

former subchapters III to VII of this chapter and former section 1418 of this title, prior to the general amendment of subchapters I to IV of this chapter by Pub. L. 105-17.

**SUBCHAPTER II—ASSISTANCE FOR EDUCATION OF ALL CHILDREN WITH DISABILITIES**

**§ 1411. Authorization; allotment; use of funds; authorization of appropriations**

**(a) Grants to States**

**(1) Purpose of grants**

The Secretary shall make grants to States, outlying areas, and freely associated States, 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 subchapter.

**(2) Maximum amount**

The maximum amount of the grant a State may receive under this section—

(A) for fiscal years 2005 and 2006 is—

(i) 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 1419 of this title; and

(II) aged 6 through 21; multiplied by

(ii) 40 percent of the average per-pupil expenditure in public elementary schools and secondary schools in the United States; and

(B) for fiscal year 2007 and subsequent fiscal years is—

(i) the number of children with disabilities in the 2004-2005 school year in the State who received special education and related services—

(I) aged 3 through 5 if the State is eligible for a grant under section 1419 of this title; and

(II) aged 6 through 21; multiplied by

(ii) 40 percent of the average per-pupil expenditure in public elementary schools and secondary schools in the United States; adjusted by

(iii) the rate of annual change in the sum of—

(I) 85 percent of such State's population described in subsection (d)(3)(A)(i)(II); and

(II) 15 percent of such State's population described in subsection (d)(3)(A)(i)(III).

**(b) Outlying areas and freely associated States; Secretary of the Interior**

**(1) Outlying areas and freely associated States**

**(A) 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—

(i) to provide assistance to the outlying areas in accordance with their respective

populations of individuals aged 3 through 21; and

(ii) to provide each freely associated State a grant in the amount that such freely associated State received for fiscal year 2003 under this subchapter, but only if the freely associated State meets the applicable requirements of this subchapter, as well as the requirements of section 1411(b)(2)(C) of this title as such section was in effect on the day before December 3, 2004.

**(B) 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.

**(C) Definition**

In this paragraph, the term "freely associated States" means the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

**(2) 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 (h).

**(c) Technical assistance**

**(1) In general**

The Secretary may reserve not more than ½ of 1 percent of the amounts appropriated under this subchapter for each fiscal year to provide technical assistance activities authorized under section 1416(i) of this title.

**(2) Maximum amount**

The maximum amount the Secretary may reserve under paragraph (1) for any fiscal year is \$25,000,000, cumulatively adjusted by 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.

**(d) Allocations to States**

**(1) In general**

After reserving funds for technical assistance, 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 subchapter; 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 subchapter, including paragraph (3), section 1419

of this title, and the coordination of activities under this subchapter with, and providing technical assistance to, other programs that provide services to children with disabilities—

(i) each State may reserve for each fiscal year not more than the maximum amount the State was eligible to reserve for State administration under this section for fiscal year 2004 or \$800,000 (adjusted in accordance with subparagraph (B)), whichever is greater; and

(ii) each outlying area may reserve for each fiscal year not more than 5 percent of the amount the outlying area receives under subsection (b)(1) for the fiscal year or \$35,000, whichever is greater.

**(B) Cumulative annual adjustments**

For each fiscal year beginning with fiscal year 2005, the Secretary shall cumulatively adjust—

(i) the maximum amount the State was eligible to reserve for State administration under this subchapter for fiscal year 2004; and

(ii) \$800,000,

by 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) 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 1412(a)(12)(A) of this title are current.

**(D) Subchapter III**

Funds reserved under subparagraph (A) may be used for the administration of subchapter III, if the State educational agency is the lead agency for the State under such subchapter.

**(2) Other State-level activities**

**(A) State-level activities**

**(i) In general**

Except as provided in clause (iii), for the purpose of carrying out State-level activities, each State may reserve for each of the fiscal years 2005 and 2006 not more than 10 percent from the amount of the State's allocation under subsection (d) for each of the fiscal years 2005 and 2006, respectively. For fiscal year 2007 and each subsequent fiscal year, the State may reserve the maximum amount the State was eligible to reserve under the preceding sentence for fiscal year 2006 (cumulatively adjusted by 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).

**(ii) Small State adjustment**

Notwithstanding clause (i) and except as provided in clause (iii), in the case of a

State for which the maximum amount reserved for State administration is not greater than \$850,000, the State may reserve for the purpose of carrying out State-level activities for each of the fiscal years 2005 and 2006, not more than 10.5 percent from the amount of the State's allocation under subsection (d) for each of the fiscal years 2005 and 2006, respectively. For fiscal year 2007 and each subsequent fiscal year, such State may reserve the maximum amount the State was eligible to reserve under the preceding sentence for fiscal year 2006 (cumulatively adjusted by 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).

**(iii) Exception**

If a State does not reserve funds under paragraph (3) for a fiscal year, then—

(I) in the case of a State that is not described in clause (ii), for fiscal year 2005 or 2006, clause (i) shall be applied by substituting "9.0 percent" for "10 percent"; and

(II) in the case of a State that is described in clause (ii), for fiscal year 2005 or 2006, clause (ii) shall be applied by substituting "9.5 percent" for "10.5 percent".

**(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 process required by section 1415(e) of this title, including providing for the cost of mediators and support personnel.

**(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 appropriate 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 use of technology, including technology with universal design principles and assistive technology devices, to maximize accessibility to the general education curriculum for children with disabilities.

(vi) Development and implementation of transition programs, including coordina-

tion of services with agencies involved in supporting the transition of children with disabilities to postsecondary 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 with disabilities who have been expelled from school, and services for children with disabilities in correctional facilities, children enrolled in State-operated or State-supported schools, and children with disabilities 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 6311(b) and 7301 of this title.

(xi) To provide technical assistance to schools and local educational agencies, and direct services, including supplemental educational services as defined in 6316(e) of this title to children with disabilities, in schools or local educational agencies identified for improvement under section 6316 of this title on the sole basis of the assessment results of the disaggregated subgroup of children with disabilities, including providing professional development to special and regular education teachers, who teach children with disabilities, based on scientifically based research to improve educational instruction, in order to improve academic achievement to meet or exceed the objectives established by the State under section 6311(b)(2)(G) of this title.

### **(3) Local educational agency risk pool**

#### **(A) In general**

##### **(i) Reservation of funds**

For the purpose of assisting local educational agencies (including a charter school that is a local educational agency or a consortium of local educational agencies) in addressing the needs of high need children with disabilities, each State shall have the option to reserve for each fiscal year 10 percent of the amount of funds the State reserves for State-level activities under paragraph (2)(A)—

(I) to establish and make disbursements from the high cost fund to local educational agencies in accordance with this paragraph during the first and succeeding fiscal years of the high cost fund; and

(II) to support innovative and effective ways of cost sharing by the State, by a local educational agency, or among a consortium of local educational agencies, as determined by the State in coordination with representatives from local educational agencies, subject to subparagraph (B)(ii).

##### **(ii) Definition of local educational agency**

In this paragraph the term “local educational agency” includes a charter school that is a local educational agency, or a consortium of local educational agencies.

#### **(B) Limitation on uses of funds**

##### **(i) Establishment of high cost fund**

A State shall not use any of the funds the State reserves pursuant to subparagraph (A)(i), but may use the funds the State reserves under paragraph (1), to establish and support the high cost fund.

##### **(ii) Innovative and effective cost sharing**

A State shall not use more than 5 percent of the funds the State reserves pursuant to subparagraph (A)(i) for each fiscal year to support innovative and effective ways of cost sharing among consortia of local educational agencies.

#### **(C) State plan for high cost fund**

##### **(i) Definition**

The State educational agency shall establish the State’s definition of a high need child with a disability, which definition shall be developed in consultation with local educational agencies.

##### **(ii) State plan**

The State educational agency shall develop, not later than 90 days after the State reserves funds under this paragraph, annually review, and amend as necessary, a State plan for the high cost fund. Such State plan shall—

(I) establish, in coordination with representatives from local educational agencies, a definition of a high need child with a disability that, at a minimum—

(aa) addresses the financial impact a high need child with a disability has on the budget of the child’s local educational agency; and

(bb) ensures that the cost of the high need child with a disability is greater than 3 times the average per pupil expenditure (as defined in section 7801 of this title) in that State;

(II) establish eligibility criteria for the participation of a local educational agency that, at a minimum, takes into account the number and percentage of high need children with disabilities served by a local educational agency;

(III) develop a funding mechanism that provides distributions each fiscal year to local educational agencies that meet the criteria developed by the State under subclause (II); and

(IV) establish an annual schedule by which the State educational agency shall make its distributions from the high cost fund each fiscal year.

##### **(iii) Public availability**

The State shall make its final State plan publicly available not less than 30 days before the beginning of the school year, in-

cluding dissemination of such information on the State website.

**(D) Disbursements from the high cost fund**

**(i) In general**

Each State educational agency shall make all annual disbursements from the high cost fund established under subparagraph (A)(i) in accordance with the State plan published pursuant to subparagraph (C).

**(ii) Use of disbursements**

Each State educational agency shall make annual disbursements to eligible local educational agencies in accordance with its State plan under subparagraph (C)(ii).

**(iii) Appropriate costs**

The costs associated with educating a high need child with a disability under subparagraph (C)(i) are only those costs associated with providing direct special education and related services to such child that are identified in such child's 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 a child with a disability to ensure a free appropriate public education for such child.

**(F) Assurance of a free appropriate public education**

Nothing in this paragraph shall be construed—

(i) to limit or condition the right of a child with a disability who is assisted under this subchapter to receive a free appropriate public education pursuant to section 1412(a)(1) of this title in the least restrictive environment pursuant to section 1412(a)(5) of this title; or

(ii) to authorize a State educational agency or local educational agency to establish a limit on what may be spent on the education of a child with a disability.

**(G) Special rule for risk pool and high need assistance programs in effect as of January 1, 2004**

Notwithstanding the provisions of subparagraphs (A) through (F), a State may use funds reserved pursuant to this paragraph for implementing a placement neutral cost sharing and reimbursement program of high need, low incidence, catastrophic, or extraordinary aid to local educational agencies that provides services to high need students based on eligibility criteria for such programs that were created not later than January 1, 2004, and are currently in operation, if such program serves children that meet the requirement of the definition of a high need child with a disability as described in subparagraph (C)(ii)(I).

**(H) Medicaid services not affected**

Disbursements provided under this paragraph shall not be used to pay costs that

otherwise would be reimbursed as medical assistance for a child with a disability under the State medicaid program under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.].

**(I) Remaining funds**

Funds reserved under subparagraph (A) in any fiscal year but not expended in that fiscal year pursuant to subparagraph (D) shall be allocated to local educational agencies for the succeeding fiscal year in the same manner as funds are allocated to local educational agencies under subsection (f) for the succeeding fiscal year.

**(4) Inapplicability of certain prohibitions**

A State may use funds the State reserves under paragraphs (1) and (2) without regard to—

(A) the prohibition on commingling of funds in section 1412(a)(17)(B) of this title; and

(B) the prohibition on supplanting other funds in section 1412(a)(17)(C) of this title.

**(5) Report on use of funds**

As part of the information required to be submitted to the Secretary under section 1412 of this title, each State shall annually describe how amounts under this section—

(A) will be used to meet the requirements of this chapter; and

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

**(6) Special rule for increased funds**

A State may use funds the State reserves under paragraph (1)(A) as a result of inflationary increases under paragraph (1)(B) to carry out activities authorized under clause (i), (iii), (vii), or (viii) of paragraph (2)(C).

**(7) Flexibility in using funds for subchapter III**

Any State eligible to receive a grant under section 1419 of this title may use funds made available under paragraph (1)(A), subsection (f)(3), or section 1419(f)(5) of this title to develop and implement a State policy jointly with the lead agency under subchapter III and the State educational agency to provide early intervention services (which shall include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills) in accordance with subchapter III to children with disabilities who are eligible for services under section 1419 of this title and who previously received services under subchapter III until such children enter, or are eligible under State law to enter, kindergarten, or elementary school as appropriate.

