

105TH CONGRESS
1ST SESSION

S. 717

To amend the Individuals with Disabilities Education Act, to reauthorize and make improvements to that Act, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 7, 1997

Mr. JEFFORDS (for himself, Mr. HARKIN, Mr. LOTT, Mr. KENNEDY, Mr. COATS, Mr. DODD, Mr. GREGG, Ms. MIKULSKI, Mr. FRIST, Mr. DEWINE, Mr. ENZI, Mr. HUTCHINSON, Mrs. MURRAY, Ms. COLLINS, Mr. WARNER, Mr. MCCONNELL, and Mr. REED) introduced the following bill; which was read twice and referred to the Committee on Labor and Human Resources

A BILL

To amend the Individuals with Disabilities Education Act, to reauthorize and make improvements to that Act, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Individuals with Dis-
5 abilities Education Act Amendments of 1997”.

1 **TITLE I—AMENDMENTS TO THE**
 2 **INDIVIDUALS WITH DISABIL-**
 3 **ITIES EDUCATION ACT**

4 **SEC. 101. AMENDMENTS TO THE INDIVIDUALS WITH DIS-**
 5 **ABILITIES EDUCATION ACT.**

6 Parts A through D of the Individuals with Disabil-
 7 ities Education Act (20 U.S.C. 1400 et seq.) are amended
 8 to read as follows:

9 **“PART A—GENERAL PROVISIONS**

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

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

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

“PART A—GENERAL PROVISIONS

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

“Sec. 602. Definitions.

“Sec. 603. Office of Special Education Programs.

“Sec. 604. Abrogation of State sovereign immunity.

“Sec. 605. Acquisition of equipment; construction or alteration of facilities.

“Sec. 606. Employment of individuals with disabilities.

“Sec. 607. Requirements for prescribing regulations.

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

“Sec. 611. Authorization; allotment; use of funds; authorization of appropri-
 ations.

“Sec. 612. State eligibility.

“Sec. 613. Local educational agency eligibility.

“Sec. 614. Evaluations, eligibility determinations, individualized education pro-
 grams, and educational placements.

“Sec. 615. Procedural safeguards.

“Sec. 616. Withholding and judicial review.

“Sec. 617. Administration.

“Sec. 618. Program information.

“Sec. 619. Preschool grants.

“PART C—INFANTS AND TODDLERS WITH DISABILITIES

“Sec. 631. Findings and policy.

“Sec. 632. Definitions.

“Sec. 633. General authority.

“Sec. 634. Eligibility.

“Sec. 635. Requirements for Statewide system.

“Sec. 636. Individualized family service plan.

“Sec. 637. State application and assurances.

“Sec. 638. Uses of funds.

“Sec. 639. Procedural safeguards.

“Sec. 640. Payor of last resort.

“Sec. 641. State interagency coordinating council.

“Sec. 642. Federal administration.

“Sec. 643. Allocation of funds.

“Sec. 644. Federal interagency coordinating council.

“Sec. 645. Authorization of appropriations.

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

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

“Sec. 651. Findings and purpose.

“Sec. 652. Eligibility and collaborative process.

“Sec. 653. Applications.

“Sec. 654. Use of funds.

“Sec. 655. Minimum State grant amounts.

“Sec. 656. Authorization of appropriations.

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

“Sec. 661. Administrative provisions.

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

“Sec. 671. Findings and purpose.

“Sec. 672. Research and innovation to improve services and results for children
with disabilities.

“Sec. 673. Personnel preparation to improve services and results for children
with disabilities.

“Sec. 674. Studies and evaluations.

“CHAPTER 2—IMPROVING EARLY INTERVENTION, EDUCATIONAL, AND TRAN-
SITIONAL SERVICES AND RESULTS FOR CHILDREN WITH DISABILITIES
THROUGH COORDINATED TECHNICAL ASSISTANCE, SUPPORT, AND DISSEMI-
NATION OF INFORMATION

“Sec. 681. Findings and purposes.

“Sec. 682. Parent training and information centers.

“Sec. 683. Community parent resource centers.

“Sec. 684. Technical assistance for parent training and information centers.

“Sec. 685. Coordinated technical assistance and dissemination.

“Sec. 686. Authorization of appropriations.

“Sec. 687. Technology development, demonstration, and utilization, and media services.

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

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

10 “(2) Before the date of the enactment of the
11 Education for All Handicapped Children Act of
12 1975 (Public Law 94–142)—

13 “(A) the special educational needs of chil-
14 dren with disabilities were not being fully met;

15 “(B) more than one-half of the children
16 with disabilities in the United States did not re-
17 ceive appropriate educational services that
18 would enable such children to have full equality
19 of opportunity;

20 “(C) 1,000,000 of the children with dis-
21 abilities in the United States were excluded en-
22 tirely from the public school system and did not

1 go through the educational process with their
2 peers;

3 “(D) there were many children with dis-
4 abilities throughout the United States partici-
5 pating in regular school programs whose dis-
6 abilities prevented such children from having a
7 successful educational experience because their
8 disabilities were undetected; and

9 “(E) because of the lack of adequate serv-
10 ices within the public school system, families
11 were often forced to find services outside the
12 public school system, often at great distance
13 from their residence and at their own expense.

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

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

1 “(5) Over 20 years of research and experience
2 has demonstrated that the education of children with
3 disabilities can be made more effective by—

4 “(A) having high expectations for such
5 children and ensuring their access in the gen-
6 eral curriculum to the maximum extent pos-
7 sible;

8 “(B) strengthening the role of parents and
9 ensuring that families of such children have
10 meaningful opportunities to participate in the
11 education of their children at school and at
12 home;

13 “(C) coordinating this Act with other local,
14 educational service agency, State, and Federal
15 school improvement efforts in order to ensure
16 that such children benefit from such efforts and
17 that special education can become a service for
18 such children rather than a place where they
19 are sent;

20 “(D) providing appropriate special edu-
21 cation and related services and aids and sup-
22 ports in the regular classroom to such children,
23 whenever appropriate;

24 “(E) supporting high-quality, intensive
25 professional development for all personnel who

1 work with such children in order to ensure that
2 they have the skills and knowledge necessary to
3 enable them—

4 “(i) to meet developmental goals and,
5 to the maximum extent possible, those
6 challenging expectations that have been es-
7 tablished for all children; and

8 “(ii) to be prepared to lead produc-
9 tive, independent, adult lives, to the maxi-
10 mum extent possible;

11 “(F) providing incentives for whole-school
12 approaches and pre-referral intervention to re-
13 duce the need to label children as disabled in
14 order to address their learning needs; and

15 “(G) focusing resources on teaching and
16 learning while reducing paperwork and require-
17 ments that do not assist in improving edu-
18 cational results.

19 “(6) While States, local educational agencies,
20 and educational service agencies are responsible for
21 providing an education for all children with disabili-
22 ties, it is in the national interest that the Federal
23 Government have a role in assisting State and local
24 efforts to educate children with disabilities in order

1 to improve results for such children and to ensure
2 equal protection of the law.

3 “(7)(A) The Federal Government must be re-
4 sponsive to the growing needs of an increasingly
5 more diverse society. A more equitable allocation of
6 resources is essential for the Federal Government to
7 meet its responsibility to provide an equal edu-
8 cational opportunity for all individuals.

9 “(B) America’s racial profile is rapidly chang-
10 ing. Between 1980 and 1990, the rate of increase in
11 the population for white Americans was 6 percent,
12 while the rate of increase for racial and ethnic mi-
13 norities was much higher: 53 percent for Hispanics,
14 13.2 percent for African-Americans, and 107.8 per-
15 cent for Asians.

16 “(C) By the year 2000, this Nation will have
17 275,000,000 people, nearly one of every three of
18 whom will be either African-American, Hispanic,
19 Asian-American, or American Indian.

20 “(D) Taken together as a group, minority chil-
21 dren are comprising an ever larger percentage of
22 public school students. Large-city school populations
23 are overwhelmingly minority, for example: for fall
24 1993, the figure for Miami was 84 percent; Chicago,
25 89 percent; Philadelphia, 78 percent; Baltimore, 84

1 percent; Houston, 88 percent; and Los Angeles, 88
2 percent.

3 “(E) Recruitment efforts within special edu-
4 cation must focus on bringing larger numbers of mi-
5 norities into the profession in order to provide ap-
6 propriate practitioner knowledge, role models, and
7 sufficient manpower to address the clearly changing
8 demography of special education.

9 “(F) The limited English proficient population
10 is the fastest growing in our Nation, and the growth
11 is occurring in many parts of our Nation. In the Na-
12 tion’s 2 largest school districts, limited English stu-
13 dents make up almost half of all students initially
14 entering school at the kindergarten level. Studies
15 have documented apparent discrepancies in the levels
16 of referral and placement of limited English pro-
17 ficient children in special education. The Depart-
18 ment of Education has found that services provided
19 to limited English proficient students often do not
20 respond primarily to the pupil’s academic needs.
21 These trends pose special challenges for special edu-
22 cation in the referral, assessment, and services for
23 our Nation’s students from non-English language
24 backgrounds.

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

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

9 “(C) Poor African-American children are 2.3
10 times more likely to be identified by their teacher as
11 having mental retardation than their white counter-
12 part.

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

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

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

21 “(9)(A) The opportunity for full participation
22 in awards for grants and contracts; boards of orga-
23 nizations receiving funds under this Act; and peer
24 review panels; and training of professionals in the
25 area of special education by minority individuals, or-

1 organizations, and historically black colleges and uni-
2 versities is essential if we are to obtain greater suc-
3 cess in the education of minority children with dis-
4 abilities.

5 “(B) In 1993, of the 915,000 college and uni-
6 versity professors, 4.9 percent were African-Amer-
7 ican and 2.4 percent were Hispanic. Of the
8 2,940,000 teachers, prekindergarten through high
9 school, 6.8 percent were African-American and 4.1
10 percent were Hispanic.

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

16 “(D) As the number of African-American and
17 Hispanic students in special education increases, the
18 number of minority teachers and related service per-
19 sonnel produced in our colleges and universities con-
20 tinues to decrease.

21 “(E) Ten years ago, 12 percent of the United
22 States teaching force in public elementary and sec-
23 ondary schools were members of a minority group.
24 Minorities comprised 21 percent of the national pop-
25 ulation at that time and were clearly underrep-

1 resented then among employed teachers. Today, the
2 elementary and secondary teaching force is 13 per-
3 cent minority, while one-third of the students in
4 public schools are minority children.

5 “(F) As recently as 1991, historically black col-
6 leges and universities enrolled 44 percent of the Af-
7 rican-American teacher trainees in the Nation. How-
8 ever, in 1993, historically black colleges and univer-
9 sities received only 4 percent of the discretionary
10 funds for special education and related services per-
11 sonnel training under this Act.

12 “(G) While African-American students con-
13 stitute 28 percent of total enrollment in special edu-
14 cation, only 11.2 percent of individuals enrolled in
15 preservice training programs for special education
16 are African-American.

17 “(H) In 1986–87, of the degrees conferred in
18 education at the B.A., M.A., and Ph.D levels, only
19 6, 8, and 8 percent, respectively, were awarded to
20 African-American or Hispanic students.

21 “(10) Minorities and underserved persons are
22 socially disadvantaged because of the lack of oppor-
23 tunities in training and educational programs,
24 undergirded by the practices in the private sector

1 that impede their full participation in the main-
2 stream of society.

