely for reproduction or distribution of the contents of such print instructional materials in specialized formats designed exclusively for use by the blind or other persons with print disabilities.

(B) *PUBLISHER.*—Notwithstanding the provisions of section 106 of title 17, United States Code, it is not an infringement of copyright for a publisher to create and distribute copies of the electronic files described in section 612(a)(22)(B), containing the contents of the print instructional materials using the Instructional Material Accessibility Standard, if such copies are used solely for reproduction or distribution of the contents of such print instructional materials in specialized formats designed exclusively for use by the blind or other persons with print disabilities.

(C) *COPIES.*—Copies of the electronic files containing the contents of the print instructional materials using the Instructional Materials Accessibility Standard shall be made in compliance with the provisions of section 121(b) of title 17, United States Code, regarding the reproduction and distribution of copyrighted print instructional materials in specialized formats.

(3) *DEFINITIONS.*—In this section:

(A) *INSTRUCTIONAL MATERIALS ACCESSIBILITY STANDARD.*—The term “Instructional Materials Accessibility Standard” means the technical standards described in paragraph (2), to be used in the preparation of electronic files suitable and used solely for efficient conversion into specialized formats.

(B) *BLIND OR OTHER PERSONS WITH PRINT DISABILITIES.*—The term “blind or other persons with print disabilities” means children served under this Act and who may qualify in accordance with the Act entitled “An Act to provide books for the adult blind”, approved March 3, 1931 (2 U.S.C. 135a; 46 Stat. 1487) to receive books and other publications produced in specialized formats.

(C) *SPECIALIZED FORMATS.*—The term “specialized formats” has the meaning given the term in section 121(c)(3) of title 17, United States Code, and for the purposes of this section, includes synthesized speech, digital audio, and large print.

(D) *PRINT INSTRUCTIONAL MATERIALS.*—The term “print instructional materials” means printed textbooks and related printed core materials that are written and published primarily for use in elementary school and secondary

*school instruction and are required by a State educational agency or local educational agency for use by pupils in the classroom.*

*(E) AUTHORIZED ENTITY.—The term “authorized entity” has the meaning given the term in section 121(c)(1) of title 17, United States Code.*

*(4) APPLICABILITY.—This section shall apply to print instructional materials published and copyrighted after the date on which the final rule establishing the Instructional Materials Accessibility Standard is published in the Federal Register.*

*(b) NATIONAL INSTRUCTIONAL MATERIALS ACCESS CENTER.—*

*(1) ESTABLISHMENT.—Not later than 2 years after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2003, the Secretary shall establish a center, to be known as the National Instructional Materials Access Center, which shall coordinate the acquisition and distribution of print instructional materials prepared in the Instructional Materials Accessibility Standard described in subsection (a)(2).*

*(2) RESPONSIBILITIES.—The duties of the National Instructional Materials Access Center are the following:*

*(A) To receive and maintain a catalog of print instructional materials made available under section 612(a)(22) and section 613(a)(6).*

*(B) To provide authorized entities with access to such print instructional materials, free of charge, in accordance with such terms and procedures as the National Instructional Materials Access Center may prescribe.*

*(C) To develop, adopt, and publish procedures to protect against copyright infringement and otherwise to administratively assure compliance with title 17, United States Code, with respect to the print instructional materials provided under section 612(a)(22) and section 613(a)(6).*

*(3) CONTRACT AUTHORIZED.—To assist in carrying out paragraph (1), the Secretary shall award, on a competitive basis, a contract renewable on a biennial basis with a nonprofit organization, or with a consortium of such organizations, determined by the Secretary to be best qualified to carry out the responsibilities described in paragraph (2). The contractor shall report directly to the Assistant Secretary for Special Education and Rehabilitative Services.*

*(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subsection such sums as may be necessary.*

**SEC. 676. AUTHORIZATION OF APPROPRIATIONS.**

*There are authorized to be appropriated to carry out sections 671, 672, 673, and 663 such sums as may be necessary for each of the fiscal years 2004 through 2009.*