**(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 1413 of this title for use in accordance with this subchapter.

**(2) Procedure for allocations to local educational agencies**

For each fiscal year for which funds are allocated to States under subsection (d), each State shall allocate funds under paragraph (1) as follows:

**(A) 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 1411(d) of this title as section 1411(d) 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.

**(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 subchapter 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**

In this section:

**(1) Average per-pupil expenditure in public elementary schools and secondary schools in the United States**

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 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.

**(2) State**

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 to 21, inclusive, 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 (b)(2) for that fiscal year. Of the amount described in the preceding sentence—

(i) 80 percent shall be allocated to such schools by July 1 of that fiscal year; and

(ii) 20 percent shall be allocated to such schools by September 30 of 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 (referred to in this subsection as the "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 October 7, 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 subchapter for those 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 subchapter 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 1412 of this title (including monitoring and evaluation activities) and 1413 of this title;

(B) includes a description of how the Secretary of the Interior will coordinate the provision of services under this subchapter 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 related to the requirements 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 1418 of this title;

(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 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 subchapter, and will fulfill its duties under this subchapter.

### **(3) Applicability**

The Secretary shall withhold payments under this subsection with respect to the information described in paragraph (2) in the same manner as the Secretary withholds payments under section 1416(e)(6) of this title.

### **(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 450b of title 25) or consortia of tribes or tribal organizations 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 (b)(2).

#### **(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, tribal organization, or consortium an amount based on the number of children with disabilities aged 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 tribe or tribal organization 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 chapter. Such plan shall provide for the coordination of services benefiting those 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 educational agencies 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 1412(a)(21) of this title, 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 1441 of this title 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 of the Interior'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 early intervention services or 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 subchapter, other than section 1419 of this title, there are authorized to be appropriated—

- (1) \$12,358,376,571 for fiscal year 2005;
- (2) \$14,648,647,143 for fiscal year 2006;
- (3) \$16,938,917,714 for fiscal year 2007;
- (4) \$19,229,188,286 for fiscal year 2008;
- (5) \$21,519,458,857 for fiscal year 2009;
- (6) \$23,809,729,429 for fiscal year 2010;
- (7) \$26,100,000,000 for fiscal year 2011; and
- (8) such sums as may be necessary for fiscal year 2012 and each succeeding fiscal year.

(Pub. L. 91-230, title VI, §611, as added Pub. L. 108-446, title I, §101, Dec. 3, 2004, 118 Stat. 2662.)

REFERENCES IN TEXT

Public Law 95-134, referred to in subsec. (b)(1)(B), is Pub. L. 95-134, Oct. 15, 1977, 91 Stat. 1159, as amended. Provisions relating to consolidation of grants are contained in section 501 of Pub. L. 95-134 which is classified to section 1469a of Title 48, Territories and Insular Possessions.

The Social Security Act, referred to in subsec. (e)(3)(H), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XIX of the Act is classified generally to subchapter XIX (§1396 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

PRIOR PROVISIONS

A prior section 1411, Pub. L. 91-230, title VI, §611, as added Pub. L. 105-17, title I, §101, June 4, 1997, 111 Stat. 49, related to authorization, allotment, use of funds, and authorization of appropriations, prior to the general amendment of subchapters I to IV of this chapter by Pub. L. 108-446.

Another prior section 1411, Pub. L. 91-230, title VI, §611, Apr. 13, 1970, 84 Stat. 178; Pub. L. 93-380, title VI, §614(a), (e)(1), (2), Aug. 21, 1974, 88 Stat. 580, 582; Pub. L. 94-142, §§2(a)(1)-(3), 5(a), (c), Nov. 29, 1975, 89 Stat. 773, 776, 794; Pub. L. 95-561, title XIII, §1341(a), Nov. 1, 1978, 92 Stat. 2364; Pub. L. 96-270, §13, June 14, 1980, 94 Stat. 498; Pub. L. 98-199, §§3(b), 15, Dec. 2, 1983, 97 Stat. 1358, 1374; Pub. L. 99-159, title VI, §601, Nov. 22, 1985, 99 Stat. 904; Pub. L. 99-362, §2, July 9, 1986, 100 Stat. 769; Pub. L. 99-457, title II, §201(b), title IV, §§403, 404, Oct. 8, 1986, 100 Stat. 1158, 1173; Pub. L. 100-630, title I, §102(a), Nov. 7, 1988, 102 Stat. 3290; Pub. L. 101-476, title II, §201, title IX, §901(b)(25)-(32), Oct. 30, 1990, 104 Stat. 1111, 1143; Pub. L. 102-73, title VIII, §802(d)(2), (3), July 25, 1991, 105 Stat. 361; Pub. L. 102-119, §§4, 25(a)(4), (19), (b), Oct. 7, 1991, 105 Stat. 587, 606, 607; Pub. L. 103-382, title III, §311, Oct. 20, 1994, 108 Stat. 3931, related to entitlements and allocations, prior to the general amendment of subchapters I to IV of this chapter by Pub. L. 105-17.

EFFECTIVE DATE

Subchapter effective July 1, 2005, see section 302(a) of Pub. L. 108-446, set out as a note under section 1400 of this title.

**§ 1412. State eligibility**

**(a) In general**

A State is eligible for assistance under this subchapter 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 subchapter 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 1401 of this title; or

(II) did not have an individualized education program under this subchapter.

**(C) State flexibility**

A State that provides early intervention services in accordance with subchapter III to a child who is eligible for services under section 1419 of this title, 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 who are homeless children or are wards of the State and 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 chapter requires that children be classified by their disability so long as each child who has a disability listed in

section 1401 of this title and who, by reason of that disability, needs special education and related services is regarded as a child with a disability under this subchapter.

**(4) Individualized education program**

An individualized education program, or an individualized family service plan that meets the requirements of section 1436(d) of this title, is developed, reviewed, and revised for each child with a disability in accordance with section 1414(d) of this title.

**(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 1415 of this title.

**(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 for services under this chapter 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) through (c) of section 1414 of this title.

**(8) Confidentiality**

Agencies in the State comply with section 1417(c) of this title (relating to the confidentiality of records and information).

**(9) Transition from subchapter III to preschool programs**

Children participating in early intervention programs assisted under subchapter III, and who will participate in preschool programs assisted under this subchapter, experience a smooth and effective transition to those preschool programs in a manner consistent with section 1437(a)(9) of this title. By the third birthday of such a child, an individualized education program or, if consistent with sections 1414(d)(2)(B) and 1436(d) of this title, 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 1435(a)(10) of this title.

**(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 subchapter 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 private school children) by the local educational agency shall be equal to a proportionate amount of Federal funds made available under this subchapter.

(II) In calculating the proportionate amount of Federal funds, the local educational agency, after timely and meaningful consultation with representatives of private schools as described in clause (iii), shall conduct a thorough and complete child find process to determine the number of parentally placed children with disabilities attending private schools located in the local educational agency.

(III) Such services to parentally placed private school children with disabilities may be provided to the children on the premises of private, including religious, schools, to the extent consistent with law.

(IV) State and local funds may supplement and in no case shall supplant the proportionate amount of Federal funds required to be expended under this subparagraph.

(V) Each local educational agency shall maintain in its records and provide to the State educational agency the number of children evaluated under this subparagraph, the number of children determined to be children with disabilities under this paragraph, and the number of children served under this paragraph.

**(ii) Child find requirement****(I) In general**

The requirements of paragraph (3) (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.

**(II) Equitable participation**

The child find process shall be designed to ensure the equitable participation of parentally placed private school children with disabilities 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 the agency's public school children.

**(IV) Cost**

The cost of carrying out this clause, including individual evaluations, may not be considered in determining whether a local educational agency has met its obligations under clause (i).

**(V) Completion period**

Such child find process shall be completed in a time period comparable to that for other students attending public schools in the local educational agency.

**(iii) Consultation**

To ensure timely and meaningful consultation, a local educational agency, or where appropriate, a State educational agency, shall consult with private school representatives and representatives of parents of parentally placed private school children with disabilities during the design and development of special education and related services for the children, including 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 amount of Federal funds available to serve parentally placed private school children with disabilities under this subparagraph, including the deter-

mination of how the amount was calculated;

(III) the consultation process among the local educational agency, private school officials, and representatives of parents of parentally placed private school children with disabilities, including how such process will operate throughout the school year to ensure that parentally placed private school 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 with disabilities, including a discussion of types of services, including direct services and 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 or the types of services, whether provided directly or 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 directly or through a contract.

**(iv) Written affirmation**

When timely and meaningful consultation as required by clause (iii) has occurred, the local educational agency shall obtain a written affirmation signed by the representatives of participating private schools, and if such representatives do not provide such affirmation 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 submit a complaint 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 submit a complaint, the official shall provide the basis of the noncompliance with this subparagraph 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 submit a complaint to the Secretary by providing the basis of the noncompliance with this subparagraph 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) Directly or through contracts**

The provision of services pursuant to this subparagraph shall be provided—

(aa) by employees of a public agency;

or

(bb) through contract by the public agency with an individual, association, agency, organization, or other entity.

**(II) Secular, neutral, nonideological**

Special education and related services provided to parentally placed private school children with disabilities, 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 subparagraph, 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 chapter, 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 subchapter 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 educational agencies 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 subchapter 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 agen-

cy 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 item (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 1415(b)(3) of this title, 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;

(bb) the parents had not received notice, pursuant to section 1415 of this title, of the notice requirement in clause (iii)(I); or

(cc) compliance with clause (iii)(I) would likely result in physical harm to the child; 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 or cannot write in English; or

(bb) compliance with clause (iii)(I) would likely result in 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 subchapter are met;

(ii) all educational programs for children with disabilities in the State, including all such programs administered by any other State agency 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; and

(iii) in carrying out this subchapter with respect to homeless children, the requirements of subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.) are met.

**(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 subchapter 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 1401(1) relating to assistive technology devices, 1401(2) relating to assistive technology services, 1401(26) relating to related services, 1401(33) relating to supplementary aids and services, and 1401(34) of this title 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 subchapter without first affording that agency reasonable notice and an opportunity for a hearing.

**(14) Personnel qualifications****(A) In general**

The State educational agency has established and maintains qualifications to ensure that personnel necessary to carry out this subchapter 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 qualifications under subparagraph (A) include qualifications 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 requirements 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 subchapter to be used to assist in the provision of special education and related services under this subchapter to children with disabilities.

**(C) Qualifications for special education teachers**

The qualifications described in subparagraph (A) shall ensure that each person employed as a special education teacher in the State who teaches elementary school, middle school, or secondary school is highly qualified by the deadline established in section 6319(a)(2) of this title.

**(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 subchapter to children with disabilities.

**(E) Rule of construction**

Notwithstanding any other individual right of action that a parent or student may maintain under this subchapter, nothing in this paragraph 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 subchapter.

**(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 chapter, as stated in section 1400(d) of this title;

(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 6311(b)(2)(C) of this title;

(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 6311(b)(2)(C)(v)(II)(cc) of this title; 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), which may include elements of the reports required under section 6311(h) of this title.

**(16) Participation in assessments****(A) In general**

All children with disabilities are included in all general State and districtwide assess-

ment programs, including assessments described under section 6311 of this title, with appropriate accommodations and 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 (A) with accommodations 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 standards and challenging student academic achievement standards; and

(II) if the State has adopted alternate academic achievement standards permitted under the regulations promulgated to carry out section 6311(b)(1) of this title, measure the achievement of children with disabilities against those standards.

**(iii) Conduct of alternate 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 subchapter will be expended in accordance with all the provisions of this subchapter.

**(B) Prohibition against commingling**

Funds paid to a State under this subchapter will not be commingled with State funds.

**(C) Prohibition against supplantation and conditions for waiver by Secretary**

Except as provided in section 1413 of this title, funds paid to a State under this subchapter 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 subchapter 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 1411 of this title 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 cir-

cumstances 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 subchapter.

**(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) Rule of construction**

In complying with paragraphs (17) and (18), a State may not use funds paid to it under this subchapter to satisfy State-law mandated funding obligations to local educational agencies, including funding based on student attendance or enrollment, or inflation.

**(21) 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, be representative of the State population, and be 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, including officials who carry out activities under subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.);
- (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) not less than 1 representative of a vocational, community, or business organization concerned with the provision of transition services to children with disabilities;

(x) a representative from the State child welfare agency responsible for foster care; and

(xi) 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 (ages birth through 26).