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

4 “(1)(A) to ensure that all children with disabil-
5 ities have available to them a free appropriate public
6 education that emphasizes special education and re-
7 lated services designed to meet their unique needs
8 and prepare them for employment and independent
9 living;

10 “(B) to ensure that the rights of children with
11 disabilities and parents of such children are pro-
12 tected; and

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

16 “(2) to assist States in the implementation of
17 a statewide, comprehensive, coordinated, multidisci-
18 plinary, interagency system of early intervention
19 services for infants and toddlers with disabilities and
20 their families;

21 “(3) to ensure that educators and parents have
22 the necessary tools to improve educational results for
23 children with disabilities by supporting systemic-
24 change activities; coordinated research and personnel
25 preparation; coordinated technical assistance, dis-

1 semination, and support; and technology develop-
2 ment and media services; and

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

5 **“SEC. 602. DEFINITIONS.**

6 “Except as otherwise provided, as used in this Act:

7 “(1) ASSISTIVE TECHNOLOGY DEVICE.—The
8 term ‘assistive technology device’ means any item,
9 piece of equipment, or product system, whether ac-
10 quired commercially off the shelf, modified, or cus-
11 tomized, that is used to increase, maintain, or im-
12 prove functional capabilities of a child with a disabil-
13 ity.

14 “(2) ASSISTIVE TECHNOLOGY SERVICE.—The
15 term ‘assistive technology service’ means any service
16 that directly assists a child with a disability in the
17 selection, acquisition, or use of an assistive tech-
18 nology device. Such term includes—

19 “(A) the evaluation of the needs of such
20 child, including a functional evaluation of the
21 child in the child’s customary environment;

22 “(B) purchasing, leasing, or otherwise pro-
23 viding for the acquisition of assistive technology
24 devices by such child;

1 “(C) selecting, designing, fitting, customiz-
2 ing, adapting, applying, maintaining, repairing,
3 or replacing of assistive technology devices;

4 “(D) coordinating and using other thera-
5 pies, interventions, or services with assistive
6 technology devices, such as those associated
7 with existing education and rehabilitation plans
8 and programs;

9 “(E) training or technical assistance for
10 such child, or, where appropriate, the family of
11 such child; and

12 “(F) training or technical assistance for
13 professionals (including individuals providing
14 education and rehabilitation services), employ-
15 ers, or other individuals who provide services to,
16 employ, or are otherwise substantially involved
17 in the major life functions of such child.

18 “(3) CHILD WITH A DISABILITY.—

19 “(A) IN GENERAL.—The term ‘child with a
20 disability’ means a child—

21 “(i) with mental retardation, hearing
22 impairments (including deafness), speech
23 or language impairments, visual impair-
24 ments (including blindness), serious emo-
25 tional disturbance (hereinafter referred to

1 as ‘emotional disturbance’), orthopedic im-
2 pairments, autism, traumatic brain injury,
3 other health impairments, or specific learn-
4 ing disabilities; and

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

7 “(B) CHILD AGED 3 THROUGH 9.—The
8 term ‘child with a disability’ for a child aged 3
9 through 9 may, at the discretion of the State
10 and the local educational agency, include a
11 child—

12 “(i) experiencing developmental
13 delays, as defined by the State and as
14 measured by appropriate diagnostic instru-
15 ments and procedures, in one or more of
16 the following areas: physical development,
17 cognitive development, communication de-
18 velopment, social or emotional develop-
19 ment, or adaptive development; and

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

22 “(4) EDUCATIONAL SERVICE AGENCY.—The
23 term ‘educational service agency’—

24 “(A) means a regional public multiservice
25 agency—

1 “(i) authorized by State law to de-
2 velop, manage, and provide services or pro-
3 grams to local educational agencies; and

4 “(ii) recognized as an administrative
5 agency for purposes of the provision of
6 special education and related services pro-
7 vided within public elementary and second-
8 ary schools of the State; and

9 “(B) includes any other public institution
10 or agency having administrative control and di-
11 rection over a public elementary or secondary
12 school.

13 “(5) ELEMENTARY SCHOOL.—The term ‘ele-
14 mentary school’ means a nonprofit institutional day
15 or residential school that provides elementary edu-
16 cation, as determined under State law.

17 “(6) EQUIPMENT.—The term ‘equipment’ in-
18 cludes—

19 “(A) machinery, utilities, and built-in
20 equipment and any necessary enclosures or
21 structures to house such machinery, utilities, or
22 equipment; and

23 “(B) all other items necessary for the
24 functioning of a particular facility as a facility
25 for the provision of educational services, includ-

1 ing items such as instructional equipment and
 2 necessary furniture; printed, published, and
 3 audio-visual instructional materials; tele-
 4 communications, sensory, and other techno-
 5 logical aids and devices; and books, periodicals,
 6 documents, and other related materials.

7 “(7) EXCESS COSTS.—The term ‘excess costs’
 8 means those costs that are in excess of the average
 9 annual per-student expenditure in a local edu-
 10 cational agency during the preceding school year for
 11 an elementary or secondary school student, as may
 12 be appropriate, and which shall be computed after
 13 deducting—

14 “(A) amounts received—

15 “(i) under part B of this title;

16 “(ii) under part A of title I of the El-
 17 ementary and Secondary Education Act of
 18 1965; or

19 “(iii) under part A of title VII of that
 20 Act; and

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

24 “(8) FREE APPROPRIATE PUBLIC EDU-
 25 CATION.—The term ‘free appropriate public edu-

1 cation’ means special education and related services
2 that—

3 “(A) have been provided at public expense,
4 under public supervision and direction, and
5 without charge;

6 “(B) meet the standards of the State edu-
7 cational agency;

8 “(C) include an appropriate preschool, ele-
9 mentary, or secondary school education in the
10 State involved; and

11 “(D) are provided in conformity with the
12 individualized education program required
13 under section 614(d).

14 “(9) INDIAN.—The term ‘Indian’ means an in-
15 dividual who is a member of an Indian tribe.

16 “(10) INDIAN TRIBE.—The term ‘Indian tribe’
17 means any Federal or State Indian tribe, band,
18 rancheria, pueblo, colony, or community, including
19 any Alaskan Native village or regional village cor-
20 poration (as defined in or established under the
21 Alaska Native Claims Settlement Act).

22 “(11) INDIVIDUALIZED EDUCATION PRO-
23 GRAM.—The term ‘individualized education program’
24 or ‘IEP’ means a written statement for each child

1 with a disability that is developed, reviewed, and re-
2 vised in accordance with section 614(d).

3 “(12) INDIVIDUALIZED FAMILY SERVICE
4 PLAN.—The term ‘individualized family service plan’
5 has the meaning given such term in section 632.

6 “(13) INFANT OR TODDLER WITH A DISABIL-
7 ITY.—The term ‘infant or toddler with a disability’
8 has the meaning given such term in section 632.

9 “(14) INSTITUTION OF HIGHER EDUCATION.—
10 The term ‘institution of higher education’—

11 “(A) has the meaning given that term in
12 section 1201(a) of the Higher Education Act of
13 1965; and

14 “(B) also includes any community college
15 receiving funding from the Secretary of the In-
16 terior under the Tribally Controlled Community
17 College Assistance Act of 1978.

18 “(15) LOCAL EDUCATIONAL AGENCY.—

19 “(A) The term ‘local educational agency’
20 means a public board of education or other pub-
21 lic authority legally constituted within a State
22 for either administrative control or direction of,
23 or to perform a service function for, public ele-
24 mentary or secondary schools in a city, county,
25 township, school district, or other political sub-

1 division of a State, or for such combination of
2 school districts or counties as are recognized in
3 a State as an administrative agency for its pub-
4 lic elementary or secondary schools.

5 “(B) The term includes—

6 “(i) an educational service agency, as
7 defined in paragraph (4); and

8 “(ii) any other public institution or
9 agency having administrative control and
10 direction of a public elementary or second-
11 ary school.

12 “(C) The term includes an elementary or
13 secondary school funded by the Bureau of In-
14 dian Affairs, but only to the extent that such
15 inclusion makes the school eligible for programs
16 for which specific eligibility is not provided to
17 the school in another provision of law and the
18 school does not have a student population that
19 is smaller than the student population of the
20 local educational agency receiving assistance
21 under this Act with the smallest student popu-
22 lation, except that the school shall not be sub-
23 ject to the jurisdiction of any State educational
24 agency other than the Bureau of Indian Affairs.

1 “(16) NATIVE LANGUAGE.—The term ‘native
2 language’, when used with reference to an individual
3 of limited English proficiency, means the language
4 normally used by the individual, or in the case of a
5 child, the language normally used by the parents of
6 the child.

7 “(17) NONPROFIT.—The term ‘nonprofit’, as
8 applied to a school, agency, organization, or institu-
9 tion, means a school, agency, organization, or insti-
10 tution owned and operated by one or more nonprofit
11 corporations or associations no part of the net earn-
12 ings of which inures, or may lawfully inure, to the
13 benefit of any private shareholder or individual.

14 “(18) OUTLYING AREA.—The term ‘outlying
15 area’ means the United States Virgin Islands,
16 Guam, American Samoa, and the Commonwealth of
17 the Northern Mariana Islands.

18 “(19) PARENT.—The term ‘parent’—

19 “(A) includes a legal guardian; and

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

1 “(20) PARENT ORGANIZATION.—The term ‘par-
2 ent organization’ has the meaning given that term in
3 section 682(g).

4 “(21) PARENT TRAINING AND INFORMATION
5 CENTER.—The term ‘parent training and informa-
6 tion center’ means a center assisted under section
7 682 or 683.

8 “(22) RELATED SERVICES.—The term ‘related
9 services’ means transportation, and such devel-
10 opmental, corrective, and other supportive services
11 (including speech-language pathology and audiology
12 services, psychological services, physical and occupa-
13 tional therapy, recreation, including therapeutic
14 recreation, social work services, counseling services,
15 including rehabilitation counseling, orientation and
16 mobility services, and medical services, except that
17 such medical services shall be for diagnostic and
18 evaluation purposes only) as may be required to as-
19 sist a child with a disability to benefit from special
20 education, and includes the early identification and
21 assessment of disabling conditions in children.

22 “(23) SECONDARY SCHOOL.—The term ‘second-
23 ary school’ means a nonprofit institutional day or
24 residential school that provides secondary education,

1 as determined under State law, except that it does
2 not include any education beyond grade 12.

3 “(24) SECRETARY.—The term ‘Secretary’
4 means the Secretary of Education.

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

9 “(A) instruction conducted in the class-
10 room, in the home, in hospitals and institutions,
11 and in other settings; and

12 “(B) instruction in physical education.

13 “(26) SPECIFIC LEARNING DISABILITY.—

14 “(A) IN GENERAL.—The term ‘specific
15 learning disability’ means a disorder in one or
16 more of the basic psychological processes in-
17 volved in understanding or in using language,
18 spoken or written, which disorder may manifest
19 itself in imperfect ability to listen, think, speak,
20 read, write, spell, or do mathematical calcula-
21 tions.

22 “(B) DISORDERS INCLUDED.—Such term
23 includes such conditions as perceptual disabili-
24 ties, brain injury, minimal brain dysfunction,
25 dyslexia, and developmental aphasia.