### ***Subpart 4—Interim Alternative Educational Settings, Behavioral Supports, and Whole School Interventions***

#### **SEC. 681. PURPOSE.**

*The purpose of this subpart is to authorize resources to foster a safe learning environment that supports academic achievement for all students by improving the quality of interim alternative educational settings, providing more behavioral supports in schools, and supporting whole school interventions.*

#### **SEC. 682. DEFINITION OF ELIGIBLE ENTITY.**

*In this subpart, the term “eligible entity” means—*

- (1) a local educational agency; or*
- (2) a consortium consisting of a local educational agency and 1 or more of the following entities:*
  - (A) another local educational agency;*
  - (B) a community-based organization with a demonstrated record of effectiveness in helping children with disabilities who have behavioral challenges succeed;*
  - (C) an institution of higher education;*
  - (D) a mental health provider; or*
  - (E) an educational service agency.*

#### **SEC. 683. PROGRAM AUTHORIZED.**

*The Secretary is authorized to award grants, on a competitive basis, to eligible entities to enable the eligible entities—*

- (1) to establish or expand behavioral supports and whole school behavioral interventions by providing for effective, research-based practices, including—*
  - (A) comprehensive, early screening efforts for students at risk for emotional and behavioral difficulties;*
  - (B) training for school staff on early identification, prereferral, and referral procedures;*
  - (C) training for administrators, teachers, related services personnel, behavioral specialists, and other school staff in whole school positive behavioral interventions and supports, behavioral intervention planning, and classroom and student management techniques;*
  - (D) joint training for administrators, parents, teachers, related services personnel, behavioral specialists, and other school staff on effective strategies for positive behavioral interventions and behavior management strategies that focus on the prevention of behavior problems;*
  - (E) developing or implementing specific curricula, programs, or interventions aimed at addressing behavioral problems;*
  - (F) stronger linkages between school-based services and community-based resources, such as community mental health and primary care providers; or*
  - (G) using behavioral specialists, related services personnel, and other staff necessary to implement behavioral supports; or*
- (2) to improve interim alternative educational settings by—*

- (A) improving the training of administrators, teachers, related services personnel, behavioral specialists, and other school staff (including ongoing mentoring of new teachers);
- (B) attracting and retaining a high quality, diverse staff;
- (C) providing for on-site counseling services;
- (D) using research-based interventions, curriculum, and practices;
- (E) allowing students to use instructional technology that provides individualized instruction;
- (F) ensuring that the services are fully consistent with the goals of the individual student's IEP;
- (G) promoting effective case management and collaboration among parents, teachers, physicians, related services personnel, behavioral specialists, principals, administrators, and other school staff;
- (H) promoting interagency coordination and coordinated service delivery among schools, juvenile courts, child welfare agencies, community mental health providers, primary care providers, public recreation agencies, and community-based organizations; or
- (I) providing for behavioral specialists to help students transitioning from interim alternative educational settings reintegrate into their regular classrooms.

**SEC. 684. PROGRAM EVALUATIONS.**

(a) *REPORT AND EVALUATION.*—Each eligible entity receiving a grant under this subpart shall prepare and submit annually to the Secretary a report on the outcomes of the activities assisted under the grant.

(b) *BEST PRACTICES ON WEBSITE.*—The Secretary shall make available on the Department's website information for parents, teachers, and school administrators on best practices for interim alternative educational settings, behavior supports, and whole school intervention.

**SEC. 685. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated to carry out this subpart \$50,000,000 for fiscal year 2004 and such sums as may be necessary for each of the 5 succeeding fiscal years.