**(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 1418 of this title;

(iv) advise the State educational agency in developing corrective action plans to address findings identified in Federal monitoring reports under this subchapter; 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, including data disaggregated by race and ethnicity, 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 non-disabled 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 positive behavioral interventions and supports, and procedural safeguards, to ensure that such policies, procedures, and practices comply with this chapter.

**(23) Access to instructional materials**

**(A) In general**

The State adopts the National Instructional Materials Accessibility Standard for the purposes of providing instructional ma-

terials to blind persons or other persons with print disabilities, in a timely manner after the publication of the National Instructional Materials Accessibility Standard in the Federal Register.

**(B) Rights of State educational agency**

Nothing in this paragraph shall be construed to require any State educational agency to coordinate with the National Instructional Materials Access Center. If a State educational agency chooses not to coordinate with the National Instructional Materials Access Center, such agency shall provide an assurance to the Secretary that the agency will provide instructional materials to blind persons or other persons with print disabilities in a timely manner.

**(C) Preparation and delivery of files**

If a State educational agency chooses to coordinate with the National Instructional Materials Access Center, not later than 2 years after December 3, 2004, the agency, as part of any print instructional materials adoption process, procurement contract, or other practice or instrument used for purchase of print instructional materials, shall enter into a written contract with the publisher of the print instructional materials to—

(i) require the publisher to prepare and, on or before delivery of the print instructional materials, provide to the National Instructional Materials Access Center electronic files containing the contents of the print instructional materials using the National Instructional Materials Accessibility Standard; or

(ii) purchase instructional materials from the publisher that are produced in, or may be rendered in, specialized formats.

**(D) Assistive technology**

In carrying out this paragraph, the State educational agency, to the maximum extent possible, shall work collaboratively with the State agency responsible for assistive technology programs.

**(E) Definitions**

In this paragraph:

**(i) National Instructional Materials Access Center**

The term “National Instructional Materials Access Center” means the center established pursuant to section 1474(e) of this title.

**(ii) National Instructional Materials Accessibility Standard**

The term “National Instructional Materials Accessibility Standard” has the meaning given the term in section 1474(e)(3)(A) of this title.

**(iii) Specialized formats**

The term “specialized formats” has the meaning given the term in section 1474(e)(3)(D) of this title.

**(24) Overidentification and disproportionality**

The State has in effect, consistent with the purposes of this chapter and with section



1418(d) of this title, policies and procedures designed to prevent the inappropriate over-identification or disproportionate representation by race and ethnicity of children as children with disabilities, including children with disabilities with a particular impairment described in section 1401 of this title.

**(25) Prohibition on mandatory medication**

**(A) In general**

The State educational agency shall prohibit State and local educational agency personnel from requiring a child to obtain a prescription for a substance covered by the Controlled Substances Act (21 U.S.C. 801 et seq.) as a condition of attending school, receiving an evaluation under subsection (a) or (c) of section 1414 of this title, or receiving services under this chapter.

**(B) Rule of construction**

Nothing in subparagraph (A) shall be construed to create a Federal prohibition against teachers and other school personnel consulting or sharing classroom-based observations with parents or guardians regarding a student's academic and functional performance, or behavior in the classroom or school, or regarding the need for evaluation for special education or related services under paragraph (3).

**(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 1413(a) of this title, as if such agency were a local educational agency; and

(2) may use amounts that are otherwise available to such agency under this subchapter to serve those children without regard to section 1413(a)(2)(A)(i) of this title (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 subchapter as in effect before the effective date of the Individuals with Disabilities Education Improvement Act of 2004, the Secretary shall consider such State to have met such requirement for purposes of receiving a grant under this subchapter.

**(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 2004, the provisions of this chapter are amended (or the regulations developed to carry out this chapter are amended), there is a new interpretation of this chapter 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 subchapter.

**(d) Approval by the Secretary**

**(1) In general**

If the Secretary determines that a State is eligible to receive a grant under this subchapter, 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 subchapter 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 chapter permits a State to reduce medical and other assistance available, or to alter eligibility, under titles V and XIX of the Social Security Act [42 U.S.C. 701 et seq., 1396 et seq.] 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 December 2, 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 that 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 subchapter 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 1418 of this title.

**(B) Withholding of certain amounts**

Pending final resolution of any investigation or complaint that may result in a deter-

mination under this subsection, the Secretary may withhold from the allocation of the affected State educational 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 not less than 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.

**(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.

(Pub. L. 91-230, title VI, §612, as added Pub. L. 108-446, title I, §101, Dec. 3, 2004, 118 Stat. 2676.)

REFERENCES IN TEXT

The McKinney-Vento Homeless Assistance Act, referred to in subsec. (a)(11)(A)(iii), (21)(B)(v), is Pub. L. 100-77, July 22, 1987, 101 Stat. 482, as amended. Subtitle B of title VII of the Act is classified generally to part B (§11431 et seq.) of subchapter VI of chapter 119 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 11301 of Title 42 and Tables.

The Controlled Substances Act, referred to in subsec. (a)(25)(A), is title II of Pub. L. 91-513, Oct. 27, 1970, 84 Stat. 1242, as amended, which is classified principally to subchapter I (§801 et seq.) of chapter 13 of Title 21, Food and Drugs. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 21 and Tables.

For the effective date of the Individuals with Disabilities Education Improvement Act of 2004, referred to in subsec. (c)(1), (3), see section 302(a), (b) of Pub. L. 108-446, set out as an Effective Date note under section 1400 of this title.

The Social Security Act, referred to in subsec. (e), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles V and XIX of the Act are classified generally to subchapters V (§701 et seq.) and XIX (§1396 et seq.), respectively, of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

PRIOR PROVISIONS

A prior section 1412, Pub. L. 91-230, title VI, §612, as added Pub. L. 105-17, title I, §101, June 4, 1997, 111 Stat. 60, related to State eligibility for assistance, prior to the general amendment of subchapters I to IV of this chapter by Pub. L. 108-446.

Another prior section 1412, Pub. L. 91-230, title VI, §612, Apr. 13, 1970, 84 Stat. 178; Pub. L. 92-318, title IV, §421(b)(1)(C), June 23, 1972, 86 Stat. 341; Pub. L. 93-380, title VI, §§614(b), (f)(1), 615(a), title VIII, §843(b), Aug. 21, 1974, 88 Stat. 581, 582, 611; Pub. L. 94-142, §§2(a)(4), (c), (d), 5(a), Nov. 29, 1975, 89 Stat. 773, 774, 780; Pub. L. 98-199, §3(b), Dec. 2, 1983, 97 Stat. 1358; Pub. L. 99-457, title II, §203(a), Oct. 8, 1986, 100 Stat. 1158; Pub. L. 100-630, title I, §102(b), Nov. 7, 1988, 102 Stat. 3291; Pub. L. 101-476, title IX, §901(b)(33)-(46), (c), Oct. 30, 1990, 104 Stat. 1143, 1144, 1151; Pub. L. 102-119, §25(a)(5), (b), Oct. 7, 1991, 105 Stat. 606, 607, related to eligibility requirements, prior to the general amendment of subchapters I to IV of this chapter by Pub. L. 105-17.

**§ 1413. Local educational agency eligibility**

**(a) In general**

A local educational agency is eligible for assistance under this subchapter 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 1412 of this title.

**(2) Use of amounts**

**(A) In general**

Amounts provided to the local educational agency under this subchapter shall be expended in accordance with the applicable provisions of this subchapter 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 subchapter, 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) Adjustment to local fiscal effort in certain fiscal years**

**(i) Amounts in excess**

Notwithstanding clauses (ii) and (iii) of subparagraph (A), for any fiscal year for which the allocation received by a local educational agency under section 1411(f) of this title exceeds the amount the local educational agency received for the previous fiscal year, the local educational agency may reduce the level of expenditures otherwise required by subparagraph (A)(iii) by not more than 50 percent of the amount of such excess.

**(ii) Use of amounts to carry out activities under ESEA**

If a local educational agency exercises the authority under clause (i), the agency shall use an amount of local funds equal to the reduction in expenditures under clause (i) to carry out activities authorized under the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6301 et seq.].

**(iii) State prohibition**

Notwithstanding clause (i), if a State educational agency determines that a local educational agency is unable to es-

tablish and maintain programs of free appropriate public education that meet the requirements of subsection (a) or the State educational agency has taken action against the local educational agency under section 1416 of this title, the State educational agency shall prohibit the local educational agency from reducing the level of expenditures under clause (i) for that fiscal year.

**(iv) Special rule**

The amount of funds expended by a local educational agency under subsection (f) shall count toward the maximum amount of expenditures such local educational agency may reduce under clause (i).

**(D) Schoolwide programs under title I of the ESEA**

Notwithstanding subparagraph (A) or any other provision of this subchapter, a local educational agency may use funds received under this subchapter for any fiscal year to carry out a schoolwide program under section 1114 of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6314], 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 subchapter 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 subchapter are appropriately and adequately prepared, subject to the requirements of section 1412(a)(14) of this title and section 2122 of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6622].

**(4) Permissive use of funds**

**(A) Uses**

Notwithstanding paragraph (2)(A) or section 1412(a)(17)(B) of this title (relating to commingled funds), funds provided to the local educational agency under this subchapter 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).

**(iii) High cost education and related services**

To establish and implement cost or risk sharing funds, consortia, or cooperatives for the local educational agency itself, or for local educational agencies working in a consortium of which the local educational agency is a part, to pay for high cost special education and related services.

**(B) Administrative case management**

A local educational agency may use funds received under this subchapter 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 subchapter 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 subchapter to those charter schools—

(i) on the same basis as the local educational agency provides funds to the local educational agency's other public schools, including proportional distribution based on relative enrollment of children with disabilities; and

(ii) at the same time as the agency distributes other Federal funds to the agency's other public schools, consistent with the State's charter school law.

**(6) Purchase of instructional materials**

**(A) In general**

Not later than 2 years after December 3, 2004, a local educational agency that chooses to coordinate with the National Instructional Materials Access Center, when purchasing print instructional materials, shall acquire the print instructional materials in the same manner and subject to the same conditions as a State educational agency acquires print instructional materials under section 1412(a)(23) of this title.

**(B) Rights of local educational agency**

Nothing in this paragraph shall be construed to require a local educational agency to coordinate with the National Instructional Materials Access Center. If a local educational agency chooses not to coordinate with the National Instructional Materials Access Center, the local educational

agency shall provide an assurance to the State educational agency that the local educational agency will provide instructional materials to blind persons or other persons with print disabilities in a timely manner.

**(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 subchapter, including, with respect to paragraphs (15) and (16) of section 1412(a) of this title, information relating to the performance of children with disabilities participating in programs carried out under this subchapter.

**(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 subchapter.

**(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 subchapter as in effect before the effective date of the Individuals with Disabilities Education Improvement Act of 2004, 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 subchapter.

**(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 2004, the provisions of this chapter are amended (or the regulations developed to carry out this chapter are amended), there is a new interpretation of this chapter by Federal or State courts, or there is an official finding of noncompliance 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 subchapter 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 1415 of this title 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 1411(f) of this title 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 1412(a) of this title; and

(B) be jointly responsible for implementing programs that receive assistance under this subchapter.

**(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 subchapter, 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 1412(a)(5) of this title.

**(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 subchapter for any fiscal year, less any amount reduced by the agency 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 services, which may include inter-agency financing structures, for students in kindergarten through grade 12 (with a particular emphasis on students in kindergarten through grade 3) who have not been identified as needing special education or related services but who need additional academic and behavioral support to succeed in a general education environment.

**(2) Activities**

In implementing coordinated, early intervening 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 instruction and behavioral interventions, including scientifically based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software; and

(B) providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction.

**(3) Construction**

Nothing in this subsection shall be construed to limit or create a right to a free appropriate public education under this subchapter.

**(4) Reporting**

Each local educational agency that develops and maintains coordinated, early intervening services under this subsection shall annually report to the State educational agency on—

(A) the number of students served under this subsection; and

(B) the number of students served under this subsection who subsequently receive special education and related services under this chapter during the preceding 2-year period.