1 “(C) DISORDERS NOT INCLUDED.—Such
2 term does not include a learning problem that
3 is primarily the result of visual, hearing, or
4 motor disabilities, of mental retardation, of
5 emotional disturbance, or of environmental, cul-
6 tural, or economic disadvantage.

7 “(27) STATE.—The term ‘State’ means each of
8 the 50 States, the District of Columbia, the Com-
9 monwealth of Puerto Rico, and each of the outlying
10 areas.

11 “(28) STATE EDUCATIONAL AGENCY.—The
12 term ‘State educational agency’ means the State
13 board of education or other agency or officer pri-
14 marily responsible for the State supervision of public
15 elementary and secondary schools, or, if there is no
16 such officer or agency, an officer or agency des-
17 ignated by the Governor or by State law.

18 “(29) SUPPLEMENTARY AIDS AND SERVICES.—
19 The term ‘supplementary aids and services’ means,
20 aids, services, and other supports that are provided
21 in regular education classes or other education-relat-
22 ed settings to enable children with disabilities to be
23 educated with nondisabled children to the maximum
24 extent appropriate in accordance with section
25 612(a)(5).

1 “(30) TRANSITION SERVICES.—The term ‘tran-
2 sition services’ means a coordinated set of activities
3 for a student with a disability that—

4 “(A) are designed within an outcome-ori-
5 ented process, which promotes movement from
6 school to post-school activities, including post-
7 secondary education, vocational training, inte-
8 grated employment (including supported em-
9 ployment), continuing and adult education,
10 adult services, independent living, or community
11 participation;

12 “(B) are based upon the individual stu-
13 dent’s needs, taking into account the student’s
14 preferences and interests; and

15 “(C) include instruction, related services,
16 community experiences, the development of em-
17 ployment and other post-school adult living ob-
18 jectives, and, when appropriate, acquisition of
19 daily living skills and functional vocational eval-
20 uation.

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

22 “(a) ESTABLISHMENT.—There shall be, within the
23 Office of Special Education and Rehabilitative Services in
24 the Department of Education, an Office of Special Edu-
25 cation Programs, which shall be the principal agency in

1 such Department for administering and carrying out this
2 Act and other programs and activities concerning the edu-
3 cation of children with disabilities.

4 “(b) DIRECTOR.—The Office established under sub-
5 section (a) shall be headed by a Director who shall be se-
6 lected by the Secretary and shall report directly to the As-
7 sistant Secretary for Special Education and Rehabilitative
8 Services.

9 “(c) VOLUNTARY AND UNCOMPENSATED SERV-
10 ICES.—Notwithstanding section 1342 of title 31, United
11 States Code, the Secretary is authorized to accept vol-
12 untary and uncompensated services in furtherance of the
13 purposes of this Act.

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

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

19 “(b) REMEDIES.—In a suit against a State for a vio-
20 lation of this Act, remedies (including remedies both at
21 law and in equity) are available for such a violation to
22 the same extent as those remedies are available for such
23 a violation in the suit against any public entity other than
24 a State.

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

5 **“SEC. 605. ACQUISITION OF EQUIPMENT; CONSTRUCTION**
6 **OR ALTERATION OF FACILITIES.**

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

13 “(b) COMPLIANCE WITH CERTAIN REGULATIONS.—
14 Any construction of new facilities or alteration of existing
15 facilities under subsection (a) shall comply with the re-
16 quirements of—

17 “(1) appendix A of part 36 of title 28, Code of
18 Federal Regulations (commonly known as the
19 ‘Americans with Disabilities Accessibility Guidelines
20 for Buildings and Facilities’); or

21 “(2) appendix A of part 101-19.6 of title 41,
22 Code of Federal Regulations (commonly known as
23 the ‘Uniform Federal Accessibility Standards’).

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

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

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

9 “(a) PUBLIC COMMENT PERIOD.—The Secretary
10 shall provide a public comment period of at least 90 days
11 on any regulation proposed under part B or part C of this
12 Act on which an opportunity for public comment is other-
13 wise required by law.

14 “(b) PROTECTIONS PROVIDED TO CHILDREN.—The
15 Secretary may not implement, or publish in final form,
16 any regulation prescribed pursuant to this Act that would
17 procedurally or substantively lessen the protections pro-
18 vided to children with disabilities under this Act, as em-
19 bodied in regulations in effect on July 20, 1983 (particu-
20 larly as such protections relate to parental consent to ini-
21 tial evaluation or initial placement in special education,
22 least restrictive environment, related services, timelines,
23 attendance of evaluation personnel at individualized edu-
24 cation program meetings, or qualifications of personnel),
25 except to the extent that such regulation reflects the clear
26 and unequivocal intent of the Congress in legislation.

1 “(c) POLICY LETTERS AND STATEMENTS.—The Sec-
2 retary may not, through policy letters or other statements,
3 establish a rule that is required for compliance with, and
4 eligibility under, this part without following the require-
5 ments of section 553 of title 5, United States Code.

6 “(d) CORRESPONDENCE FROM DEPARTMENT OF
7 EDUCATION DESCRIBING INTERPRETATIONS OF THIS
8 PART.—

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

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

24 “(e) ISSUES OF NATIONAL SIGNIFICANCE.—If the
25 Secretary receives a written request regarding a policy,

1 question, or interpretation under part B of this Act, and
2 determines that it raises an issue of general interest or
3 applicability of national significance to the implementation
4 of part B, the Secretary shall—

5 “(1) include a statement to that effect in any
6 written response;

7 “(2) widely disseminate that response to State
8 educational agencies, local educational agencies, par-
9 ent and advocacy organizations, and other interested
10 organizations, subject to applicable laws relating to
11 confidentiality of information; and

12 “(3) not later than one year after the date on
13 which the Secretary responds to the written request,
14 issue written guidance on such policy, question, or
15 interpretation through such means as the Secretary
16 determines to be appropriate and consistent with
17 law, such as a policy memorandum, notice of inter-
18 pretation, or notice of proposed rulemaking.

19 “(f) EXPLANATION.—Any written response by the
20 Secretary under subsection (e) regarding a policy, ques-
21 tion, or interpretation under part B of this Act shall in-
22 clude an explanation that the written response—

23 “(1) is provided as informal guidance and is not
24 legally binding; and

1 “(2) represents the interpretation by the De-
2 partment of Education of the applicable statutory or
3 regulatory requirements in the context of the specific
4 facts presented.

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

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

9 “(a) GRANTS TO STATES.—

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

16 “(2) MAXIMUM AMOUNTS.—The maximum
17 amount of the grant a State may receive under this
18 section for any fiscal year is—

19 “(A) the number of children with disabil-
20 ities in the State who are receiving special edu-
21 cation and related services—

22 “(i) aged three through five if the
23 State is eligible for a grant under section
24 619; and

1 “(ii) aged six through 21; multiplied
2 by

3 “(B) 40 percent of the average per-pupil
4 expenditure in public elementary and secondary
5 schools in the United States.

6 “(b) OUTLYING AREAS AND FREELY ASSOCIATED
7 STATES.—

8 “(1) FUNDS RESERVED.—From the amount ap-
9 propriated for any fiscal year under subsection (j),
10 the Secretary shall reserve not more than one per-
11 cent, which shall be used—

12 “(A) to provide assistance to the outlying
13 areas in accordance with their respective popu-
14 lations of individuals aged three through 21;
15 and

16 “(B) for fiscal years 1998 through 2001,
17 to carry out the competition described in para-
18 graph (2), except that the amount reserved to
19 carry out that competition shall not exceed the
20 amount reserved for fiscal year 1996 for the
21 competition under part B of this Act described
22 under the heading “SPECIAL EDUCATION”
23 in Public Law 104–134.

24 “(2) LIMITATION FOR FREELY ASSOCIATED
25 STATES.—

1 “(A) COMPETITIVE GRANTS.—The Sec-
2 retary shall use funds described in paragraph
3 (1)(B) to award grants, on a competitive basis,
4 to Guam, American Samoa, the Commonwealth
5 of the Northern Mariana Islands, and the freely
6 associated States to carry out the purposes of
7 this part.

8 “(B) AWARD BASIS.—The Secretary shall
9 award grants under subparagraph (A) on a
10 competitive basis, pursuant to the recommenda-
11 tions of the Pacific Region Educational Labora-
12 tory in Honolulu, Hawaii. Those recommenda-
13 tions shall be made by experts in the field of
14 special education and related services.

15 “(C) ASSISTANCE REQUIREMENTS.—Any
16 freely associated State that wishes to receive
17 funds under this part shall include, in its appli-
18 cation for assistance—

19 “(i) information demonstrating that it
20 will meet all conditions that apply to
21 States under this part;

22 “(ii) an assurance that, notwithstand-
23 ing any other provision of this part, it will
24 use those funds only for the direct provi-
25 sion of special education and related serv-

1 ices to children with disabilities and to en-
2 hance its capacity to make a free appro-
3 priate public education available to all chil-
4 dren with disabilities;

5 “(iii) identify the source and amount
6 of funds, in addition to funds under this
7 part, that it will make available to ensure
8 that a free appropriate public education is
9 available to all children with disabilities
10 within its jurisdiction; and

11 “(iv) such other information and as-
12 surances as the Secretary may require.

13 “(D) TERMINATION OF ELIGIBILITY.—
14 Notwithstanding any other provision of law, the
15 freely associated States shall not receive any
16 funds under this part for any program year
17 that begins after September 30, 2001.

18 “(E) ADMINISTRATIVE COSTS.—The Sec-
19 retary may provide not more than five percent
20 of the amount reserved for grants under this
21 paragraph to pay the administrative costs of
22 the Pacific Region Educational Laboratory
23 under subparagraph (B).

1 “(3) LIMITATION.—An outlying area is not eli-
2 gible for a competitive award under paragraph (2)
3 unless it receives assistance under paragraph (1)(A).

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

9 “(5) ELIGIBILITY FOR DISCRETIONARY PRO-
10 GRAMS.—The freely associated States shall be eligi-
11 ble to receive assistance under subpart 2 of part D
12 of this Act until September 30, 2001.

13 “(6) DEFINITION.—As used in this subsection,
14 the term ‘freely associated States’ means the Repub-
15 lic of the Marshall Islands, the Federated States of
16 Micronesia, and the Republic of Palau.

17 “(c) SECRETARY OF THE INTERIOR.—From the
18 amount appropriated for any fiscal year under subsection
19 (j), the Secretary shall reserve 1.226 percent to provide
20 assistance to the Secretary of the Interior in accordance
21 with subsection (i).

22 “(d) ALLOCATIONS TO STATES.—

23 “(1) IN GENERAL.—After reserving funds for
24 studies and evaluations under section 674(e), and
25 for payments to the outlying areas and the Secretary

1 of the Interior under subsections (b) and (c), the
2 Secretary shall allocate the remaining amount
3 among the States in accordance with paragraph (2)
4 or subsection (e), as the case may be.

5 “(2) INTERIM FORMULA.—Except as provided
6 in subsection (e), the Secretary shall allocate the
7 amount described in paragraph (1) among the
8 States in accordance with section 611(a)(3), (4), and
9 (5) and (b)(1), (2), and (3) of this Act, as in effect
10 prior to the enactment of the Individuals with Dis-
11 abilities Education Act Amendments of 1997, except
12 that the determination of the number of children
13 with disabilities receiving special education and re-
14 lated services under such section 611(a)(3) may, at
15 the State’s discretion, be calculated as of the last
16 Friday in October or as of December 1 of the fiscal
17 year for which the funds are appropriated.