**Education Sciences Reform Act of 2002**

\* \* \* \* \*

**PART II—EDUCATION SCIENCES REFORM**

\* \* \* \* \*

**TITLE I—EDUCATION SCIENCES REFORM**

\* \* \* \* \*

**PART A—THE INSTITUTE OF EDUCATION SCIENCES**

**SEC. 111. ESTABLISHMENT.**

(a) ESTABLISHMENT.—\* \* \*

(b) MISSION.—

(1) IN GENERAL.—\* \* \*

(A) the condition and progress of education in the United States, including early childhood education *early childhood education*;

\* \* \* \* \*

(c) \* \* \*

\* \* \* \* \*

(3) \* \* \*

(A) \* \* \*

(B) the National Center for Education Statistics (as described in part C); [and]

(C) the National Center for Education Evaluation and Regional Assistance (as described in part D)[.]; and

(D) *the National Center for Special Education Research (as described in part E).*

\* \* \* \* \*

**SEC. 115. PRIORITIES.**

(a) PROPOSAL.—The Director shall propose to the Board priorities for the Institute (taking into consideration long-term research and development on core issues conducted through the national research and development centers). The Director shall identify topics that may require long-term research and topics that are focused on understanding and solving particular education problems and issues, [including those associated with the goals and requirements established in the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.) and the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.), such as—] *including those associated with the goals and requirements of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.), the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.), and the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.) such as—*

\* \* \* \* \*

**SEC. 116. NATIONAL BOARD FOR EDUCATION SCIENCES.**

(a) ESTABLISHMENT.—\* \* \*

\* \* \* \* \*

(c) \* \* \*

\* \* \* \* \*

(4) \* \* \*

(A) \* \* \*

\* \* \* \* \*

(i) \* \* \*

(ii) Individuals who are knowledgeable about the educational needs of the United States, who may include school-based professional educators, parents (in-

cluding parents with experience in promoting parental involvement in education), Chief State School Officers, State postsecondary education executives, presidents of institutions of higher education, local educational agency superintendents, early childhood experts, *special education experts*, principals, members of State or local boards of education or Bureau-funded school boards, and individuals from business and industry with experience in promoting private sector involvement in education.

\* \* \* \* \*

## **PART E—NATIONAL CENTER FOR SPECIAL EDUCATION RESEARCH**

### **SEC. 175. ESTABLISHMENT.**

(a) *ESTABLISHMENT.*—*There is established in the Institute a National Center for Special Education Research.*

(b) *MISSION.*—*The mission of the National Center for Special Education Research (in this part referred to as the “Special Education Research Center”) is—*

(1) *to sponsor research to expand knowledge and understanding of the needs of infants, toddlers, and children with disabilities in order to improve the developmental, educational, and transitional results of such individuals;*

(2) *to sponsor research to improve services provided under, and support the implementation of, the Individuals with Disabilities Education Act; and*

(3) *to evaluate the implementation and effectiveness of the Individuals with Disabilities Education Act in coordination with the National Center for Education Evaluation and Regional Assistance.*

(c) *APPLICABILITY OF EDUCATION SCIENCES REFORM ACT OF 2002.*—*Parts A and F, and the standards for peer review of applications and for the conduct and evaluation of research under sections 133(a) and 134, respectively, shall apply to the Secretary, the Director, and the Commissioner in carrying out this part.*

### **SEC. 176. COMMISSIONER FOR SPECIAL EDUCATION RESEARCH.**

*The Special Education Research Center shall be headed by a Commissioner for Special Education Research (in this part referred to as “the Special Education Research Commissioner”) who shall have substantial knowledge of the Special Education Research Center’s activities, including a high level of expertise in the fields of research, research management, and the education of children with disabilities.*

### **SEC. 177. DUTIES.**

(a) *GENERAL DUTIES.*—*The Special Education Research Center shall carry out research activities under this part consistent with the mission described in section 175(b), such as activities that—*

(1) *improve services provided under the Individuals with Disabilities Education Act in order to improve—*

(A) *academic achievement, functional outcomes, and educational results for children with disabilities; and*

(B) *developmental outcomes for infants and toddlers;*

(2) *identify scientifically based educational practices that support learning and improve academic achievement, functional outcomes, and educational results for all students with disabilities;*