**(5) Coordination with Elementary and Secondary Education Act of 1965**

Funds made available to carry out this subsection may be used to carry out coordinated, early intervening services aligned with activities funded by, and carried out under, the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6301 et seq.] 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.

**(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 education 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 local educational agency or State 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 educational agency considers appropriate. Such education and services shall be provided in accordance with this subchapter.

**(h) State agency eligibility**

Any State agency that desires to receive a subgrant for any fiscal year under section 1411(f) of this title 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 subchapter receive a free appropriate public education, and that those children and their parents are provided all the rights and procedural safeguards described in this subchapter; 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) Adjustment to State fiscal effort in certain fiscal years**

For any fiscal year for which the allotment received by a State under section 1411 of this title exceeds the amount the State received for the previous fiscal year and if the State in school year 2003–2004 or any subsequent school year pays or reimburses all local educational agencies within the State from State revenue 100 percent of the non-Federal share of the costs of special education and related services, the State educational agency, notwithstanding paragraphs (17) and (18) of section 1412(a) of this title and section 1412(b) of this title, may reduce the level of expenditures from State sources for the education of children with disabilities by not more than 50 percent of the amount of such excess.

**(2) Prohibition**

Notwithstanding paragraph (1), 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 subchapter, or that the State needs assistance, intervention, or substantial intervention under section 1416(d)(2)(A) of this title, the Secretary shall prohibit the State educational agency from exercising the authority in paragraph (1).

**(3) Education activities**

If a State educational agency exercises the authority under paragraph (1), the agency shall use funds from State sources, in an amount equal to the amount of the reduction under paragraph (1), to support activities authorized under the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6301 et seq.] or to support need based student or teacher higher education programs.

**(4) Report**

For each fiscal year for which a State educational agency exercises the authority under paragraph (1), the State educational agency shall report to the Secretary the amount of expenditures reduced pursuant to such paragraph and the activities that were funded pursuant to paragraph (3).

**(5) Limitation**

Notwithstanding paragraph (1), a State educational agency may not reduce the level of expenditures described in paragraph (1) if any local educational agency in the State would, as a result of such reduction, receive less than 100 percent of the amount necessary to ensure that all children with disabilities served by the local educational agency receive a free appropriate public education from the combination of Federal funds received under this chapter and State funds received from the State educational agency.

(Pub. L. 91-230, title VI, §613, as added Pub. L. 108-446, title I, §101, Dec. 3, 2004, 118 Stat. 2694.)

## REFERENCES IN TEXT

The Elementary and Secondary Education Act of 1965, referred to in subsecs. (a)(2)(C)(ii), (f)(5), and (j)(3), is Pub. L. 89-10, Apr. 11, 1965, 79 Stat. 27, as amended, which is classified generally to chapter 70 (§6301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of this title and Tables.

For the effective date of the Individuals with Disabilities Education Improvement Act of 2004, referred to in subsec. (b)(1), (3), see section 302(a), (b) of Pub. L. 108-446, set out as an Effective Date note under section 1400 of this title.

## PRIOR PROVISIONS

A prior section 1413, Pub. L. 91-230, title VI, §613, as added Pub. L. 105-17, title I, §101, June 4, 1997, 111 Stat. 73; amended Pub. L. 107-110, title X, §1076(i), Jan. 8, 2002, 115 Stat. 2091, related to local educational agency eligibility, prior to the general amendment of subchapters I to IV of this chapter by Pub. L. 108-446.

Another prior section 1413, Pub. L. 91-230, title VI, §613, Apr. 13, 1970, 84 Stat. 179; Pub. L. 93-380, title VI, §§614(c), (d), 615(b), (c), title VIII, §843(b)(2), Aug. 21, 1974, 88 Stat. 581, 583, 611; Pub. L. 94-142, §5(a), Nov. 29,

1975, 89 Stat. 782; Pub. L. 98-199, §§3(b), 7, Dec. 2, 1983, 97 Stat. 1358, 1359; Pub. L. 99-457, title II, §203(b), title IV, §405, Oct. 8, 1986, 100 Stat. 1159, 1174; Pub. L. 100-630, title I, §102(c), Nov. 7, 1988, 102 Stat. 3291; Pub. L. 101-476, title II, §202, title IX, §901(b)(47)-(58), Oct. 30, 1990, 104 Stat. 1111, 1144; Pub. L. 102-119, §§5, 25(a)(6), (b), Oct. 7, 1991, 105 Stat. 591, 606, 607; Pub. L. 103-382, title III, §391(f)(2), Oct. 20, 1994, 108 Stat. 4023, related to requisite features of a State plan, approval of State plan by Secretary, and participation of children with disabilities enrolled in private schools, prior to the general amendment of subchapters I to IV of this chapter by Pub. L. 105-17.

**§ 1414. Evaluations, eligibility determinations, individualized education programs, and educational placements****(a) Evaluations, parental consent, 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 subchapter.

**(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****(i) In general**

Such initial evaluation shall consist of procedures—

(I) to determine whether a child is a child with a disability (as defined in 1401 of this title) within 60 days of receiving parental consent for the evaluation, or, if the State establishes a timeframe within which the evaluation must be conducted, within such timeframe; and

(II) to determine the educational needs of such child.

**(ii) Exception**

The relevant timeframe in clause (i)(I) shall not apply to a local educational agency if—

(I) a child enrolls in a school served by the local educational agency after the relevant timeframe in clause (i)(I) has begun and prior to a determination by the child's previous local educational agency as to whether the child is a child with a disability (as defined in section 1401 of this title), but only if the subsequent local educational agency is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent local educational agency agree to a specific time when the evaluation will be completed; or

(II) the parent of a child repeatedly fails or refuses to produce the child for the evaluation.

**(D) Parental consent****(i) In general****(I) Consent for initial evaluation**

The agency proposing to conduct an initial evaluation to determine if the child qualifies as a child with a disability as defined in section 1401 of this title shall obtain informed consent from the parent of such child before conducting the evaluation. Parental consent for evaluation shall not be construed as consent for placement for receipt of special education and related services.

**(II) Consent for services**

An agency that is responsible for making a free appropriate public education available to a child with a disability under this subchapter shall seek to obtain informed consent from the parent of such child before providing special education and related services to the child.

**(ii) Absence of consent****(I) For initial evaluation**

If the parent of such child does not provide consent for an initial evaluation under clause (i)(I), or the parent fails to respond to a request to provide the consent, the local educational agency may pursue the initial evaluation of the child by utilizing the procedures described in section 1415 of this title, except to the extent inconsistent with State law relating to such parental consent.

**(II) For services**

If the parent of such child refuses to consent to services under clause (i)(II), the local educational agency shall not provide special education and related services to the child by utilizing the procedures described in section 1415 of this title.

**(III) Effect on agency obligations**

If the parent of such child refuses to consent to the receipt of special education and related services, or the parent fails to respond to a request to provide such consent—

(aa) 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 such child with the special education and related services for which the local educational agency requests such consent; and

(bb) the local educational agency shall not be required to convene an IEP meeting or develop an IEP under this section for the child for the special education and related services for which the local educational agency requests such consent.

**(iii) Consent for wards of the State****(I) In general**

If the child is a ward of the State and is not residing with the child's parent,

the agency shall make reasonable efforts to obtain the informed consent from the parent (as defined in section 1401 of this title) of the child for an initial evaluation to determine whether the child is a child with a disability.

**(II) Exception**

The agency shall not be required to obtain informed consent from the parent of a child for an initial evaluation to determine whether the child is a child with a disability if—

(aa) despite reasonable efforts to do so, the agency cannot discover the whereabouts of the parent of the child;

(bb) the rights of the parents of the child have been terminated in accordance with State law; or

(cc) the rights of the parent to make educational decisions have been subrogated by a judge in accordance with State law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.

**(E) Rule of construction**

The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.

**(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 frequently 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 1415 of this title, 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 education curriculum, or, for preschool children, to participate in appropriate activities;

(B) not use any single 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) assessments 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 in the language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is not feasible to so provide or administer;

(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 assessments;

(B) the child is assessed in all areas of suspected disability;

(C) assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided; and

(D) assessments of children with disabilities who transfer from 1 school district to another school district in the same academic year are coordinated with such children's prior and subsequent schools, as necessary and as expeditiously as possible, to ensure prompt completion of full evaluations.

### (4) Determination of eligibility and educational need

Upon completion of the administration of assessments and other evaluation measures—

(A) the determination of whether the child is a child with a disability as defined in section 1401(3) of this title and the educational needs of the child 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 appropriate instruction in reading, including in the essential components of reading instruction (as defined in section 6368(3) of this title);

(B) lack of instruction in math; or

(C) limited English proficiency.

### (6) Specific learning disabilities

#### (A) In general

Notwithstanding section 1406(b) of this title, when determining whether a child has a specific learning disability as defined in section 1401 of this title, 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 and other qualified professionals, as appropriate, shall—

(A) review existing evaluation data on the child, including—

(i) evaluations and information provided by the parents of the child;

(ii) current classroom-based, local, or State assessments, and classroom-based observations; and

(iii) observations by teachers and related services providers; 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 is a child with a disability as defined in section 1401(3) of this title, and the educational needs of the child, or, in case of a reevaluation of a child, whether the child continues to have such a disability and such educational needs;

(ii) the present levels of academic achievement and related developmental 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 education curriculum.

**(2) Source of data**

The local educational agency shall administer such assessments and other evaluation measures 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 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 and to determine the child's educational needs, 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 continues to be a child with a disability and to determine the child's educational needs; 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) 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 subchapter due to graduation from secondary school with a regular diploma, or due 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 subchapter terminates under circum-

stances 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**

In this chapter:

**(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 education curriculum;

(bb) for preschool children, as appropriate, how the disability affects the child's participation in appropriate activities; and

(cc) for children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;

(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 education 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, based on peer-reviewed research to the extent practicable, 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 education curriculum in accordance with subclause (I) and to participate in extra-

curricular 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 subparagraph;

(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 performance of the child on State and districtwide assessments consistent with section 1412(a)(16)(A) of this title; 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 16, and updated annually thereafter—

(aa) appropriate measurable post-secondary 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 to assist the child in reaching those goals; and

(cc) beginning not later than 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 chapter, if any, that will transfer to the child on reaching the age of majority under section 1415(m) of this title.

**(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) not less than 1 regular education teacher of such child (if the child is, or may be, participating in the regular education environment);

(iii) not less than 1 special education teacher, or where appropriate, not less than 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 education 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 the parent of a child with a disability and the local educational agency agree that the attendance of such member is not necessary because the member's area of the curriculum or related services is not 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) the parent and the local educational agency consent to the excusal; and

(II) the member submits, in writing to the parent and the IEP Team, 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.

**(D) IEP Team transition**

In the case of a child who was previously served under subchapter III, an invitation to the initial IEP meeting shall, at the request of the parent, be sent to the subchapter III service coordinator or other representatives of the subchapter III system to assist with the smooth transition of services.

**(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 the agency's 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), the IEP Team shall consider the individualized family service plan that contains the material described in section 1436 of this title, and that is developed in accordance with this section, and the individualized family service plan 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.

**(C) Program for children who transfer school districts****(i) In general****(I) Transfer within the same State**

In the case of a child with a disability who transfers school districts within the same academic year, who enrolls in a new school, and who had an IEP that was in effect in the same State, the local educational agency shall provide such child with a free appropriate public education, including services comparable to those described in the previously held IEP, in consultation with the parents until such time as the local educational agency adopts the previously held IEP or develops, adopts, and implements a new IEP that is consistent with Federal and State law.

**(II) Transfer outside State**

In the case of a child with a disability who transfers school districts within the same academic year, who enrolls in a new school, and who had an IEP that was in effect in another State, the local educational agency shall provide such child with a free appropriate public education, including services comparable to those described in the previously held IEP, in consultation with the parents until such time as the local educational agency conducts an evaluation pursuant to subsection (a)(1), if determined to be necessary by such agency, and develops a new IEP, if appropriate, that is consistent with Federal and State law.

**(ii) Transmittal of records**

To facilitate the transition for a child described in clause (i)—

- (I) the new school in which the child enrolls shall take reasonable steps to promptly obtain the child's records, in-

cluding the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous school in which the child was enrolled, pursuant to section 99.31(a)(2) of title 34, Code of Federal Regulations; and

(II) the previous school in which the child was enrolled shall take reasonable steps to promptly respond to such request from the new school.