18 “(e) PERMANENT FORMULA.—

19 “(1) ESTABLISHMENT OF BASE YEAR.—The
20 Secretary shall allocate the amount described in sub-
21 section (d)(1) among the States in accordance with
22 this subsection for each fiscal year beginning with
23 the first fiscal year for which the amount appro-
24 priated under subsection (j) is more than
25 \$4,924,672,200.

1 “(2) USE OF BASE YEAR.—

2 “(A) DEFINITION.—As used in this sub-
3 section, the term ‘base year’ means the fiscal
4 year preceding the first fiscal year in which this
5 subsection applies.

6 “(B) SPECIAL RULE FOR USE OF BASE
7 YEAR AMOUNT.—If a State received any funds
8 under this section for the base year on the basis
9 of children aged three through five, but does
10 not make a free appropriate public education
11 available to all children with disabilities aged
12 three through five in the State in any subse-
13 quent fiscal year, the Secretary shall compute
14 the State’s base year amount, solely for the
15 purpose of calculating the State’s allocation in
16 that subsequent year under paragraph (3) or
17 (4), by subtracting the amount allocated to the
18 State for the base year on the basis of those
19 children.

20 “(3) INCREASE IN FUNDS.—If the amount
21 available for allocations to States under paragraph
22 (1) is equal to or greater than the amount allocated
23 to the States under this paragraph for the preceding
24 fiscal year, those allocations shall be calculated as
25 follows:

1 “(A)(i) Except as provided in subpara-
2 graph (B), the Secretary shall—

3 “(I) allocate to each State the amount
4 it received for the base year;

5 “(II) allocate 85 percent of any re-
6 maining funds to States on the basis of
7 their relative populations of children aged
8 3 through 21 who are of the same age as
9 children with disabilities for whom the
10 State ensures the availability of a free ap-
11 propriate public education under this part;
12 and

13 “(III) allocate 15 percent of those re-
14 maining funds to States on the basis of
15 their relative populations of children de-
16 scribed in subclause (II) who are living in
17 poverty.

18 “(ii) For the purpose of making grants
19 under this paragraph, the Secretary shall use
20 the most recent population data, including data
21 on children living in poverty, that are available
22 and satisfactory to the Secretary.

23 “(B) Notwithstanding subparagraph (A),
24 allocations under this paragraph shall be sub-
25 ject to the following:

1 “(i) No State’s allocation shall be less
2 than its allocation for the preceding fiscal
3 year.

4 “(ii) No State’s allocation shall be less
5 than the greatest of—

6 “(I) the sum of—

7 “(aa) the amount it received
8 for the base year; and

9 “(bb) one third of one per-
10 cent of the amount by which the
11 amount appropriated under sub-
12 section (j) exceeds the amount
13 appropriated under this section
14 for the base year;

15 “(II) the sum of—

16 “(aa) the amount it received
17 for the preceding fiscal year; and

18 “(bb) that amount multi-
19 plied by the percentage by which
20 the increase in the funds appro-
21 priated from the preceding fiscal
22 year exceeds 1.5 percent; or

23 “(III) the sum of—

24 “(aa) the amount it received
25 for the preceding fiscal year; and

1 “(bb) that amount multi-
2 plied by 90 percent of the per-
3 centage increase in the amount
4 appropriated from the preceding
5 fiscal year.

6 “(iii) Notwithstanding clause (ii), no
7 State’s allocation under this paragraph
8 shall exceed the sum of—

9 “(I) the amount it received for
10 the preceding fiscal year; and

11 “(II) that amount multiplied by
12 the sum of 1.5 percent and the per-
13 centage increase in the amount appro-
14 priated.

15 “(C) If the amount available for allocations
16 under this paragraph is insufficient to pay
17 those allocations in full, those allocations shall
18 be ratably reduced, subject to subparagraph
19 (B)(i).

20 “(4) DECREASE IN FUNDS.—If the amount
21 available for allocations to States under paragraph
22 (1) is less than the amount allocated to the States
23 under this section for the preceding fiscal year, those
24 allocations shall be calculated as follows:

1 “(A) If the amount available for allocations
2 is greater than the amount allocated to the
3 States for the base year, each State shall be al-
4 located the sum of—

5 “(i) the amount it received for the
6 base year; and

7 “(ii) an amount that bears the same
8 relation to any remaining funds as the in-
9 crease the State received for the preceding
10 fiscal year over the base year bears to the
11 total of all such increases for all States.

12 “(B)(i) If the amount available for alloca-
13 tions is equal to or less than the amount allo-
14 cated to the States for the base year, each
15 State shall be allocated the amount it received
16 for the base year.

17 “(ii) If the amount available is insufficient
18 to make the allocations described in clause (i),
19 those allocations shall be ratably reduced.

20 “(f) STATE-LEVEL ACTIVITIES.—

21 “(1) GENERAL.—

22 “(A) Each State may retain not more than
23 the amount described in subparagraph (B) for
24 administration and other State-level activities in
25 accordance with paragraphs (2) and (3).

1 “(B) For each fiscal year, the Secretary
2 shall determine and report to the State edu-
3 cational agency an amount that is 25 percent of
4 the amount the State received under this sec-
5 tion for fiscal year 1997, cumulatively adjusted
6 by the Secretary for each succeeding fiscal year
7 by the lesser of—

8 “(i) the percentage increase, if any,
9 from the preceding fiscal year in the
10 State’s allocation under this section; or

11 “(ii) the rate of inflation, as measured
12 by the percentage increase, if any, from
13 the preceding fiscal year in the Consumer
14 Price Index For All Urban Consumers,
15 published by the Bureau of Labor Statis-
16 tics of the Department of Labor.

17 “(C) A State may use funds it retains
18 under subparagraph (A) without regard to—

19 “(i) the prohibition on commingling of
20 funds in section 612(a)(18)(B); and

21 “(ii) the prohibition on supplanting
22 other funds in section 612(a)(18)(C).

23 “(2) STATE ADMINISTRATION.—

24 “(A) For the purpose of administering this
25 part, including section 619 (including the co-

1 ordination of activities under this part with,
2 and providing technical assistance to, other pro-
3 grams that provide services to children with dis-
4 abilities)—

5 “(i) each State may use not more
6 than twenty percent of the maximum
7 amount it may retain under paragraph
8 (1)(A) for any fiscal year or \$500,000 (ad-
9 justed by the cumulative rate of inflation
10 since fiscal year 1998, as measured by the
11 percentage increase, if any, in the
12 Consumer Price Index For All Urban Con-
13 sumers, published by the Bureau of Labor
14 Statistics of the Department of Labor),
15 whichever is greater; and

16 “(ii) each outlying area may use up to
17 five percent of the amount it receives
18 under this section for any fiscal year or
19 \$35,000, whichever is greater.

20 “(B) Funds described in subparagraph (A)
21 may also be used for the administration of part
22 C of this Act, if the State educational agency
23 is the lead agency for the State under that
24 part.

1 “(3) OTHER STATE-LEVEL ACTIVITIES.—Each
2 State shall use any funds it retains under paragraph
3 (1) and does not use for administration under para-
4 graph (2) for any of the following:

5 “(A) Support and direct services, including
6 technical assistance and personnel development
7 and training.

8 “(B) Administrative costs of monitoring
9 and complaint investigation, but only to the ex-
10 tent that those costs exceed the costs incurred
11 for those activities during fiscal year 1985.

12 “(C) To establish and implement the medi-
13 ation process required by section 615(e), includ-
14 ing providing for the costs of mediators and
15 support personnel.

16 “(D) To assist local educational agencies
17 in meeting personnel shortages.

18 “(E) To develop a State Improvement Plan
19 under subpart 1 of part D.

20 “(F) Activities at the State and local levels
21 to meet the performance goals established by
22 the State under section 612(a)(16) and to sup-
23 port implementation of the State Improvement
24 Plan under subpart 1 of part D if the State re-
25 ceives funds under that subpart.

1 “(G) To supplement other amounts used to
2 develop and implement a Statewide coordinated
3 services system designed to improve results for
4 children and families, including children with
5 disabilities and their families, but not to exceed
6 one percent of the amount received by the State
7 under this section. This system shall be coordi-
8 nated with and, to the extent appropriate, build
9 on the system of coordinated services developed
10 by the State under part C of this Act.

11 “(H) For subgrants to local educational
12 agencies for the purposes described in para-
13 graph (4)(A).

14 “(4)(A) SUBGRANTS TO LOCAL EDUCATIONAL
15 AGENCIES FOR CAPACITY-BUILDING AND IMPROVE-
16 MENT.—In any fiscal year in which the percentage
17 increase in the State’s allocation under this section
18 exceeds the rate of inflation (as measured by the
19 percentage increase, if any, from the preceding fiscal
20 year in the Consumer Price Index For All Urban
21 Consumers, published by the Bureau of Labor Sta-
22 tistics of the Department of Labor), each State shall
23 reserve, from its allocation under this section, the
24 amount described in subparagraph (B) to make sub-
25 grants to local educational agencies, unless that

1 amount is less than \$100,000, to assist them in pro-
2 viding direct services and in making systemic change
3 to improve results for children with disabilities
4 through one or more of the following:

5 “(i) Direct services, including alter-
6 native programming for children who have
7 been expelled from school, and services for
8 children in correctional facilities, children
9 enrolled in State-operated or State-sup-
10 ported schools, and children in charter
11 schools.

12 “(ii) Addressing needs or carrying out
13 improvement strategies identified in the
14 State’s Improvement Plan under subpart 1
15 of part D.

16 “(iii) Adopting promising practices,
17 materials, and technology, based on knowl-
18 edge derived from education research and
19 other sources.

20 “(iv) Establishing, expanding, or im-
21 plementing interagency agreements and ar-
22 rangements between local educational
23 agencies and other agencies or organiza-
24 tions concerning the provision of services

1 to children with disabilities and their fami-
2 lies.

3 “(v) Increasing cooperative problem-
4 solving between parents and school person-
5 nel and promoting the use of alternative
6 dispute resolution.

7 “(B) MAXIMUM SUBGRANT.—For each fis-
8 cal year, the amount referred to in subpara-
9 graph (A) is—

10 “(i) the maximum amount the State
11 was allowed to retain under paragraph
12 (1)(A) for the prior fiscal year, or for fiscal
13 year 1998, 25 percent of the State’s alloca-
14 tion for fiscal year 1997 under this section;
15 multiplied by

16 “(ii) the difference between the per-
17 centage increase in the State’s allocation
18 under this section and the rate of inflation,
19 as measured by the percentage increase, if
20 any, from the preceding fiscal year in the
21 Consumer Price Index For All Urban Con-
22 sumers, published by the Bureau of Labor
23 Statistics of the Department of Labor.

24 “(5) REPORT ON USE OF FUNDS.—As part of
25 the information required to be submitted to the Sec-

1 retary under section 612, each State shall annually
2 describe—

3 “(A) how amounts retained under para-
4 graph (1) will be used to meet the requirements
5 of this part;

6 “(B) how those amounts will be allocated
7 among the activities described in paragraphs
8 (2) and (3) to meet State priorities based on
9 input from local educational agencies; and

10 “(C) the percentage of those amounts, if
11 any, that will be distributed to local educational
12 agencies by formula.