(3) *examine the special needs of preschool aged children, infants, and toddlers with disabilities, including factors that may result in developmental delays;*

(4) *identify scientifically based related services and interventions that promote participation and progress in the general education curriculum and general education settings;*

(5) *improve the alignment, compatibility, and development of valid and reliable assessments, including alternate assessments, as required by section 1111(b) of the Elementary and Secondary Education Act of 1965;*

(6) *examine State content standards and alternate assessments for students with significant cognitive impairment in terms of academic achievement, individualized instructional need, appropriate education settings, and improved post-school results;*

(7) *examine the educational, developmental, and transitional needs of children with high incidence and low incidence disabilities;*

(8) *examine the extent to which overidentification and underidentification of children with disabilities occurs, and the causes thereof;*

(9) *improve reading and literacy skills of children with disabilities;*

(10) *examine and improve secondary and postsecondary education and transitional outcomes and results for children with disabilities;*

(11) *examine methods of early intervention for children with disabilities, including children with multiple or complex developmental delays;*

(12) *examine and incorporate universal design concepts in the development of standards, assessments, curricula, and instructional methods as a method to improve educational and transitional results for children with disabilities;*

(13) *improve the preparation of personnel, including early intervention personnel, who provide educational and related services to children with disabilities to increase the academic achievement and functional performance of students with disabilities;*

(14) *examine the excess costs of educating a child with a disability and expenses associated with high cost special education and related services;*

(15) *help parents improve educational results for their children, particularly related to transition issues; and*

(16) *address the unique needs of children with significant cognitive disabilities.*

(b) *STANDARDS.—The Commissioner of Special Education Research shall ensure that activities assisted under this section—*

(1) *conform to high standards of quality, integrity, accuracy, validity, and reliability;*

(2) are carried out in conjunction with the standards for the conduct and evaluation of all research and development established by the National Center for Education Research; and

(3) are objective, secular, neutral, and nonideological, and are free of partisan political influence, and racial, cultural, gender, regional, or disability bias.

(c) PLAN.—The Commissioner of Special Education Research shall propose to the Director a research plan, developed in collaboration with the Assistant Secretary for Special Education and Rehabilitative Services, that—

(1) is consistent with the priorities and mission of the Institute and the mission of the Special Education Research Center;

(2) is carried out, updated, and modified, as appropriate;

(3) is consistent with the purpose of the Individuals with Disabilities Education Act;

(4) contains an appropriate balance across all age ranges and types of children with disabilities;

(5) provides for research that is objective and uses measurable indicators to assess its progress and results;

(6) is coordinated with the comprehensive plan developed under section 661 of the Individuals with Disabilities Education Act; and

(7) provides that the research conducted under part D of the Individuals with Disabilities Education Act is relevant to special education practice and policy.

(d) GRANTS, CONTRACTS, AND COOPERATIVE AGREEMENTS.—In carrying out the duties under this section, the Director may award grants to, or enter into contracts or cooperative agreements with, eligible entities.

(e) APPLICATIONS.—An eligible entity that wishes to receive a grant, or enter into a contract or cooperative agreement, under this part shall submit an application to the Director at such time, in such manner, and containing such information as the Director may require.

(f) DISSEMINATION.—The Special Education Research Center shall—

(1) synthesize and disseminate, through the National Center for Education Evaluation and Regional Assistance, the findings and results of special education research conducted or supported by the Special Education Research Center; and

(2) assist the Director in the preparation of a biennial report, as described in section 119.

(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this part such sums as may be necessary for each of fiscal years 2004 through 2009.