**(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, consider the use of 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, 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 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 needs 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 reevaluation meetings for the child and other IEP Team meetings for the child.

**(F) Amendments**

Changes to the IEP may be made either by the entire IEP Team or, as provided in subparagraph (D), by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent shall be provided with a revised copy of the IEP with the amendments incorporated.

**(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 frequently 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 education 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) Multi-year IEP demonstration****(A) Pilot program****(i) Purpose**

The purpose of this paragraph is to provide an opportunity for States to allow parents and local educational agencies the opportunity for long-term planning by offering the option of developing a comprehensive multi-year IEP, not to exceed 3 years, that is designed to coincide with the natural transition points for the child.

**(ii) Authorization**

In order to carry out the purpose of this paragraph, the Secretary is authorized to approve not more than 15 proposals from States to carry out the activity described in clause (i).

**(iii) Proposal****(I) In general**

A State desiring to participate in the program under this paragraph shall submit a proposal to the Secretary at such time and in such manner as the Secretary may reasonably require.

**(II) Content**

The proposal shall include—

(aa) assurances that the development of a multi-year IEP under this paragraph is optional for parents;

(bb) assurances that the parent is required to provide informed consent before a comprehensive multi-year IEP is developed;

(cc) a list of required elements for each multi-year IEP, including—

(AA) measurable goals pursuant to paragraph (1)(A)(i)(II), coinciding with natural transition points for the child, that will enable the child to be involved in and make progress in the general education curriculum and that will meet the child's other needs that result from the child's disability; and

(BB) measurable annual goals for determining progress toward meeting the goals described in subitem (AA); and

(dd) a description of the process for the review and revision of each multi-year IEP, including—

(AA) a review by the IEP Team of the child's multi-year IEP at each of the child's natural transition points;

(BB) in years other than a child's natural transition points, an annual review of the child's IEP to determine the child's current levels of progress and whether the annual goals for the child are being achieved, and a requirement to amend the IEP, as appropriate, to enable the child to continue to meet the measurable goals set out in the IEP;

(CC) if the IEP Team determines on the basis of a review that the child is not making sufficient progress toward the goals described in the multi-year IEP, a requirement that the local educational agency shall ensure that the IEP Team carries out a more thorough review of the IEP in accordance with paragraph (4) within 30 calendar days; and

(DD) at the request of the parent, a requirement that the IEP Team shall conduct a review of the child's multi-year IEP rather than or subsequent to an annual review.

**(B) Report**

Beginning 2 years after December 3, 2004, the Secretary shall submit an annual report to the Committee on Education and the Workforce of the House of Representatives

and the Committee on Health, Education, Labor, and Pensions of the Senate regarding the effectiveness of the program under this paragraph and any specific recommendations for broader implementation of such program, including—

- (i) reducing—
  - (I) the paperwork burden on teachers, principals, administrators, and related service providers; and
  - (II) noninstructional time spent by teachers in complying with this subchapter;
- (ii) enhancing longer-term educational planning;
- (iii) improving positive outcomes for children with disabilities;
- (iv) promoting collaboration between IEP Team members; and
- (v) ensuring satisfaction of family members.

**(C) Definition**

In this paragraph, the term “natural transition points” means those periods that are close in time to the transition of a child with a disability from preschool to elementary grades, from elementary grades to middle or junior high school grades, from middle or junior high school grades to secondary school grades, and from secondary school grades to post-secondary activities, but in no case a period longer than 3 years.

**(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 the IEP.

**(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 1412(a)(16) of this title and paragraph (1)(A)(i)(VI) (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 subchapter will end, because of such children’s age, before such children 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<sup>1</sup>

1412(a)(5)(A) of this title and paragraph (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<sup>2</sup> meetings and placement meetings pursuant to this section, section 1415(e) of this title, and section 1415(f)(1)(B) of this title, and carrying out administrative matters under section 1415 of this title (such as scheduling, exchange of witness lists, and status conferences), 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.

(Pub. L. 91-230, title VI, §614, as added Pub. L. 108-446, title I, §101, Dec. 3, 2004, 118 Stat. 2702.)

PRIOR PROVISIONS

A prior section 1414, Pub. L. 91-230, title VI, §614, as added Pub. L. 105-17, title I, §101, June 4, 1997, 111 Stat. 81, related to evaluations, eligibility determinations, individualized education programs, and educational placements, prior to the general amendment of subchapters I to IV of this chapter by Pub. L. 108-446.

Another prior section 1414, Pub. L. 91-230, title VI, §614, Apr. 13, 1970, 84 Stat. 181; Pub. L. 94-142, §5(a), Nov. 29, 1975, 89 Stat. 784; Pub. L. 98-199, §3(b), Dec. 2, 1983, 97 Stat. 1358; Pub. L. 100-630, title I, §102(d), Nov. 7, 1988, 102 Stat. 3293; Pub. L. 101-476, title IX, §901(b)(59)-(70), Oct. 30, 1990, 104 Stat. 1144, 1145; Pub. L. 102-119, §§6, 25(b), Oct. 7, 1991, 105 Stat. 591, 607, related to requisite features of an application, approval of application by State educational agency, consolidated applications of local educational agencies, and provision of special education and related services directly to children with disabilities in areas not served by local educational agency, prior to the general amendment of subchapters I to IV of this chapter by Pub. L. 105-17.

A prior section 1414a, Pub. L. 91-230, title VI, §614A, as added Pub. L. 103-382, title III, §312, Oct. 20, 1994, 108 Stat. 3934, which related to treatment of State agencies that received funds for fiscal year 1994 under subpart 2 of part D of chapter 1 of title I of the Elementary and Secondary Education Act of 1965 (as in existence on the day preceding Oct. 20, 1994), was omitted in the general amendment of subchapters I to IV of this chapter by Pub. L. 105-17.

**§ 1415. Procedural safeguards**

**(a) Establishment of procedures**

Any State educational agency, State agency, or local educational agency that receives assistance under this subchapter 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 a free appropriate public education by such agencies.

**(b) Types of procedures**

The procedures required by this section shall include the following:

<sup>1</sup> So in original. Probably should be “section”.

<sup>2</sup> So in original. Probably should be capitalized.

(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)(A) 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 to act as a surrogate for the parents, which surrogate 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. In the case of—

(i) a child who is a ward of the State, such surrogate may alternatively be appointed by the judge overseeing the child's care provided that the surrogate meets the requirements of this paragraph; and

(ii) an unaccompanied homeless youth as defined in section 11434a(6) of title 42, the local educational agency shall appoint a surrogate in accordance with this paragraph.

(B) The State shall make reasonable efforts to ensure the assignment of a surrogate not more than 30 days after there is a determination by the agency that the child needs a surrogate.

(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 any party to present a complaint—

(A) 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; and

(B) which sets forth an alleged violation that occurred not more than 2 years before 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 presenting such a complaint under this subchapter, in such time as the State law allows, except that the exceptions to the timeline described in subsection (f)(3)(D) shall apply to the timeline described in this subparagraph.

(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 (or available contact information in the case of a homeless 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 11434a(2) of title 42), 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.

(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) 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 notice 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 and a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;

(C) a statement that the parents of a child with a disability have protection under the procedural safeguards of this subchapter 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;

(D) sources for parents to contact to obtain assistance in understanding the provisions of this subchapter;

(E) a description of other options considered by the IEP Team and the reason why those options were rejected; and

(F) a description of the factors that are relevant to the agency's proposal or refusal.

#### (2) Due process complaint notice

##### (A) Complaint

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 subsection (b)(7)(A).

**(B) Response to complaint****(i) Local educational agency response****(I) In general**

If the local educational agency has not sent a prior written notice to the parent regarding the subject matter contained in the parent's due process complaint notice, such local educational agency shall, within 10 days of receiving the complaint, send to the parent a response that shall include—

(aa) an explanation of why the agency proposed or refused to take the action raised in the complaint;

(bb) a description of other options that the IEP Team considered and the reasons why those options were rejected;

(cc) a description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and

(dd) a description of the factors that are relevant to the agency's proposal or refusal.

**(II) Sufficiency**

A response filed by a local educational agency pursuant to subclause (I) shall not be construed to preclude such local educational agency from asserting that the parent's due process complaint notice was insufficient where appropriate.

**(ii) Other party response**

Except as provided in clause (i), the non-complaining party shall, within 10 days of receiving the complaint, send to the complainant a response that specifically addresses the issues raised in the complaint.

**(C) Timing**

The party providing a hearing officer notification under subparagraph (A) shall provide the notification within 15 days of receiving the complaint.

**(D) Determination**

Within 5 days of receipt of the notification provided under subparagraph (C), 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 the parties in writing of such determination.

**(E) Amended complaint notice****(i) In general**

A party may amend its due process complaint notice only if—

(I) the other party 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, except that the hearing officer may only grant such permission at any time not later than 5 days before a due process hearing occurs.

**(ii) Applicable timeline**

The applicable timeline for a due process hearing under this subchapter shall recom-

mence at the time the party files an amended notice, including the timeline under subsection (f)(1)(B).

**(d) Procedural safeguards notice****(1) In general****(A) Copy to parents**

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—

(i) upon initial referral or parental request for evaluation;

(ii) upon the first occurrence of the filing of a complaint under subsection (b)(6); and

(iii) upon request by a parent.

**(B) Internet website**

A local educational agency may place a current copy of the procedural safeguards notice on its Internet website if such website exists.

**(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) attorneys' fees.

**(e) Mediation****(1) In general**

Any State educational agency or local educational agency that receives assistance under this subchapter shall ensure that procedures are established and implemented to allow parties to disputes involving any matter, including matters 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 subchapter; 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 that 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 1471 or 1472 of this title; 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 AGREEMENT.—In the case that a resolution is reached to resolve the complaint through the mediation process, the parties shall execute a legally binding agreement that sets forth such resolution and that—

(i) states that all discussions that occurred during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding;

(ii) is signed by both the parent and a representative of the agency who has the authority to bind such agency; and

(iii) 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 hearing or civil proceeding.

**(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) Resolution session****(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 relevant member or members of the IEP Team who have specific knowledge of the facts identified in the complaint—

(I) within 15 days of receiving notice of the parents' complaint;

(II) which shall include a representative of the agency who has decision-making 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 facts 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 30 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 subchapter shall commence.

**(iii) Written settlement agreement**

In the case that a resolution is reached to resolve the complaint at a meeting described in clause (i), the parties shall execute a legally binding agreement that is—

(I) signed by both the parent and a representative of the agency who has the authority to bind such agency; and

(II) enforceable in any State court of competent jurisdiction or in a district court of the United States.

**(iv) Review period**

If the parties execute an agreement pursuant to clause (iii), a party may void such agreement within 3 business days of the agreement's execution.

**(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 knowledge of, and the ability to understand, the provisions of this chapter, Federal and State regulations pertaining to this chapter, and legal interpretations of this chapter by Federal and State 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) Timeline for requesting hearing**

A parent or agency shall request an impartial due process hearing within 2 years of the date the parent or 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 subchapter, in such time as the State law allows.

**(D) Exceptions to the timeline**

The timeline described in subparagraph (C) shall not apply to a parent if the parent was prevented from requesting the hearing due to—

(i) specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint; or

(ii) the local educational agency's withholding of information from the parent that was required under this subchapter to be provided to the parent.

**(E) 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) impeded the child's right to a free appropriate public education;

(II) significantly impeded the parents' opportunity to participate in the decisionmaking process regarding the provision of a free appropriate public education to the parents' child; or

(III) caused a deprivation of educational benefits.

**(iii) Rule of construction**

Nothing in this subparagraph shall be construed to preclude a hearing officer from ordering a local educational agency to comply with procedural requirements under this section.

**(F) Rule of construction**

Nothing in this paragraph shall be construed to affect the right of a parent to file a complaint with the State educational agency.

**(g) Appeal****(1) In general**

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.