13 “(g) SUBGRANTS TO LOCAL EDUCATIONAL AGEN-
14 CIES.—

15 “(1) SUBGRANTS REQUIRED.—Each State that
16 receives a grant under this section for any fiscal
17 year shall distribute any funds it does not retain
18 under subsection (f) (at least 75 percent of the
19 grant funds) to local educational agencies in the
20 State that have established their eligibility under
21 section 613, and to State agencies that received
22 funds under section 614A(a) of this Act for fiscal
23 year 1997, as then in effect, and have established
24 their eligibility under section 613, for use in accord-
25 ance with this part.

1 “(2) ALLOCATIONS TO LOCAL EDUCATIONAL
2 AGENCIES.—

3 “(A) INTERIM PROCEDURE.—For each fis-
4 cal year for which funds are allocated to States
5 under subsection (d)(2), each State shall allo-
6 cate funds under paragraph (1) in accordance
7 with section 611(d) of this Act, as in effect
8 prior to the enactment of the Individuals with
9 Disabilities Education Act Amendments of
10 1997.

11 “(B) PERMANENT PROCEDURE.—For each
12 fiscal year for which funds are allocated to
13 States under subsection (e), each State shall al-
14 locate funds under paragraph (1) as follows:

15 “(i) BASE PAYMENTS.—The State
16 shall first award each agency described in
17 paragraph (1) the amount that agency
18 would have received under this section for
19 the base year, as defined in subsection
20 (e)(2)(A), if the State had distributed 75
21 percent of its grant for that year under
22 section 611(d), as then in effect.

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

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

7 “(II) allocate 15 percent of those
8 remaining funds to those agencies in
9 accordance with their relative num-
10 bers of children living in poverty, as
11 determined by the State educational
12 agency.

13 “(3) FORMER CHAPTER 1 STATE AGENCIES.—

14 “(A) To the extent necessary, the State—

15 “(i) shall use funds that are available
16 under subsection (f)(1)(A) to ensure that
17 each State agency that received fiscal year
18 1994 funds under subpart 2 of part D of
19 chapter 1 of title I of the Elementary and
20 Secondary Education Act of 1965 receives,
21 from the combination of funds under sub-
22 section (f)(1)(A) and funds provided under
23 paragraph (1) of this subsection, an
24 amount equal to—

1 “(I) the number of children with
2 disabilities, aged 6 through 21, to
3 whom the agency was providing spe-
4 cial education and related services on
5 December 1 of the fiscal year for
6 which the funds were appropriated,
7 subject to the limitation in subpara-
8 graph (B); multiplied by

9 “(II) the per-child amount pro-
10 vided under such subpart for fiscal
11 year 1994; and

12 “(ii) may use those funds to ensure
13 that each local educational agency that re-
14 ceived fiscal year 1994 funds under that
15 subpart for children who had transferred
16 from a State-operated or State-supported
17 school or program assisted under that sub-
18 part receives, from the combination of
19 funds available under subsection (f)(1)(A)
20 and funds provided under paragraph (1) of
21 this subsection, an amount for each such
22 child, aged 3 through 21 to whom the
23 agency was providing special education and
24 related services on December 1 of the fis-
25 cal year for which the funds were appro-

1 priated, equal to the per-child amount the
2 agency received under that subpart for fis-
3 cal year 1994.

4 “(B) The number of children counted
5 under subparagraph (A)(i)(I) shall not exceed
6 the number of children aged 3 through 21 for
7 whom the agency received fiscal year 1994
8 funds under subpart 2 of part D of chapter 1
9 of title I of the Elementary and Secondary
10 Education Act of 1965.

11 “(4) REALLOCATION OF FUNDS.—If a State
12 educational agency determines that a local edu-
13 cational agency is adequately providing a free appro-
14 priate public education to all children with disabil-
15 ities residing in the area served by that agency with
16 State and local funds, the State educational agency
17 may reallocate any portion of the funds under this
18 part that are not needed by that local agency to pro-
19 vide a free appropriate public education to other
20 local educational agencies in the State that are not
21 adequately providing special education and related
22 services to all children with disabilities residing in
23 the areas they serve.

24 “(h) DEFINITIONS.—For the purpose of this sec-
25 tion—

1 “(1) the term ‘average per-pupil expenditure in
2 public elementary and secondary schools in the Unit-
3 ed States’ means—

4 “(A) without regard to the source of
5 funds—

6 “(i) the aggregate current expendi-
7 tures, during the second fiscal year preced-
8 ing the fiscal year for which the determina-
9 tion is made (or, if satisfactory data for
10 that year are not available, during the
11 most recent preceding fiscal year for which
12 satisfactory data are available) of all local
13 educational agencies in the 50 States and
14 the District of Columbia); plus

15 “(ii) any direct expenditures by the
16 State for the operation of those agencies;
17 divided by

18 “(B) the aggregate number of children in
19 average daily attendance to whom those agen-
20 cies provided free public education during that
21 preceding year; and

22 “(2) the term ‘State’ means each of the 50
23 States, the District of Columbia, and the Common-
24 wealth of Puerto Rico.

1 “(i) USE OF AMOUNTS BY SECRETARY OF THE INTE-
2 RIOR.—

3 “(1) PROVISION OF AMOUNTS FOR ASSIST-
4 ANCE.—

5 “(A) IN GENERAL.—The Secretary of Edu-
6 cation shall provide amounts to the Secretary of
7 the Interior to meet the need for assistance for
8 the education of children with disabilities on
9 reservations aged 5 to 21, inclusive, enrolled in
10 elementary and secondary schools for Indian
11 children operated or funded by the Secretary of
12 the Interior. The amount of such payment for
13 any fiscal year shall be equal to 80 percent of
14 the amount allotted under subsection (c) for
15 that fiscal year.

16 “(B) CALCULATION OF NUMBER OF CHIL-
17 DREN.—In the case of Indian students ages 3
18 to 5, inclusive, who are enrolled in programs af-
19 filiated with Bureau of Indian Affairs (here-
20 after in this subsection referred to as ‘BIA’)
21 schools and that are required by the States in
22 which such schools are located to attain or
23 maintain State accreditation, and which schools
24 have such accreditation prior to the date of en-
25 actment of the Individuals with Disabilities

1 Education Act Amendments of 1991, the school
2 shall be allowed to count those children for the
3 purpose of distribution of the funds provided
4 under this paragraph to the Secretary of the
5 Interior. The Secretary of the Interior shall be
6 responsible for meeting all of the requirements
7 of this part for these children, in accordance
8 with paragraph (2).

9 “(C) ADDITIONAL REQUIREMENT.—With
10 respect to all other children aged 3 to 21, inclu-
11 sive, on reservations, the State educational
12 agency shall be responsible for ensuring that all
13 of the requirements of this part are imple-
14 mented.

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

20 “(A) demonstrates that the Department of
21 the Interior meets the appropriate require-
22 ments, as determined by the Secretary of Edu-
23 cation, of sections 612 (including monitoring
24 and evaluation activities) and 613;

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

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

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

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

1 and other entities to facilitate the provision of
2 services to Indian children with disabilities re-
3 siding on or near reservations (such agreement
4 shall provide for the apportionment of respon-
5 sibilities and costs including, but not limited to,
6 child find, evaluation, diagnosis, remediation or
7 therapeutic measures, and (where appropriate)
8 equipment and medical or personal supplies as
9 needed for a child to remain in school or a pro-
10 gram); and

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

19 Section 616(a) shall apply to the information de-
20 scribed in this paragraph.

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

24 “(A) IN GENERAL.—With funds appro-
25 priated under subsection (j), the Secretary of

1 Education shall make payments to the Sec-
2 retary of the Interior to be distributed to tribes
3 or tribal organizations (as defined under section
4 of the Indian Self-Determination and Edu-
5 cation Assistance Act) or consortia of the above
6 to provide for the coordination of assistance for
7 special education and related services for chil-
8 dren with disabilities aged 3 through 5 on res-
9 ervations served by elementary and secondary
10 schools for Indian children operated or funded
11 by the Department of the Interior. The amount
12 of such payments under subparagraph (B) for
13 any fiscal year shall be equal to 20 percent of
14 the amount allotted under subsection (c).

15 “(B) DISTRIBUTION OF FUNDS.—The Sec-
16 retary of the Interior shall distribute the total
17 amount of the payment under subparagraph
18 (A) by allocating to each tribe or tribal organi-
19 zation an amount based on the number of chil-
20 dren with disabilities ages 3 through 5 residing
21 on reservations as reported annually, divided by
22 the total of those children served by all tribes
23 or tribal organizations.

24 “(C) SUBMISSION OF INFORMATION.—To
25 receive a payment under this paragraph, the

1 tribe or tribal organization shall submit such
2 figures to the Secretary of the Interior as re-
3 quired to determine the amounts to be allocated
4 under subparagraph (B). This information shall
5 be compiled and submitted to the Secretary of
6 Education.

7 “(D) USE OF FUNDS.—The funds received
8 by a tribe or tribal organization shall be used
9 to assist in child find, screening, and other pro-
10 cedures for the early identification of children
11 aged 3 through 5, parent training, and the pro-
12 vision of direct services. These activities may be
13 carried out directly or through contracts or co-
14 operative agreements with the BIA, local edu-
15 cational agencies, and other public or private
16 nonprofit organizations. The tribe or tribal or-
17 ganization is encouraged to involve Indian par-
18 ents in the development and implementation of
19 these activities. The above entities shall, as ap-
20 propriate, make referrals to local, State, or
21 Federal entities for the provision of services or
22 further diagnosis.

23 “(E) BIENNIAL REPORT.—To be eligible to
24 receive a grant pursuant to subparagraph (A),
25 the tribe or tribal organization shall provide to

1 the Secretary of the Interior a biennial report
2 of activities undertaken under this paragraph,
3 including the number of contracts and coopera-
4 tive agreements entered into, the number of
5 children contacted and receiving services for
6 each year, and the estimated number of chil-
7 dren needing services during the 2 years follow-
8 ing the one in which the report is made. The
9 Secretary of the Interior shall include a sum-
10 mary of this information on a biennial basis in
11 the report to the Secretary of Education re-
12 quired under this subsection. The Secretary of
13 Education may require any additional informa-
14 tion from the Secretary of the Interior.

15 “(F) PROHIBITIONS.—None of the funds
16 allocated under this paragraph may be used by
17 the Secretary of the Interior for administrative
18 purposes, including child count and the provi-
19 sion of technical assistance.