**PART [E]F—GENERAL PROVISIONS**

\* \* \* \* \*

**Elementary and Secondary Education Act of 1965**

\* \* \* \* \*

**TITLE I—IMPROVING THE ACADEMIC  
ACHIEVEMENT OF THE DISADVANTAGED**

\* \* \* \* \*

**PART A—IMPROVING BASIC PROGRAMS OPER-  
ATED BY LOCAL EDUCATIONAL AGENCIES**

**Subpart 1—Basic Program Requirements**

\* \* \* \* \*

(3) REGIONAL CENTERS.—Such a statewide system shall, to the extent practicable, work with and receive support and assistance from regional educational laboratories established under [part E] *part D* of the Education Sciences Reform Act of 2002 and comprehensive centers established under the Educational Technical Assistance Act of 2002 and the comprehensive regional technical assistance centers and the regional educational laboratories under section 941(h) of the Educational Research, Development, Dissemination, and Improvement Act of 1994 (as such section existed on the day before the date of enactment of the Education Sciences Reform Act of 2002), or other providers of technical assistance.

\* \* \* \* \*

**Rehabilitation Act of 1973**

\* \* \* \* \*

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) SHORT TITLE.—This Act may be cited as the “Rehabilitation Act of 1973”.

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

Sec. 1. Short title; table of contents.

\* \* \* \* \*

**PART B—BASIC VOCATIONAL REHABILITATION SERVICES**

Sec. 110. State allotments.

Sec. 110A. *Reservation for expanded transition services.*

\* \* \* \* \*

**SEC. 2. FINDINGS; PURPOSE; POLICY.**

(a) FINDINGS.—Congress finds that—

(1) \* \* \*

\* \* \* \* \*

(5) individuals with disabilities continually encounter various forms of discrimination in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and public services; [and]

(6) the goals of the Nation properly include the goal of providing individuals with disabilities with the tools necessary to—

(A) make informed choices and decisions; and

(B) achieve equality of opportunity, full inclusion and integration in society, employment, independent living, and economic and social self-sufficiency, for such individuals【.】; and  
 (7) there is a substantial need to improve and expand services for students with disabilities under this Act.

\* \* \* \* \*

**SEC. 7. DEFINITIONS.**

For the purposes of this Act:

(1) ADMINISTRATIVE COSTS.—\* \* \*

\* \* \* \* \*

(35)(A) The term “student with a disability” means an individual with a disability who—

- (i) is not younger than 14 and not older than 21;
- (ii) has been determined to be eligible under section 102(a) for assistance under this title; and
- (iii)(I) is eligible for, and is receiving, special education under part B of the Individuals with Disabilities Education Act (20 U.S.C. 1411 et seq.); or

(II) is an individual with a disability, for purposes of section 504.

(B) the term “students with disabilities” means more than 1 student with a disability.

【(35) (36) SUPPORTED EMPLOYMENT.—

(A) IN GENERAL.—The term “supported employment” means competitive work in integrated work settings, or employment in integrated work settings in which individuals are working toward competitive work, consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individuals, for individuals with the most significant disabilities—

- (i)(I) for whom competitive employment has not traditionally occurred; or
- (II) for whom competitive employment has been interrupted or intermittent as a result of a significant disability; and

(ii) who, because of the nature and severity of their disability, need intensive supported employment services for the period, and any extension, described in 【paragraph (36)(C)】 *paragraph (37)(C)* and extended services after the transition described in paragraph (13)(C) in order to perform such work.

(B) CERTAIN TRANSITIONAL EMPLOYMENT.—Such term includes transitional employment for persons who are individuals with the most significant disabilities due to mental illness.

【(36)】 (37) SUPPORTED EMPLOYMENT SERVICES.—The term “supported employment services” means ongoing support services and other appropriate services needed to support and maintain an individual with a most significant disability in supported employment, that—

- (A) are provided singly or in combination and are organized and made available in such a way as to assist an eligible individual to achieve competitive employment;



(B) are based on a determination of the needs of an eligible individual, as specified in an individualized plan for employment; and

(C) are provided by the designated State unit for a period of time not to extend beyond 18 months, unless under special circumstances the eligible individual and the rehabilitation counselor or coordinator involved jointly agree to extend the time in order to achieve the employment outcome identified in the individualized plan for employment.