**(2) Impartial review and independent decision**

The State educational agency shall conduct an impartial review of the findings and decision appealed under paragraph (1). 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—

(A) shall be made available to the public consistent with the requirements of section 1417(b) of this title (relating to the confidentiality of data, information, and records); and

(B) shall be transmitted to the advisory panel established pursuant to section 1412(a)(21) of this title.

**(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 made 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) 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 subchapter, 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**

**(i) In general**

In any action or proceeding brought under this section, the court, in its discre-

tion, may award reasonable attorneys' fees as part of the costs—

(I) to a prevailing party who is the parent of a child with a disability;

(II) to a prevailing party who is a State educational agency or local educational agency against the attorney of a parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or

(III) to a prevailing State educational agency or local educational agency against the attorney of a parent, or against the parent, if the parent's complaint or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

**(ii) Rule of construction**

Nothing in this subparagraph shall be construed to affect section 327 of the District of Columbia Appropriations Act, 2005.

**(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.

**(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 the 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) Case-by-case determination**

School personnel may consider any unique circumstances on a case-by-case basis when determining whether to order a change in placement for a child with a disability who violates a code of student conduct.

**(B) Authority**

School personnel under this subsection may remove a child with a disability who

violates a code of student conduct from their current placement 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).

**(C) 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 (E), the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner and for the same duration in which the procedures would be applied to children without disabilities, except as provided in section 1412(a)(1) of this title although it may be provided in an interim alternative educational setting.

**(D) Services**

A child with a disability who is removed from the child's current placement under subparagraph (G) (irrespective of whether the behavior is determined to be a manifestation of the child's disability) or subparagraph (C) shall—

(i) continue to receive educational services, as provided in section 1412(a)(1) of this title, 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, as appropriate, a functional behavioral assessment, behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

**(E) Manifestation determination**

**(i) In general**

Except as provided in subparagraph (B), 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 local educational agency, the parent, and relevant members of the IEP Team (as determined by the parent and the local educational agency) shall review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine—

(I) if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or

(II) if the conduct in question was the direct result of the local educational agency's failure to implement the IEP.

**(ii) Manifestation**

If the local educational agency, the parent, and relevant members of the IEP Team determine 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.

**(F) Determination that behavior was a manifestation**

If the local educational agency, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team shall—

(i) conduct a functional behavioral assessment, and implement a behavioral intervention plan for such child, provided that the local educational agency had not conducted such assessment prior to such determination before the behavior that resulted in a change in placement described in subparagraph (C) or (G);

(ii) in the situation where a behavioral intervention plan has been developed, review the behavioral intervention plan if the child already has such a behavioral intervention plan, and modify it, as necessary, to address the behavior; and

(iii) except as provided in subparagraph (G), return the child to the placement from which the child was removed, unless the parent and the local educational agency agree to a change of placement as part of the modification of the behavioral intervention plan.

**(G) Special circumstances**

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, 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;

(ii) knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of a State or local educational agency; or

(iii) has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of a State or local educational agency.

**(H) 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.

**(2) Determination of setting**

The interim alternative educational setting in subparagraphs (C) and (G) of paragraph (1) 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 place-

ment, 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**

A hearing officer shall hear, and make a determination regarding, an appeal requested under subparagraph (A).

**(ii) Change of placement order**

In making the determination under clause (i), the hearing officer may order a change in placement of a child with a disability. In such situations, the hearing officer may—

(I) return a child with a disability to the placement from which the child was removed; or

(II) 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 an appeal under paragraph (3) has been requested by either the parent or the local educational agency—

(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)(C), 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 and shall result in a determination within 10 school days after the hearing.

**(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 subchapter and who has engaged in behavior that violates a code of student conduct, may assert any of the protections provided for in this subchapter 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 to supervisory or ad-

ministrative personnel of the appropriate educational agency, or a teacher of the child, 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 1414(a)(1)(B) of this title; or

(iii) the teacher of the child, or other personnel of the local educational agency, has expressed specific concerns about a pattern of behavior demonstrated by the child, directly to the director of special education of such agency or to other supervisory personnel of the agency.

**(C) Exception**

A local educational agency shall not be deemed to have knowledge that the child is a child with a disability if the parent of the child has not allowed an evaluation of the child pursuant to section 1414 of this title or has refused services under this subchapter or the child has been evaluated and it was determined that the child was not a child with a disability under this subchapter.

**(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 this subsection, 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 subchapter, 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) Rule of construction**

Nothing in this subchapter 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**

In this subsection:

**(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 [21 U.S.C. 801 et seq.] 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.

**(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.

**(I) Rule of construction**

Nothing in this chapter shall be construed to restrict or limit the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990 [42 U.S.C. 12101 et seq.], title V of the Rehabilitation Act of 1973 [29 U.S.C. 790 et seq.], 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 subchapter, 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 subchapter.

**(m) Transfer of parental rights at age of majority**

**(1) In general**

A State that receives amounts from a grant under this subchapter 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 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 subchapter 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 subchapter 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 subchapter.

**(n) Electronic mail**

A parent of a child with a disability may elect to receive notices required under this section by an electronic mail (e-mail) communication, if the agency makes such option available.

**(o) Separate complaint**

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.

(Pub. L. 91-230, title VI, §615, as added Pub. L. 108-446, title I, §101, Dec. 3, 2004, 118 Stat. 2715.)

REFERENCES IN TEXT

Section 327 of the District of Columbia Appropriations Act, 2005, referred to in subsec. (i)(3)(B)(ii), is section 327 of Pub. L. 108-335, title III, Oct. 18, 2004, 118 Stat. 1344, which is not classified to the Code.

The Federal Rules of Civil Procedure, referred to in subsec. (i)(3)(D)(i)(I), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

The Controlled Substances Act, referred to in subsec. (k)(7)(B), is title II of Pub. L. 91-513, Oct. 27, 1970, 84 Stat. 1242, as amended, which is classified principally to subchapter I (§801 et seq.) of chapter 13 of Title 21, Food and Drugs. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 21 and Tables.

The Americans with Disabilities Act of 1990, referred to in subsec. (l), is Pub. L. 101-336, July 26, 1990, 104 Stat. 327, as amended, which is classified principally to chapter 126 (§12101 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of Title 42 and Tables.

The Rehabilitation Act of 1973, referred to in subsec. (l), is Pub. L. 93-112, Sept. 26, 1973, 87 Stat. 355, as amended. Title V of the Act is classified generally to subchapter V (§790 et seq.) of chapter 16 of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables.

PRIOR PROVISIONS

A prior section 1415, Pub. L. 91-230, title VI, §615, as added Pub. L. 105-17, title I, §101, June 4, 1997, 111 Stat. 88; amended Pub. L. 106-25, §6(a), Apr. 29, 1999, 113 Stat. 49, related to procedural safeguards, prior to the general amendment of subchapters I to IV of this chapter by Pub. L. 108-446.

Another prior section 1415, Pub. L. 91-230, title VI, §615, as added Pub. L. 94-142, §5(a), Nov. 29, 1975, 89 Stat. 788; amended Pub. L. 99-372, §§2, 3, Aug. 5, 1986, 100 Stat. 796, 797; Pub. L. 100-630, title I, §102(e), Nov. 7, 1988, 102 Stat. 3294; Pub. L. 101-476, title IX, §901(b)(71)-(75), Oct. 30, 1990, 104 Stat. 1145; Pub. L. 102-119, §25(b), Oct. 7, 1991, 105 Stat. 607; Pub. L. 103-382, title III, §314(a)(1), Oct. 20, 1994, 108 Stat. 3936, related to procedural safeguards, prior to the general amendment of subchapters I to IV of this chapter by Pub. L. 105-17.

**§ 1416. Monitoring, technical assistance, and enforcement**

**(a) Federal and State monitoring**

**(1) In general**

The Secretary shall—

(A) monitor implementation of this subchapter through—

(i) oversight of the exercise of general supervision by the States, as required in section 1412(a)(11) of this title; and

(ii) the State performance plans, described in subsection (b);

(B) enforce this subchapter in accordance with subsection (e); and

(C) require States to—

(i) monitor implementation of this subchapter by local educational agencies; and

(ii) enforce this subchapter in accordance with paragraph (3) and subsection (e).

**(2) Focused monitoring**

The primary focus of Federal and State monitoring activities described in paragraph (1) shall be on—

(A) improving educational results and functional outcomes for all children with disabilities; and

(B) ensuring that States meet the program requirements under this subchapter, 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 the States, and shall require each State to monitor the local educational agencies located in the State (except the State exercise of general supervisory responsibility), using quantifiable indicators in each of the following priority areas, and using such qualitative indicators as are needed to adequately measure performance in the following priority areas:

(A) Provision of a free appropriate public education in the least restrictive environment.

(B) State exercise of general supervisory authority, including child find, effective monitoring, the use of resolution sessions, mediation, voluntary binding arbitration, and a system of transition services as defined in sections 1401(34) and 1437(a)(9) of this title.

(C) Disproportionate representation of racial and ethnic groups in special education and related services, to the extent the representation is the result of inappropriate identification.

**(4) Permissive areas of review**

The Secretary shall consider other relevant information and data, including data provided by States under section 1418 of this title.

**(b) State performance plans**

**(1) Plan**

**(A) In general**

Not later than 1 year after December 3, 2004, each State shall have in place a per-

formance plan that evaluates that State's efforts to implement the requirements and purposes of this subchapter and describes how the State will improve such implementation.

**(B) Submission for approval**

Each State shall submit the State's performance plan to the Secretary for approval in accordance with the approval process described in subsection (c).

**(C) Review**

Each State shall review its State performance plan at least once every 6 years and submit any amendments to the Secretary.

**(2) Targets**

**(A) In general**

As a part of the State performance plan described under paragraph (1), each State shall establish measurable and rigorous targets for the indicators established under the priority areas described in subsection (a)(3).

**(B) Data collection**

**(i) In general**

Each State shall collect valid and reliable information as needed to report annually to the Secretary on the priority areas described in subsection (a)(3).

**(ii) Rule of construction**

Nothing in this chapter shall be construed to authorize the development of a nationwide database of personally identifiable information on individuals involved in studies or other collections of data under this subchapter.

**(C) Public reporting and privacy**

**(i) In general**

The State shall use the targets established in the plan and priority areas described in subsection (a)(3) to analyze the performance of each local educational agency in the State in implementing this subchapter.

**(ii) Report**

**(I) Public report**

The State shall report annually to the public on the performance of each local educational agency located in the State on the targets in the State's performance plan. The State shall make the State's performance plan available through public means, including by posting on the website of the State educational agency, distribution to the media, and distribution through public agencies.

**(II) State performance report**

The State shall report annually to the Secretary on the performance of the State under the State's performance plan.

**(iii) Privacy**

The State shall not report to the public or the Secretary any information on performance that would result in the disclosure of personally identifiable information about individual children or where the available data is insufficient to yield statistically reliable information.

sure of personally identifiable information about individual children or where the available data is insufficient to yield statistically reliable information.

**(c) Approval process**

**(1) Deemed approval**

The Secretary shall review (including the specific provisions described in subsection (b)) each performance plan submitted by a State pursuant to subsection (b)(1)(B) and the plan shall be deemed to be approved by the Secretary unless the Secretary makes a written determination, prior to the expiration of the 120-day period beginning on the date on which the Secretary received the plan, that the plan does not meet the requirements of this section, including the specific provisions described in subsection (b).

**(2) Disapproval**

The Secretary shall not finally disapprove a performance plan, except after giving the State notice and an opportunity for a hearing.

**(3) Notification**

If the Secretary finds that the plan does not meet the requirements, in whole or in part, of this section, the Secretary shall—

(A) give the State notice and an opportunity for a hearing; and

(B) notify the State of the finding, and in such notification shall—

(i) cite the specific provisions in the plan that do not meet the requirements; and

(ii) request additional information, only as to the provisions not meeting the requirements, needed for the plan to meet the requirements of this section.

**(4) Response**

If the State responds to the Secretary's notification described in paragraph (3)(B) during the 30-day period beginning on the date on which the State received the notification, and resubmits the plan with the requested information described in paragraph (3)(B)(ii), the Secretary shall approve or disapprove such plan prior to the later of—

(A) the expiration of the 30-day period beginning on the date on which the plan is resubmitted; or

(B) the expiration of the 120-day period described in paragraph (1).