20 “(4) PLAN FOR COORDINATION OF SERVICES.—
21 The Secretary of the Interior shall develop and im-
22 plement a plan for the coordination of services for
23 all Indian children with disabilities residing on res-
24 ervations covered under this Act. Such plan shall
25 provide for the coordination of services benefiting

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

15 “(5) ESTABLISHMENT OF ADVISORY BOARD.—
16 To meet the requirements of section 612(a)(21), the
17 Secretary of the Interior shall establish, not later
18 than 6 months after the date of the enactment of
19 the Individuals with Disabilities Education Act
20 Amendments of 1997, under the BIA, an advisory
21 board composed of individuals involved in or con-
22 cerned with the education and provision of services
23 to Indian infants, toddlers, children, and youth with
24 disabilities, including Indians with disabilities, In-
25 dian parents or guardians of such children, teachers,

1 service providers, State and local educational offi-
2 cials, representatives of tribes or tribal organiza-
3 tions, representatives from State Interagency Co-
4 ordinating Councils under section 641 in States hav-
5 ing reservations, and other members representing
6 the various divisions and entities of the BIA. The
7 chairperson shall be selected by the Secretary of the
8 Interior. The advisory board shall—

9 “(A) assist in the coordination of services
10 within the BIA and with other local, State, and
11 Federal agencies in the provision of education
12 for infants, toddlers, and children with disabil-
13 ities;

14 “(B) advise and assist the Secretary of the
15 Interior in the performance of the Secretary’s
16 responsibilities described in this subsection;

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

22 “(D) provide assistance and disseminate
23 information on best practices, effective program
24 coordination strategies, and recommendations
25 for improved educational programming for In-

1 dian infants, toddlers, and children with disabil-
2 ities; and

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

6 “(6) ANNUAL REPORTS.—

7 “(A) IN GENERAL.—The advisory board
8 established under paragraph (5) shall prepare
9 and submit to the Secretary of the Interior and
10 to the Congress an annual report containing a
11 description of the activities of the advisory
12 board for the preceding year.

13 “(B) AVAILABILITY.—The Secretary of the
14 Interior shall make available to the Secretary of
15 Education the report described in subparagraph
16 (A).

17 “(j) AUTHORIZATION OF APPROPRIATIONS.—For the
18 purpose of carrying out this part, other than section 619,
19 there are authorized to be appropriated such sums as may
20 be necessary.

21 **“SEC. 612. STATE ELIGIBILITY.**

22 “(a) IN GENERAL.—A State is eligible for assistance
23 under this part for a fiscal year if the State demonstrates
24 to the satisfaction of the Secretary that the State has in

1 effect policies and procedures to ensure that it meets each
2 of the following conditions:

3 “(1) FREE APPROPRIATE PUBLIC EDU-
4 CATION.—

5 “(A) IN GENERAL.—A free appropriate
6 public education is available to all children with
7 disabilities residing in the State between the
8 ages of 3 and 21, inclusive, including children
9 with disabilities who have been suspended or ex-
10 pelled from school.

11 “(B) LIMITATION.—The obligation to
12 make a free appropriate public education avail-
13 able to all children with disabilities does not
14 apply with respect to children—

15 “(i) aged 3 through 5 and 18 through
16 21 in a State to the extent that its applica-
17 tion to those children would be inconsistent
18 with State law or practice, or the order of
19 any court, respecting the provision of pub-
20 lic education to children in those age
21 ranges; and

22 “(ii) aged 18 through 21 to the extent
23 that State law does not require that special
24 education and related services under this
25 part be provided to children with disabil-

1 ities who were not actually identified as
2 being a child with a disability under sec-
3 tion 602(3) immediately prior to their in-
4 carceration in adult prisons.

5 “(2) FULL EDUCATIONAL OPPORTUNITY
6 GOAL.—The State has established a goal of provid-
7 ing full educational opportunity to all children with
8 disabilities and a detailed timetable for accomplish-
9 ing that goal.

10 “(3) CHILD FIND.—

11 “(A) IN GENERAL.—All children with dis-
12 abilities residing in the State, including children
13 with disabilities attending private schools, re-
14 gardless of the severity of their disabilities, and
15 who are in need of special education and related
16 services, are identified, located, and evaluated
17 and a practical method is developed and imple-
18 mented to determine which children with dis-
19 abilities are currently receiving needed special
20 education and related services.

21 “(B) CONSTRUCTION.—Nothing in this
22 Act requires that children be classified by their
23 disability so long as each child who has a dis-
24 ability listed in section 602 and who, by reason
25 of that disability, needs special education and

1 related services is regarded as a child with a
2 disability under this part.

3 “(4) INDIVIDUALIZED EDUCATION PROGRAM.—

4 An individualized education program, or an individ-
5 ualized family service plan that meets the require-
6 ments of section 636(d), is developed, reviewed, and
7 revised for each child with a disability in accordance
8 with section 614(d).

9 “(5) LEAST RESTRICTIVE ENVIRONMENT.—

10 “(A) IN GENERAL.—To the maximum ex-
11 tent appropriate, children with disabilities, in-
12 cluding children in public or private institutions
13 or other care facilities, are educated with chil-
14 dren who are not disabled, and special classes,
15 separate schooling, or other removal of children
16 with disabilities from the regular educational
17 environment occurs only when the nature or se-
18 verity of the disability of a child is such that
19 education in regular classes with the use of sup-
20 plementary aids and services cannot be achieved
21 satisfactorily.

22 “(B) ADDITIONAL REQUIREMENT.—

23 “(i) IN GENERAL.—If the State uses a
24 funding mechanism by which the State dis-
25 tributes State funds on the basis of the

1 type of setting in which a child is served,
2 the funding mechanism does not result in
3 placements that violate the requirements of
4 subparagraph (A).

5 “(ii) ASSURANCE.—If the State does
6 not have policies and procedures to ensure
7 compliance with clause (i), the State shall
8 provide the Secretary an assurance that it
9 will revise the funding mechanism as soon
10 as feasible to ensure that such mechanism
11 does not result in such placements.

12 “(6) PROCEDURAL SAFEGUARDS.—

13 “(A) IN GENERAL.—Children with disabili-
14 ties and their parents are afforded the proce-
15 dural safeguards required by section 615.

16 “(B) ADDITIONAL PROCEDURAL SAFE-
17 GUARDS.—Procedures to ensure that testing
18 and evaluation materials and procedures uti-
19 lized for the purposes of evaluation and place-
20 ment of children with disabilities will be se-
21 lected and administered so as not to be racially
22 or culturally discriminatory. Such materials or
23 procedures shall be provided and administered
24 in the child’s native language or mode of com-
25 munication, unless it clearly is not feasible to

1 do so, and no single procedure shall be the sole
2 criterion for determining an appropriate edu-
3 cational program for a child.

4 “(7) EVALUATION.—Children with disabilities
5 are evaluated in accordance with subsections (a)
6 through (c) of section 614.

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

10 “(9) TRANSITION FROM PART C TO PRESCHOOL
11 PROGRAMS.—Children participating in early-inter-
12 vention programs assisted under part C, and who
13 will participate in preschool programs assisted under
14 this part, experience a smooth and effective transi-
15 tion to those preschool programs in a manner con-
16 sistent with section 637(a)(8). By the third birthday
17 of such a child, an individualized education program
18 or, if consistent with sections 614(d)(2)(B) and
19 636(d), an individualized family service plan, has
20 been developed and is being implemented for the
21 child. The local educational agency will participate in
22 transition planning conferences arranged by the des-
23 ignated lead agency under section 637(a)(8).

24 “(10) CHILDREN IN PRIVATE SCHOOLS.—

1 “(A) CHILDREN ENROLLED IN PRIVATE
2 SCHOOLS BY THEIR PARENTS.—

3 “(i) IN GENERAL.—To the extent con-
4 sistent with the number and location of
5 children with disabilities in the State who
6 are enrolled by their parents in private ele-
7 mentary and secondary schools, provision
8 is made for the participation of those chil-
9 dren in the program assisted or carried out
10 under this part by providing for such chil-
11 dren special education and related services
12 in accordance with the following require-
13 ments, unless the Secretary has arranged
14 for services to those children under sub-
15 section (f):

16 “(I) Amounts expended for the
17 provision of those services by a local
18 educational agency shall be equal to a
19 proportionate amount of Federal
20 funds made available under this part.

21 “(II) Such services may be pro-
22 vided to children with disabilities on
23 the premises of private, including pa-
24 rochial, schools, to the extent consist-
25 ent with law.

1 “(ii) CHILD-FIND REQUIREMENT.—

2 The requirements of paragraph (3) of this
3 subsection (relating to child find) shall
4 apply with respect to children with disabili-
5 ties in the State who are enrolled in pri-
6 vate, including parochial, elementary and
7 secondary schools.

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

10 “(i) IN GENERAL.—Children with dis-
11 abilities in private schools and facilities are
12 provided special education and related
13 services, in accordance with an individual-
14 ized education program, at no cost to their
15 parents, if such children are placed in, or
16 referred to, such schools or facilities by the
17 State or appropriate local educational
18 agency as the means of carrying out the
19 requirements of this part or any other ap-
20 plicable law requiring the provision of spe-
21 cial education and related services to all
22 children with disabilities within such State.

23 “(ii) STANDARDS.—In all cases de-
24 scribed in clause (i), the State educational
25 agency shall determine whether such

1 schools and facilities meet standards that
2 apply to State and local educational agen-
3 cies and that children so served have all
4 the rights they would have if served by
5 such agencies.

6 “(C) PAYMENT FOR EDUCATION OF CHIL-
7 DREN ENROLLED IN PRIVATE SCHOOLS WITH-
8 OUT CONSENT OF OR REFERRAL BY THE PUB-
9 LIC AGENCY.—

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

20 “(ii) REIMBURSEMENT FOR PRIVATE
21 SCHOOL PLACEMENT.—If the parents of a
22 child with a disability, who previously re-
23 ceived special education and related serv-
24 ices under the authority of a public agency,
25 enroll the child in a private elementary or

1 secondary school without the consent of or
2 referral by the public agency, a court or a
3 hearing officer may require the agency to
4 reimburse the parents for the cost of that
5 enrollment if the court or hearing officer
6 finds that the agency had not made a free
7 appropriate public education available to
8 the child in a timely manner prior to that
9 enrollment.

10 “(iii) LIMITATION ON REIMBURSE-
11 MENT.—The cost of reimbursement de-
12 scribed in clause (ii) may be reduced or de-
13 nied—

14 “(I) if—

15 “(aa) at the most recent
16 IEP meeting that the parents at-
17 tended prior to removal of the
18 child from the public school, the
19 parents did not inform the IEP
20 team that they were rejecting the
21 placement proposed by the public
22 agency to provide a free appro-
23 priate public education to their
24 child, including stating their con-
25 cerns and their intent to enroll

1 their child in a private school at
2 public expense; or

3 “(bb) 10 business days (in-
4 cluding any holidays that occur
5 on a business day) prior to the
6 removal of the child from the
7 public school, the parents did not
8 give written notice to the public
9 agency of the information de-
10 scribed in division (aa);

11 “(II) if, prior to the parents’ re-
12 moval of the child from the public
13 school, the public agency informed the
14 parents, through the notice require-
15 ments described in section 615(b)(7),
16 of its intent to evaluate the child (in-
17 cluding a statement of the purpose of
18 the evaluation that was appropriate
19 and reasonable), but the parents did
20 not make the child available for such
21 evaluation; or

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

1 “(iv) EXCEPTION.—Notwithstanding
2 the notice requirement in clause (iii)(I),
3 the cost of reimbursement may not be re-
4 duced or denied for failure to provide such
5 notice if—

6 “(I) the parent is illiterate and
7 cannot write in English;

8 “(II) compliance with clause
9 (iii)(I) would likely result in physical
10 or serious emotional harm to the
11 child;

12 “(III) the school prevented the
13 parent from providing such notice; or

14 “(IV) the parents had not re-
15 ceived notice, pursuant to section 615,
16 of the notice requirement in clause
17 (iii)(I).