[(37)] (38) TRANSITION SERVICES.—The term “transition services” means a coordinated set of activities for a student, designed within an outcome-oriented process, that promotes movement from school to post school activities, including post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. The coordinated set of activities shall be based upon the individual student’s needs, taking into account the student’s preferences and interests, and shall include instruction, community experience, the development of employment and other post school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation.

(39) *The term “transition services expansion year” means—*

(A) *the first fiscal year for which the amount appropriated under section 100(b) exceeds the amount appropriated under section 100(b) for fiscal year 2004 by not less than \$100,000,000; and*

(B) *each fiscal year subsequent to that first fiscal year.*

[(38)] (40) VOCATIONAL REHABILITATION SERVICES.—The term “vocational rehabilitation services” means those services identified in section 103 which are provided to individuals with disabilities under this Act.

[(39)] (41) WORKFORCE INVESTMENT ACTIVITIES.—The term “workforce investment activities” means workforce investment activities, as defined in section 101 of the Workforce Investment Act of 1998, that are carried out under that Act.

\* \* \* \* \*

**SEC. 101. STATE PLANS.**

(a) PLAN REQUIREMENTS.—

(1) IN GENERAL.—

\* \* \* \* \*

(15) ANNUAL STATE GOALS AND REPORTS OF PROGRESS.—

(A) ASSESSMENTS AND ESTIMATES.—The State plan shall—

\* \* \* \* \*

(II) individuals with disabilities who are minorities and individuals with disabilities who have been unserved or underserved by the vocational rehabilitation program carried out under this title; **[and]**

(III) individuals with disabilities served through other components of the statewide workforce in-

vestment system (other than the vocational rehabilitation program), as identified by such individuals and personnel assisting such individuals through the components; and

*(IV) in a transition services expansion year; students with disabilities, including their need for transition services;*

\* \* \* \* \*

(D) STRATEGIES.—The State plan shall contain a description of the strategies the State will use to address the needs identified in the assessment conducted under subparagraph (A) and achieve the goals and priorities identified in subparagraph (C), including—

(i) \* \* \*

\* \* \* \* \*

*(iii) in a transition services expansion year, the methods to be used to improve and expand vocational rehabilitation services for students with disabilities, including the coordination of services designed to facilitate the transition of such students from the receipt of educational services in school to the receipt of vocational rehabilitation services under this title or to postsecondary education or employment;*

[(iii)] *(iv) where necessary, the plan of the State for establishing, developing, or improving community rehabilitation programs;*

[(iv)] *(v) strategies to improve the performance of the State with respect to the evaluation standards and performance indicators established pursuant to section 106; and*

[(v)] *(vi) strategies for assisting entities carrying out other components of the statewide workforce investment system (other than the vocational rehabilitation program) in assisting individuals with disabilities.*

\* \* \* \* \*

(25) SERVICES FOR STUDENTS WITH DISABILITIES.—*The State plan for a transition services expansion year shall provide an assurance satisfactory to the Secretary that the State—*

*(A) has developed and implemented strategies to address the needs identified in the assessment described in paragraph (15), and achieve the goals and priorities identified by the State, to improve and expand vocational rehabilitation services for students with disabilities on a statewide basis in accordance with paragraph (15); and*

*(B) from funds reserved under section 110A shall carry out programs or activities designed to improve and expand vocational rehabilitation services for students with disabilities that—*

*(i) facilitate the transition of the students with disabilities from the receipt of educational services in school, to the receipt of vocational rehabilitation services under this title, including, at a minimum, those*

services specified in the interagency agreement required in paragraph (11)(D);

(ii) improve the achievement of post-school goals of students with disabilities, including improving the achievement through participation in meetings regarding individualized education programs developed under section 614 of the Individuals with Disabilities Education Act (20 U.S.C. 1414);

(iii) provide vocational guidance, career exploration services, and job search skills and strategies and technical assistance to students with disabilities;

(iv) support the provision of training and technical assistance to State and local educational agency and designated State agency personnel responsible for the planning and provision of services to students with disabilities; and

(v) support outreach activities to students with disabilities who are eligible for, and need, services under this title.