**(5) Failure to respond**

If the State does not respond to the Secretary's notification described in paragraph (3)(B) during the 30-day period beginning on the date on which the State received the notification, such plan shall be deemed to be disapproved.

**(d) Secretary's review and determination**

**(1) Review**

The Secretary shall annually review the State performance report submitted pursuant to subsection (b)(2)(C)(ii)(II) in accordance with this section.

**(2) Determination**

**(A) In general**

Based on the information provided by the State in the State performance report, infor-



mation obtained through monitoring visits, and any other public information made available, the Secretary shall determine if the State—

- (i) meets the requirements and purposes of this subchapter;
- (ii) needs assistance in implementing the requirements of this subchapter;
- (iii) needs intervention in implementing the requirements of this subchapter; or
- (iv) needs substantial intervention in implementing the requirements of this subchapter.

**(B) Notice and opportunity for a hearing**

For determinations made under clause (iii) or (iv) of subparagraph (A), the Secretary shall provide reasonable notice and an opportunity for a hearing on such determination.

**(e) Enforcement**

**(1) Needs assistance**

If the Secretary determines, for 2 consecutive years, that a State needs assistance under subsection (d)(2)(A)(ii) in implementing the requirements of this subchapter, the Secretary shall take 1 or more of the following actions:

(A) Advise the State of available sources of technical assistance that may help the State address the areas in which the State needs assistance, which may include assistance from the Office of Special Education Programs, other offices of the Department of Education, other Federal agencies, technical assistance providers approved by the Secretary, and other federally funded nonprofit agencies, and require the State to work with appropriate entities. Such technical assistance may include—

- (i) the provision of advice by experts to address the areas in which the State needs assistance, including explicit plans for addressing the area for concern within a specified period of time;
- (ii) assistance in identifying and implementing professional development, instructional strategies, and methods of instruction that are based on scientifically based research;
- (iii) designating and using distinguished superintendents, principals, special education administrators, special education teachers, and other teachers to provide advice, technical assistance, and support; and
- (iv) devising additional approaches to providing technical assistance, such as collaborating with institutions of higher education, educational service agencies, national centers of technical assistance supported under subchapter IV, and private providers of scientifically based technical assistance.

(B) Direct the use of State-level funds under section 1411(e) of this title on the area or areas in which the State needs assistance.

(C) Identify the State as a high-risk grantee and impose special conditions on the State's grant under this subchapter.

**(2) Needs intervention**

If the Secretary determines, for 3 or more consecutive years, that a State needs intervention under subsection (d)(2)(A)(iii) in implementing the requirements of this subchapter, the following shall apply:

(A) The Secretary may take any of the actions described in paragraph (1).

(B) The Secretary shall take 1 or more of the following actions:

- (i) Require the State to 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) Require the State to enter into a compliance agreement under section 457 of the General Education Provisions Act [20 U.S.C. 1234f], if the Secretary has reason to believe that the State cannot correct the problem within 1 year.
- (iii) For each year of the determination, withhold not less than 20 percent and not more than 50 percent of the State's funds under section 1411(e) of this title, until the Secretary determines the State has sufficiently addressed the areas in which the State needs intervention.

(iv) Seek to recover funds under section 452 of the General Education Provisions Act [20 U.S.C. 1234a].

(v) Withhold, in whole or in part, any further payments to the State under this subchapter pursuant to paragraph (5).

(vi) Refer the matter for appropriate enforcement action, which may include referral to the Department of Justice.

**(3) Needs substantial intervention**

Notwithstanding paragraph (1) or (2), at any time that the Secretary determines that a State needs substantial intervention in implementing the requirements of this subchapter or that there is a substantial failure to comply with any condition of a State educational agency's or local educational agency's eligibility under this subchapter, the Secretary shall take 1 or more of the following actions:

(A) Recover funds under section 452 of the General Education Provisions Act [20 U.S.C. 1234a].

(B) Withhold, in whole or in part, any further payments to the State under this subchapter.

(C) Refer the case to the Office of the Inspector General at the Department of Education.

(D) Refer the matter for appropriate enforcement action, which may include referral to the Department of Justice.

**(4) Opportunity for hearing**

**(A) Withholding funds**

Prior to withholding any funds under this section, the Secretary shall provide reasonable notice and an opportunity for a hearing to the State educational agency involved.

**(B) Suspension**

Pending the outcome of any hearing to withhold payments under subsection (b), the

Secretary may suspend payments to a recipient, suspend the authority of the recipient to obligate funds under this subchapter, or both, after such recipient has been given reasonable notice and an opportunity to show cause why future payments or authority to obligate funds under this subchapter should not be suspended.

**(5) Report to Congress**

The Secretary shall report to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate within 30 days of taking enforcement action pursuant to paragraph (1), (2), or (3), on the specific action taken and the reasons why enforcement action was taken.

**(6) Nature of withholding**

**(A) Limitation**

If the Secretary withholds further payments pursuant to paragraph (2) or (3), the Secretary may determine—

(i) that such withholding will be limited to programs or projects, or portions of programs or projects, that affected the Secretary's determination under subsection (d)(2); or

(ii) that the State educational agency shall not make further payments under this subchapter to specified State agencies or local educational agencies that caused or were involved in the Secretary's determination under subsection (d)(2).

**(B) Withholding until rectified**

Until the Secretary is satisfied that the condition that caused the initial withholding has been substantially rectified—

(i) payments to the State under this subchapter shall be withheld in whole or in part; and

(ii) payments by the State educational agency under this subchapter shall be limited to State agencies and local educational agencies whose actions did not cause or were not involved in the Secretary's determination under subsection (d)(2), as the case may be.

**(7) Public attention**

Any State that has received notice under subsection (d)(2) 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 State.

**(8) Judicial review**

**(A) In general**

If any State is dissatisfied with the Secretary's action with respect to the eligibility of the State under section 1412 of this title, 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 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.

**(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.

**(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 be conclusive if supported by substantial evidence.

**(f) State enforcement**

If a State educational agency determines that a local educational agency is not meeting the requirements of this subchapter, including the targets in the State's performance plan, the State educational agency shall prohibit the local educational agency from reducing the local educational agency's maintenance of effort under section 1413(a)(2)(C) of this title for any fiscal year.

**(g) Rule of construction**

Nothing in this section shall be construed to restrict the Secretary from utilizing any authority under the General Education Provisions Act [20 U.S.C. 1221 et seq.] to monitor and enforce the requirements of this chapter.

**(h) Divided State agency responsibility**

For purposes of this section, where responsibility for ensuring that the requirements of this subchapter 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 1412(a)(11)(C) of this title, the Secretary, in instances where the Secretary finds that the failure to comply substantially with the provisions of this subchapter are related to a failure by the public agency, shall take appropriate corrective action to ensure compliance with this subchapter, except that—

(1) any reduction or withholding of payments to the State shall be proportionate to the total funds allotted under section 1411 of this title 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 re-

sponsible for the failure to comply with this subchapter.

**(i) Data capacity and technical assistance review**

The Secretary shall—

(1) review the data collection and analysis capacity of States to ensure that data and information determined necessary for implementation of this section is collected, analyzed, and accurately reported to the Secretary; and

(2) provide technical assistance (from funds reserved under section 1411(c) of this title), where needed, to improve the capacity of States to meet the data collection requirements.

(Pub. L. 91-230, title VI, §616, as added Pub. L. 108-446, title I, §101, Dec. 3, 2004, 118 Stat. 2731.)

REFERENCES IN TEXT

The General Education Provisions Act, referred to in subsec. (g), is title IV of Pub. L. 90-247, Jan. 2, 1968, 81 Stat. 814, as amended, which is classified generally to chapter 31 (§1221 et seq.) of this title. For complete classification of this Act to the Code, see section 1221 of this title and Tables.

PRIOR PROVISIONS

A prior section 1416, Pub. L. 91-230, title VI, §616, as added Pub. L. 105-17, title I, §101, June 4, 1997, 111 Stat. 99, related to withholding of payments and judicial review, prior to the general amendment of subchapters I to IV of this chapter by Pub. L. 108-446.

Another prior section 1416, Pub. L. 91-230, title VI, §616, as added Pub. L. 94-142, §5(a), Nov. 29, 1975, 89 Stat. 789; amended Pub. L. 98-199, §3(b), Dec. 2, 1983, 97 Stat. 1358; Pub. L. 100-630, title I, §102(f), Nov. 7, 1988, 102 Stat. 3294; Pub. L. 101-476, title IX, §901(b)(76), Oct. 30, 1990, 104 Stat. 1145; Pub. L. 102-119, §25(b), Oct. 7, 1991, 105 Stat. 607, related to withholding of payments, prior to the general amendment of subchapters I to IV of this chapter by Pub. L. 105-17.

**§ 1417. 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 subchapter; and

(2) provide short-term training programs and institutes.

**(b) Prohibition against Federal mandates, direction, or control**

Nothing in this chapter shall be construed to authorize an officer or employee of the Federal Government to mandate, direct, or control a State, local educational agency, or school's specific instructional content, academic achievement standards and assessments, curriculum, or program of instruction.

**(c) Confidentiality**

The Secretary shall take appropriate action, in accordance with section 1232g of this title, to ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by the Secretary and by State educational agencies and local educational agencies pursuant to this subchapter.

**(d) Personnel**

The Secretary is authorized to hire qualified personnel necessary to carry out the Secretary's duties under subsection (a), under section 1418 of this title, and under part D of subchapter IV, without regard to the provisions of title 5 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 20 such personnel shall be employed at any time.

**(e) Model forms**

Not later than the date that the Secretary publishes final regulations under this chapter, to implement amendments made by the Individuals with Disabilities Education Improvement Act of 2004, 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 1415(d) of this title; and

(4) a model form of the prior written notice described in subsections (b)(3) and (c)(1) of section 1415 of this title that is consistent with the requirements of this subchapter and is sufficient to meet such requirements.

(Pub. L. 91-230, title VI, §617, as added Pub. L. 108-446, title I, §101, Dec. 3, 2004, 118 Stat. 2737.)

REFERENCES IN TEXT

The provisions of title 5 relating to appointments in the competitive service, referred to in subsec. (d), are classified generally to section 3301 et seq. of Title 5, Government Organization and Employees.

The Individuals with Disabilities Education Improvement Act of 2004, referred to in subsec. (e), is Pub. L. 108-446, Dec. 3, 2004, 118 Stat. 2647. For complete classification of this Act to the Code, see Short Title of 2004 Amendment note set out under section 1400 of this title and Tables.

PRIOR PROVISIONS

A prior section 1417, Pub. L. 91-230, title VI, §617, as added Pub. L. 105-17, title I, §101, June 4, 1997, 111 Stat. 100, related to Secretary's administrative duties, prior to the general amendment of subchapters I to IV of this chapter by Pub. L. 108-446.

Another prior section 1417, Pub. L. 91-230, title VI, §617, as added Pub. L. 94-142, §5(a), Nov. 29, 1975, 89 Stat. 791; amended Pub. L. 98-199, §3(b), Dec. 2, 1983, 97 Stat. 1358; Pub. L. 100-630, title I, §102(g), Nov. 7, 1988, 102 Stat. 3295; Pub. L. 101-476, title IX, §901(b)(77), (78), Oct. 30, 1990, 104 Stat. 1145; Pub. L. 102-119, §25(a)(7), (b), Oct. 7, 1991, 105 Stat. 606, 607, related to Secretary's administrative duties, prior to the general amendment of subchapters I to IV of this chapter by Pub. L. 105-17.

**§ 1418. Program information**

**(a) In general**

Each State that receives assistance under this subchapter, and the Secretary of the Interior, shall provide data each year to the Secretary of Education and the public on the following:

(1)(A) The number and percentage of children with disabilities, by race, ethnicity, limited English proficiency status, gender, and

disability category, who are in each of the following separate categories:

(i) Receiving a free appropriate public education.

(ii) Participating in regular education.

(iii) In separate classes, separate schools or facilities, or public or private residential facilities.

(iv) 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.

(v)(I) Removed to an interim alternative educational setting under section 1415(k)(1) of this title.

(II) The acts or items precipitating those removals.

(III) The number of children with disabilities who are subject to long-term suspensions or expulsions.