18 “(11) STATE EDUCATIONAL AGENCY RESPON-
19 SIBLE FOR GENERAL SUPERVISION.—

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

22 “(i) the requirements of this part are
23 met; and

24 “(ii) all educational programs for chil-
25 dren with disabilities in the State, includ-

1 ing all such programs administered by any
2 other State or local agency—

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

8 “(II) meet the educational stand-
9 ards of the State educational agency.

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

16 “(C) EXCEPTION.—Notwithstanding sub-
17 paragraphs (A) and (B), the Governor (or an-
18 other individual pursuant to State law), consist-
19 ent with State law, may assign to any public
20 agency in the State the responsibility of ensur-
21 ing that the requirements of this part are met
22 with respect to children with disabilities who
23 are convicted as adults under State law and in-
24 carcerated in adult prisons.

1 “(12) OBLIGATIONS RELATED TO AND METH-
2 ODS OF ENSURING SERVICES.—

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

17 “(i) AGENCY FINANCIAL RESPON-
18 SIBILITY.—An identification of, or a meth-
19 od for defining, the financial responsibility
20 of each agency for providing services de-
21 scribed in subparagraph (B)(i) to ensure a
22 free appropriate public education to chil-
23 dren with disabilities, provided that the fi-
24 nancial responsibility of each public agency
25 described in subparagraph (B), including

1 the State Medicaid agency and other public
2 insurers of children with disabilities, shall
3 precede the financial responsibility of the
4 local educational agency (or the State
5 agency responsible for developing the
6 child's IEP).

7 “(ii) CONDITIONS AND TERMS OF RE-
8 IMBURSEMENT.—The conditions, terms,
9 and procedures under which a local edu-
10 cational agency shall be reimbursed by
11 other agencies.

12 “(iii) INTERAGENCY DISPUTES.—Pro-
13 cedures for resolving interagency disputes
14 (including procedures under which local
15 educational agencies may initiate proceed-
16 ings) under the agreement or other mecha-
17 nism to secure reimbursement from other
18 agencies or otherwise implement the provi-
19 sions of the agreement or mechanism.

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

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

3 “(B) OBLIGATION OF PUBLIC AGENCY.—

4 “(i) IN GENERAL.—If any public
5 agency other than an educational agency is
6 otherwise obligated under Federal or State
7 law, or assigned responsibility under State
8 policy or pursuant to subparagraph (A), to
9 provide or pay for any services that are
10 also considered special education or related
11 services (such as, but not limited to, serv-
12 ices described in sections 602(1) relating
13 to assistive technology devices, 602(2) re-
14 lating to assistive technology services,
15 602(22) relating to related services,
16 602(29) relating to supplementary aids
17 and services, and 602(30) relating to tran-
18 sition services) that are necessary for en-
19 suring a free appropriate public education
20 to children with disabilities within the
21 State, such public agency shall fulfill that
22 obligation or responsibility, either directly
23 or through contract or other arrangement.

24 “(ii) REIMBURSEMENT FOR SERVICES
25 BY PUBLIC AGENCY.—If a public agency

1 other than an educational agency fails to
2 provide or pay for the special education
3 and related services described in clause (i),
4 the local educational agency (or State
5 agency responsible for developing the
6 child's IEP) shall provide or pay for such
7 services to the child. Such local educational
8 agency or State agency may then claim re-
9 imbursement for the services from the pub-
10 lic agency that failed to provide or pay for
11 such services and such public agency shall
12 reimburse the local educational agency or
13 State agency pursuant to the terms of the
14 interagency agreement or other mechanism
15 described in subparagraph (A)(i) according
16 to the procedures established in such
17 agreement pursuant to subparagraph
18 (A)(ii).

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

21 “(i) STATE STATUTE OR REGULATION;

22 “(ii) signed agreements between re-
23 spective agency officials that clearly iden-
24 tify the responsibilities of each agency re-
25 lating to the provision of services; or

1 “(iii) other appropriate written meth-
2 ods as determined by the Chief Executive
3 Officer of the State or designee of the offi-
4 cer.

5 “(13) PROCEDURAL REQUIREMENTS RELATING
6 TO LOCAL EDUCATIONAL AGENCY ELIGIBILITY.—
7 The State educational agency will not make a final
8 determination that a local educational agency is not
9 eligible for assistance under this part without first
10 affording that agency reasonable notice and an op-
11 portunity for a hearing.

12 “(14) COMPREHENSIVE SYSTEM OF PERSONNEL
13 DEVELOPMENT.—The State has in effect, consistent
14 with the purposes of this Act and with section
15 635(a)(8), a comprehensive system of personnel de-
16 velopment that is designed to ensure an adequate
17 supply of qualified special education, regular edu-
18 cation, and related services personnel that meets the
19 requirements for a State improvement plan relating
20 to personnel development in subsections (b)(2)(B)
21 and (c)(3)(D) of section 653.

22 “(15) PERSONNEL STANDARDS.—

23 “(A) IN GENERAL.—The State educational
24 agency has established and maintains standards
25 to ensure that personnel necessary to carry out

1 this part are appropriately and adequately pre-
2 pared and trained.

3 “(B) STANDARDS DESCRIBED.—Such
4 standards shall—

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

11 “(ii) to the extent the standards de-
12 scribed in subparagraph (A) are not based
13 on the highest requirements in the State
14 applicable to a specific profession or dis-
15 cipline, the State is taking steps to require
16 retraining or hiring of personnel that meet
17 appropriate professional requirements in
18 the State; and

19 “(iii) allow paraprofessionals and as-
20 sistants who are appropriately trained and
21 supervised, in accordance with State law,
22 regulations, or written policy, in meeting
23 the requirements of this part to be used to
24 assist in the provision of special education

1 and related services to children with dis-
2 abilities under this part.

3 “(C) POLICY.—In implementing this para-
4 graph, a State may adopt a policy that includes
5 a requirement that local educational agencies in
6 the State make an ongoing good-faith effort to
7 recruit and hire appropriately and adequately
8 trained personnel to provide special education
9 and related services to children with disabilities,
10 including, in a geographic area of the State
11 where there is a shortage of such personnel, the
12 most qualified individuals available who are
13 making satisfactory progress toward completing
14 applicable course work necessary to meet the
15 standards described in subparagraph (B)(i),
16 consistent with State law, and the steps de-
17 scribed in subparagraph (B)(ii) within three
18 years.

19 “(16) PERFORMANCE GOALS AND INDICA-
20 TORS.—The State—

21 “(A) has established goals for the perform-
22 ance of children with disabilities in the State
23 that—

24 “(i) will promote the purposes of this
25 Act, as stated in section 601(d); and

1 “(ii) are consistent, to the maximum
2 extent appropriate, with other goals and
3 standards for children established by the
4 State;

5 “(B) has established performance indica-
6 tors the State will use to assess progress toward
7 achieving those goals that, at a minimum, ad-
8 dress the performance of children with disabil-
9 ities on assessments, drop-out rates, and grad-
10 uation rates;

11 “(C) will, every two years, report to the
12 Secretary and the public on the progress of the
13 State, and of children with disabilities in the
14 State, toward meeting the goals established
15 under subparagraph (A); and

16 “(D) based on its assessment of that
17 progress, will revise its State improvement plan
18 under subpart 1 of part D as may be needed
19 to improve its performance, if the State receives
20 assistance under that subpart.

21 “(17) PARTICIPATION IN ASSESSMENTS.—

22 “(A) IN GENERAL.—Children with disabil-
23 ities are included in general State and district-
24 wide assessment programs, with appropriate ac-

1 commodations, where necessary. As appro-
2 priate, the State or local educational agency—

3 “(i) develops guidelines for the par-
4 ticipation of children with disabilities in al-
5 ternate assessments for those children who
6 cannot participate in State and district-
7 wide assessment programs; and

8 “(ii) develops and, beginning not later
9 than July 1, 2000, conducts those alter-
10 nate assessments.

11 “(B) REPORTS.—The State educational
12 agency makes available to the public, and re-
13 ports to the public with the same frequency and
14 in the same detail as it reports on the assess-
15 ment of nondisabled children, the following:

16 “(i) The number of children with dis-
17 abilities participating in regular assess-
18 ments.

19 “(ii) The number of those children
20 participating in alternate assessments.

21 “(iii)(I) The performance of those
22 children on regular assessments (beginning
23 not later than July 1, 1998) and on alter-
24 nate assessments (not later than July 1,
25 2000), if doing so would be statistically

1 sound and would not result in the dislo-
 2 sure of performance results identifiable to
 3 individual children.

4 “(II) Data relating to the per-
 5 formance of children described under
 6 subclause (I) shall be disaggregated—

7 “(aa) for assessments con-
 8 ducted after July 1, 1998; and

9 “(bb) for assessments con-
 10 ducted before July 1, 1998 if the
 11 State is required to disaggregate
 12 such data prior to July 1, 1998.

13 “(18) SUPPLEMENTATION OF STATE, LOCAL,
 14 AND OTHER FEDERAL FUNDS.—

15 “(A) EXPENDITURES.—Funds paid to a
 16 State under this part will be expended in ac-
 17 cordance with all the provisions of this part.

18 “(B) PROHIBITION AGAINST COMMING-
 19 GLING.—Funds paid to a State under this part
 20 will not be commingled with State funds.

21 “(C) PROHIBITION AGAINST SUPPLAN-
 22 TATION AND CONDITIONS FOR WAIVER BY SEC-
 23 RETARY.—Except as provided in section 613,
 24 funds paid to a State under this part will be
 25 used to supplement the level of Federal, State,

1 and local funds (including funds that are not
2 under the direct control of State or local edu-
3 cational agencies) expended for special edu-
4 cation and related services provided to children
5 with disabilities under this part and in no case
6 to supplant such Federal, State, and local
7 funds, except that, where the State provides
8 clear and convincing evidence that all children
9 with disabilities have available to them a free
10 appropriate public education, the Secretary may
11 waive, in whole or in part, the requirements of
12 this subparagraph if the Secretary concurs with
13 the evidence provided by the State.

14 “(19) MAINTENANCE OF STATE FINANCIAL
15 SUPPORT.—

16 “(A) IN GENERAL.—The State does not re-
17 duce the amount of State financial support for
18 special education and related services for chil-
19 dren with disabilities, or otherwise made avail-
20 able because of the excess costs of educating
21 those children, below the amount of that sup-
22 port for the preceding fiscal year.

23 “(B) REDUCTION OF FUNDS FOR FAILURE
24 TO MAINTAIN SUPPORT.—The Secretary shall
25 reduce the allocation of funds under section 611

1 for any fiscal year following the fiscal year in
2 which the State fails to comply with the re-
3 quirement of subparagraph (A) by the same
4 amount by which the State fails to meet the re-
5 quirement.

6 “(C) WAIVERS FOR EXCEPTIONAL OR UN-
7 CONTROLLABLE CIRCUMSTANCES.—The Sec-
8 retary may waive the requirement of subpara-
9 graph (A) for a State, for one fiscal year at a
10 time, if the Secretary determines that—

11 “(i) granting a waiver would be equi-
12 table due to exceptional or uncontrollable
13 circumstances such as a natural disaster or
14 a precipitous and unforeseen decline in the
15 financial resources of the State; or

16 “(ii) the State meets the standard in
17 paragraph (18)(C) of this section for a
18 waiver of the requirement to supplement,
19 and not to supplant, funds received under
20 this part.