\* \* \* \* \*

**SEC. 103. VOCATIONAL REHABILITATION SERVICES.**

(a) VOCATIONAL REHABILITATION SERVICES FOR INDIVIDUALS.—

\* \* \* \* \*

(1) \* \* \*

**[(15) transition services for students with disabilities, that facilitate the achievement of the employment outcome identified in the individualized plan for employment;]**

*(15) transition services for students with disabilities, that facilitate the achievement of the employment outcome identified in the individualized plan for employment, including, in a transition services expansion year, services described in clauses (i) through (iii) of section 101(a)(25)(B);*

\* \* \* \* \*

(b) VOCATIONAL REHABILITATION SERVICES FOR GROUPS OF INDIVIDUALS.—Vocational rehabilitation services provided for the benefit of groups of individuals with disabilities may also include the following:

(1) \* \* \*

\* \* \* \* \*

**[(6) Consultative and technical assistance services to assist educational agencies in planning for the transition of students with disabilities from school to post-school activities, including employment.]**

*(6)(A)(i) Consultation and technical assistance services to assist State and local educational agencies in planning for the transition of students with disabilities from school to post-school activities, including employment.*

*(ii) In a transition services expansion year, training and technical assistance described in section 101(a)(25)(B)(iv).*

*(B) In a transition services expansion year, services for groups of individuals with disabilities who meet the requirements of clauses (i) and (iii) of section 7(35)(A), including services de-*

*scribed in clauses (i), (ii), (iii), and (v) of section 101(a)(25)(B), to assist in the transition from school to post-school activities.*

\* \* \* \* \*

**SEC. 106. EVALUATION STANDARDS AND PERFORMANCE INDICATORS.**

(A) ESTABLISHMENT.—

(1) IN GENERAL.—

(A) ESTABLISHMENT OF STANDARDS AND INDICATORS.—

\* \* \* \* \*

[(C) BASES.—Effective July 1, 1999, to the maximum extent practicable, the standards and indicators shall be consistent with the core indicators of performance established under section 136(b) of the Workforce Investment Act of 1998.

[(2) MEASURES.—The standards and indicators shall include outcome and related measures of program performance that facilitate the accomplishment of the purpose and policy of this title.]

(2) MEASURES.—*The standards and indicators shall include outcome and related measures of program performance that—*

*(A) facilitate the accomplishment of the purpose and policy of this title;*

*(B) to the maximum extent practicable, are consistent with the core indicators of performance, and corresponding State adjusted levels of performance, established under section 136(b) of the Workforce Investment Act of 1998 (29 U.S.C. 2871(b)); and*

*(C) include measures of the program’s performance with respect to the transition to post-school activities, and achievement of the postschool goals, of students with disabilities served under the program.*

\* \* \* \* \*

**PART B—BASIC VOCATIONAL REHABILITATION SERVICES**

STATE ALLOTMENTS

SEC. 110. (a)(1) \* \* \*

\* \* \* \* \*

**SEC. 110A. RESERVATION FOR EXPANDED TRANSITION SERVICES.**

(a) RESERVATION.—*From the State allotment under section 110 in a transition services expansion year, each State shall reserve an amount calculated by the Commissioner under subsection (b) to carry out programs and activities under sections 101(a)(25)(B) and 103(b)(6).*

(b) CALCULATION.—*The Commissioner shall calculate the amount to be reserved for such programs and activities for a fiscal year by each State by multiplying \$50,000,000 by the percentage determined by dividing—*

*(1) the amount allotted to that State under section 110 for the prior fiscal year; by*

*(2) the total amount allotted to all States under section 110  
for that prior fiscal year.*

\* \* \* \* \*

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