(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, gender, and ethnicity, who, from birth through age 2, stopped receiving early intervention services because of program completion or for other reasons.

(D) 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.

(E) 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.

(F) The number of due process complaints filed under section 1415 of this title and the number of hearings conducted.

(G) The number of hearings requested under section 1415(k) of this title and the number of changes in placements ordered as a result of those hearings.

(H) 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 1432 of this title), and who are receiving early intervention services under subchapter III.

(3) Any other information that may be required by the Secretary.

## (b) Data reporting

### (1) Protection of identifiable data

The data described in subsection (a) shall be publicly reported by each State in a manner that does not result in the disclosure of data identifiable to individual children.

### (2) Sampling

The Secretary may permit States and the Secretary of the Interior to obtain the data described in subsection (a) through sampling.

### (c) Technical assistance

The Secretary may provide technical assistance to States to ensure compliance with the data collection and reporting requirements under this chapter.

### (d) Disproportionality

#### (1) In general

Each State that receives assistance under this subchapter, and the Secretary of the Interior, shall provide for the collection and examination of data to determine if significant disproportionality based on race and ethnicity is occurring in the State and the local educational agencies of 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 1401(3) of this title;

(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—

(A) 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 chapter;

(B) require any local educational agency identified under paragraph (1) to reserve the maximum amount of funds under section 1413(f) of this title to provide comprehensive coordinated early intervening services to serve children in the local educational agency, particularly children in those groups that were significantly overidentified under paragraph (1); and

(C) require the local educational agency to publicly report on the revision of policies, practices, and procedures described under subparagraph (A).

(Pub. L. 91-230, title VI, §618, as added Pub. L. 108-446, title I, §101, Dec. 3, 2004, 118 Stat. 2738.)

#### PRIOR PROVISIONS

A prior section 1418, Pub. L. 91-230, title VI, §618, as added Pub. L. 105-17, title I, §101, June 4, 1997, 111 Stat. 101, related to program information, prior to the general amendment of subchapters I to IV of this chapter by Pub. L. 108-446.

Another prior section 1418, Pub. L. 91-230, title VI, §618, as added Pub. L. 94-142, §5(a), Nov. 29, 1975, 89 Stat. 791; amended Pub. L. 98-199, §§3(b), 8, Dec. 2, 1983, 97 Stat. 1358, 1360; Pub. L. 99-457, title IV, §406, Oct. 8, 1986, 100 Stat. 1174; Pub. L. 100-630, title I, §102(h), Nov. 7, 1988, 102 Stat. 3295; Pub. L. 101-476, title II, §203, Oct. 30, 1990, 104 Stat. 1112, related to evaluation and program information, prior to the general amendment of subchapters I to IV of this chapter by Pub. L. 105-17.

### § 1419. 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 subchapter—

(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 1412 of this title to receive a grant under this subchapter; 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) for a fiscal year 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) 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) 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 in-

crease 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) Ratable reductions**

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 the State received for fiscal year 1997, 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 subchapter 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 subchapter III**

Funds described in paragraph (1) may also be used for the administration of subchapter III.

**(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 1415(e) of this title), 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 1412(a)(15) of this title;

(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;

(5) to provide early intervention services (which shall include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills) in accordance with subchapter III to children with disabilities who are eligible for services under this section and who previously received services under subchapter III until such children enter, or are eligible under State law to enter, kindergarten; or

(6) at the State's discretion, to continue service coordination or case management for families who receive services under subchapter III.

**(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 1413 of this title, 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 1419(c)(3) of this title, 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 the local educational 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) Subchapter III inapplicable**

Subchapter III does not apply to any child with a disability receiving a free appropriate

public education, in accordance with this subchapter, with funds received under this section.

**(i) State defined**

In 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**

There are authorized to be appropriated to carry out this section such sums as may be necessary.

(Pub. L. 91-230, title VI, § 619, as added Pub. L. 108-446, title I, § 101, Dec. 3, 2004, 118 Stat. 2740.)

PRIOR PROVISIONS

A prior section 1419, Pub. L. 91-230, title VI, § 619, as added Pub. L. 105-17, title I, § 101, June 4, 1997, 111 Stat. 102, related to preschool grants, prior to the general amendment of subchapters I to IV of this chapter by Pub. L. 108-446.

Another prior section 1419, Pub. L. 91-230, title VI, § 619, as added Pub. L. 94-142, § 5(a), Nov. 29, 1975, 89 Stat. 793; amended Pub. L. 98-199, §§ 3(b), 9, Dec. 2, 1983, 97 Stat. 1358, 1363; Pub. L. 99-457, title II, § 201(a), Oct. 8, 1986, 100 Stat. 1155; Pub. L. 100-630, title I, § 102(i), Nov. 7, 1988, 102 Stat. 3296; Pub. L. 101-476, title IX, § 901(b)(79)–(93), Oct. 30, 1990, 104 Stat. 1145, 1146; Pub. L. 102-119, §§ 7, 25(b), Oct. 7, 1991, 105 Stat. 591, 607, related to preschool grants, prior to the general amendment of subchapters I to IV of this chapter by Pub. L. 105-17.

A prior section 1420, Pub. L. 91-230, title VI, § 620, as added Pub. L. 94-142, § 5(a), Nov. 29, 1975, 89 Stat. 793; amended Pub. L. 98-199, § 3(b), Dec. 2, 1983, 97 Stat. 1358, which related to payments to States and distribution by States to local educational agencies and intermediate educational units, was omitted in the general amendment of subchapters I to IV of this chapter by Pub. L. 105-17.

Prior sections 1421 to 1427, which comprised former subchapter III of this chapter, were repealed by Pub. L. 105-17, title II, § 203(c), June 4, 1997, 111 Stat. 157, effective Oct. 1, 1997.

Section 1421, Pub. L. 91-230, title VI, § 621, Apr. 13, 1970, 84 Stat. 181; Pub. L. 98-199, §§ 3(b), 10, Dec. 2, 1983, 97 Stat. 1358, 1363; Pub. L. 99-457, title III, § 301, Oct. 8, 1986, 100 Stat. 1159; Pub. L. 100-630, title I, § 103(b), Nov. 7, 1988, 102 Stat. 3296; Pub. L. 101-476, title III, § 301, title IX, § 901(b)(95)–(99), Oct. 30, 1990, 104 Stat. 1117, 1146; Pub. L. 102-119, § 25(b), Oct. 7, 1991, 105 Stat. 607, related to establishment and operation of regional and Federal resource centers.

Section 1422, Pub. L. 91-230, title VI, § 622, Apr. 13, 1970, 84 Stat. 182; Pub. L. 98-199, §§ 3(b), 10, Dec. 2, 1983, 97 Stat. 1358, 1364; Pub. L. 99-457, title III, § 302, Oct. 8, 1986, 100 Stat. 1160; Pub. L. 100-630, title I, § 103(c), Nov. 7, 1988, 102 Stat. 3297; Pub. L. 101-476, title III, § 302, Oct. 30, 1990, 104 Stat. 1118; Pub. L. 102-119, § 25(a)(8), Oct. 7, 1991, 105 Stat. 606; Pub. L. 103-382, title III, § 391(f)(3), Oct. 20, 1994, 108 Stat. 4023, related to services for deaf-blind children and youth.

Section 1423, Pub. L. 91-230, title VI, § 623, Apr. 13, 1970, 84 Stat. 183; Pub. L. 98-199, §§ 3(b), 10, Dec. 2, 1983, 97 Stat. 1358, 1365; Pub. L. 99-457, title III, § 303, Oct. 8, 1986, 100 Stat. 1161; Pub. L. 100-630, title I, § 103(d), Nov. 7, 1988, 102 Stat. 3297; Pub. L. 101-476, title III, § 303, title IX, § 901(b)(100)–(106), Oct. 30, 1990, 104 Stat. 1121, 1146, 1147; Pub. L. 102-119, §§ 8, 25(a)(9), (b), Oct. 7, 1991, 105 Stat. 592, 606, 607, related to early education for children with disabilities.

Section 1424, Pub. L. 91-230, title VI, § 624, Apr. 13, 1970, 84 Stat. 183; Pub. L. 98-199, §§ 3(b), 10, Dec. 2, 1983, 97 Stat. 1358, 1366; Pub. L. 99-457, title III, § 304, Oct. 8, 1986, 100 Stat. 1162; Pub. L. 100-630, title I, § 103(e), Nov. 7, 1988, 102 Stat. 3297; Pub. L. 101-476, title III, § 304, title IX, § 901(b)(107)–(110), Oct. 30, 1990, 104 Stat. 1122, 1147; Pub. L. 102-119, § 25(a)(10), (b), Oct. 7, 1991, 105 Stat. 606, 607, related to programs for children with severe disabilities.

Section 1424a, Pub. L. 91-230, title VI, § 625, as added Pub. L. 93-380, title VI, § 616, Aug. 21, 1974, 88 Stat. 584; amended Pub. L. 98-199, §§ 3(b), 10, Dec. 2, 1983, 97 Stat. 1358, 1367; Pub. L. 99-457, title III, § 305, Oct. 8, 1986, 100 Stat. 1162; Pub. L. 100-630, title I, § 103(f), Nov. 7, 1988, 102 Stat. 3297; Pub. L. 101-476, title III, § 305, title IX, § 901(b)(111)–(118), Oct. 30, 1990, 104 Stat. 1123, 1147; Pub. L. 102-119, § 25(b), Oct. 7, 1991, 105 Stat. 607; Pub. L. 102-421, title II, § 201(a), Oct. 16, 1992, 106 Stat. 2164, related to programs of postsecondary, vocational, technical, continuing, or adult education for individuals with disabilities.

Section 1425, Pub. L. 91-230, title VI, § 626, formerly § 625, Apr. 13, 1970, 84 Stat. 183, renumbered § 626, Pub. L. 93-380, title VI, § 616, Aug. 21, 1974, 88 Stat. 584; amended Pub. L. 98-199, §§ 3(b), 10, Dec. 2, 1983, 97 Stat. 1358, 1367; Pub. L. 99-457, title III, § 306, Oct. 8, 1986, 100 Stat. 1163; Pub. L. 100-630, title I, § 103(g), Nov. 7, 1988, 102 Stat. 3298; Pub. L. 101-476, title III, § 306, title IX, § 901(b)(119)–(127), Oct. 30, 1990, 104 Stat. 1124, 1147, 1148; Pub. L. 102-119, § 25(a)(11), (b), Oct. 7, 1991, 105 Stat. 606, 607, related to secondary education and transitional services for youth with disabilities.

Section 1426, Pub. L. 91-230, title VI, § 627, formerly § 626, Apr. 13, 1970, 84 Stat. 184, renumbered § 627 and amended Pub. L. 93-380, title VI, §§ 616, 617, Aug. 21, 1974, 88 Stat. 584; Pub. L. 95-49, § 2, June 17, 1977, 91 Stat. 230; Pub. L. 98-199, § 10, Dec. 2, 1983, 97 Stat. 1368; Pub. L. 101-476, title III, § 307, Oct. 30, 1990, 104 Stat. 1127, related to programs for children and youth with serious emotional disturbance.

Section 1427, Pub. L. 91-230, title VI, § 628, as added Pub. L. 98-199, § 10, Dec. 2, 1983, 97 Stat. 1368; amended Pub. L. 99-457, title III, § 307, Oct. 8, 1986, 100 Stat. 1165; Pub. L. 101-476, title III, § 308, Oct. 30, 1990, 104 Stat. 1128, authorized appropriations.

PRESCHOOL GRANTS

Pub. L. 100-630, title I, § 110, Nov. 7, 1988, 102 Stat. 3303, as amended by Pub. L. 101-476, title IX, § 901(a)(3), Oct. 30, 1990, 104 Stat. 1142, provided that: “The provisions of section 300.300(b)(3) of title 34, Code of Federal Regulations, shall not apply with respect to children aged 3 through 5, inclusive, in any State for any fiscal year for which the State receives a grant under section 619(a)(1) of the Individuals with Disabilities Education Act [20 U.S.C. 1419(a)(1)].”

SUBCHAPTER III—INFANTS AND TODDLERS WITH DISABILITIES

**§ 1431. 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 that 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