21 “(D) SUBSEQUENT YEARS.—If, for any
22 year, a State fails to meet the requirement of
23 subparagraph (A), including any year for which
24 the State is granted a waiver under subpara-
25 graph (C), the financial support required of the

1 State in future years under subparagraph (A)
2 shall be the amount that would have been re-
3 quired in the absence of that failure and not
4 the reduced level of the State's support.

5 “(E) REGULATIONS.—

6 (i) The Secretary shall, by regulation,
7 establish procedures (including objective
8 criteria and consideration of the results of
9 compliance reviews of the State conducted
10 by the Secretary) for determining whether
11 to grant a waiver under subparagraph
12 (C)(ii).

13 “(ii) The Secretary shall publish pro-
14 posed regulations under clause (i) not later
15 than 6 months after the date of the enact-
16 ment of the Individuals with Disabilities
17 Education Act Amendments of 1997, and
18 shall issue final regulations under clause
19 (i) not later than 1 year after such date of
20 enactment.

21 “(20) PUBLIC PARTICIPATION.—Prior to the
22 adoption of any policies and procedures needed to
23 comply with this section (including any amendments
24 to such policies and procedures), the State ensures
25 that there are public hearings, adequate notice of

1 the hearings, and an opportunity for comment avail-
2 able to the general public, including individuals with
3 disabilities and parents of children with disabilities.

4 “(21) STATE ADVISORY PANEL.—

5 “(A) IN GENERAL.—The State has estab-
6 lished and maintains an advisory panel for the
7 purpose of providing policy guidance with re-
8 spect to special education and related services
9 for children with disabilities in the State.

10 “(B) MEMBERSHIP.—Such advisory panel
11 shall consist of members appointed by the Gov-
12 ernor, or any other official authorized under
13 State law to make such appointments, that is
14 representative of the State population and that
15 is composed of individuals involved in, or con-
16 cerned with, the education of children with dis-
17 abilities, including—

18 “(i) parents of children with disabil-
19 ities;

20 “(ii) individuals with disabilities;

21 “(iii) teachers;

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

1 “(v) State and local education offi-
2 cials;

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

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

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

11 “(ix) at least one representative of a
12 vocational, community, or business organi-
13 zation concerned with the provision of
14 transition services to children with disabil-
15 ities; and

16 “(x) representatives from the State
17 juvenile and adult corrections agencies.

18 “(C) SPECIAL RULE.—A majority of the
19 members of the panel shall be individuals with
20 disabilities or parents of children with disabil-
21 ities.

22 “(D) DUTIES.—The advisory panel shall—

23 “(i) advise the State educational agen-
24 cy of unmet needs within the State in the
25 education of children with disabilities;

1 “(ii) comment publicly on any rules or
2 regulations proposed by the State regard-
3 ing the education of children with disabil-
4 ities;

5 “(iii) advise the State educational
6 agency in developing evaluations and re-
7 porting on data to the Secretary under sec-
8 tion 618;

9 “(iv) advise the State educational
10 agency in developing corrective action
11 plans to address findings identified in Fed-
12 eral monitoring reports under this part;
13 and

14 “(v) advise the State educational
15 agency in developing and implementing
16 policies relating to the coordination of serv-
17 ices for children with disabilities.

18 “(22) SUSPENSION AND EXPULSION RATES.—

19 “(A) IN GENERAL.—The State educational
20 agency examines data to determine if signifi-
21 cant discrepancies are occurring in the rate of
22 long-term suspensions and expulsions of chil-
23 dren with disabilities—

24 “(i) among local educational agencies
25 in the State; or

1 “(ii) compared to such rates for non-
2 disabled children within such agencies.

3 “(B) REVIEW AND REVISION OF POLI-
4 CIES.—If such discrepancies are occurring, the
5 State educational agency reviews and, if appro-
6 priate, revises (or requires the affected State or
7 local educational agency to revise) its policies,
8 procedures, and practices relating to the devel-
9 opment and implementation of IEPs, the use of
10 behavioral interventions, and procedural safe-
11 guards, to ensure that such policies, procedures,
12 and practices comply with this Act.

13 “(b) STATE EDUCATIONAL AGENCY AS PROVIDER OF
14 FREE APPROPRIATE PUBLIC EDUCATION OR DIRECT
15 SERVICES.—If the State educational agency provides free
16 appropriate public education to children with disabilities,
17 or provides direct services to such children, such agency—

18 “(1) shall comply with any additional require-
19 ments of section 613(a), as if such agency were a
20 local educational agency; and

21 “(2) may use amounts that are otherwise avail-
22 able to such agency under this part to serve those
23 children without regard to section 613(a)(2)(A)(i)
24 (relating to excess costs).

25 “(c) EXCEPTION FOR PRIOR STATE PLANS.—

1 “(1) IN GENERAL.—If a State has on file with
2 the Secretary policies and procedures that dem-
3 onstrate that such State meets any requirement of
4 subsection (a), including any policies and procedures
5 filed under this part as in effect before the effective
6 date of the Individuals with Disabilities Education
7 Act Amendments of 1997, the Secretary shall con-
8 sider such State to have met such requirement for
9 purposes of receiving a grant under this part.

10 “(2) MODIFICATIONS MADE BY STATE.—Sub-
11 ject to paragraph (3), an application submitted by a
12 State in accordance with this section shall remain in
13 effect until the State submits to the Secretary such
14 modifications as the State deems necessary. This
15 section shall apply to a modification to an applica-
16 tion to the same extent and in the same manner as
17 this section applies to the original plan.

18 “(3) MODIFICATIONS REQUIRED BY THE SEC-
19 RETARY.—If, after the effective date of the Individ-
20 uals with Disabilities Education Act Amendments of
21 1997, the provisions of this Act are amended (or the
22 regulations developed to carry out this Act are
23 amended), or there is a new interpretation of this
24 Act by a Federal or State Supreme court, or there
25 is an official finding of noncompliance with Federal

1 law or regulations, the Secretary may require a
2 State to modify its application only to the extent
3 necessary to ensure the State's compliance with this
4 part.

5 “(d) APPROVAL BY THE SECRETARY.—

6 “(1) IN GENERAL.—If the Secretary determines
7 that a State is eligible to receive a grant under this
8 part, the Secretary shall notify the State of that de-
9 termination.

10 “(2) NOTICE AND HEARING.—The Secretary
11 shall not make a final determination that a State is
12 not eligible to receive a grant under this part until
13 after providing the State—

14 “(A) with reasonable notice; and

15 “(B) with an opportunity for a hearing.

16 “(e) ASSISTANCE UNDER OTHER FEDERAL PRO-
17 GRAMS.—Nothing in this title permits a State to reduce
18 medical and other assistance available, or to alter eligi-
19 bility, under titles V and XIX of the Social Security Act
20 with respect to the provision of a free appropriate public
21 education for children with disabilities in the State.

22 “(f) BY-PASS FOR CHILDREN IN PRIVATE
23 SCHOOLS.—

24 “(1) IN GENERAL.—If, on the date of enact-
25 ment of the Education of the Handicapped Act

1 Amendments of 1983, a State educational agency is
2 prohibited by law from providing for the participa-
3 tion in special programs of children with disabilities
4 enrolled in private elementary and secondary schools
5 as required by subsection (a)(10)(A), the Secretary
6 shall, notwithstanding such provision of law, arrange
7 for the provision of services to such children through
8 arrangements which shall be subject to the require-
9 ments of such subsection.

10 “(2) PAYMENTS.—

11 “(A) DETERMINATION OF AMOUNTS.—If
12 the Secretary arranges for services pursuant to
13 this subsection, the Secretary, after consulta-
14 tion with the appropriate public and private
15 school officials, shall pay to the provider of such
16 services for a fiscal year an amount per child
17 that does not exceed the amount determined by
18 dividing—

19 “(i) the total amount received by the
20 State under this part for such fiscal year;
21 by

22 “(ii) the number of children with dis-
23 abilities served in the prior year, as re-
24 ported to the Secretary by the State under
25 section 618.

1 “(B) WITHHOLDING OF CERTAIN
2 AMOUNTS.—Pending final resolution of any in-
3 vestigation or complaint that could result in a
4 determination under this subsection, the Sec-
5 retary may withhold from the allocation of the
6 affected State educational agency the amount
7 the Secretary estimates would be necessary to
8 pay the cost of services described in subpara-
9 graph (A).

10 “(C) PERIOD OF PAYMENTS.—The period
11 under which payments are made under sub-
12 paragraph (A) shall continue until the Sec-
13 retary determines that there will no longer be
14 any failure or inability on the part of the State
15 educational agency to meet the requirements of
16 subsection (a)(10)(A).

17 “(3) NOTICE AND HEARING.—

18 “(A) IN GENERAL.—The Secretary shall
19 not take any final action under this subsection
20 until the State educational agency affected by
21 such action has had an opportunity, for at least
22 45 days after receiving written notice thereof,
23 to submit written objections and to appear be-
24 fore the Secretary or the Secretary’s designee

1 to show cause why such action should not be
2 taken.

3 “(B) REVIEW OF ACTION.—If a State edu-
4 cational agency is dissatisfied with the Sec-
5 retary’s final action after a proceeding under
6 subparagraph (A), such agency may, not later
7 than 60 days after notice of such action, file
8 with the United States court of appeals for the
9 circuit in which such State is located a petition
10 for review of that action. A copy of the petition
11 shall be forthwith transmitted by the clerk of
12 the court to the Secretary. The Secretary there-
13 upon shall file in the court the record of the
14 proceedings on which the Secretary based the
15 Secretary’s action, as provided in section 2112
16 of title 28, United States Code.

17 “(C) REVIEW OF FINDINGS OF FACT.—The
18 findings of fact by the Secretary, if supported
19 by substantial evidence, shall be conclusive, but
20 the court, for good cause shown, may remand
21 the case to the Secretary to take further evi-
22 dence, and the Secretary may thereupon make
23 new or modified findings of fact and may mod-
24 ify the Secretary’s previous action, and shall file
25 in the court the record of the further proceed-

1 ings. Such new or modified findings of fact
2 shall likewise be conclusive if supported by sub-
3 stantial evidence.

4 “(D) JURISDICTION OF COURT OF AP-
5 PEALS; REVIEW BY UNITED STATES SUPREME
6 COURT.—Upon the filing of a petition under
7 subparagraph (B), the United States court of
8 appeals shall have jurisdiction to affirm the ac-
9 tion of the Secretary or to set it aside, in whole
10 or in part. The judgment of the court shall be
11 subject to review by the Supreme Court of the
12 United States upon certiorari or certification as
13 provided in section 1254 of title 28, United
14 States Code.

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

16 “(a) IN GENERAL.—A local educational agency is eli-
17 gible for assistance under this part for a fiscal year if such
18 agency demonstrates to the satisfaction of the State edu-
19 cational agency that it meets each of the following condi-
20 tions:

21 “(1) CONSISTENCY WITH STATE POLICIES.—
22 The local educational agency, in providing for the
23 education of children with disabilities within its ju-
24 risdiction, has in effect policies, procedures, and pro-

1 grams that are consistent with the State policies and
2 procedures established under section 612.

3 “(2) USE OF AMOUNTS.—

4 “(A) IN GENERAL.—Amounts provided to
5 the local educational agency under this part
6 shall be expended in accordance with the appli-
7 cable provisions of this part and—

8 “(i) shall be used only to pay the ex-
9 cess costs of providing special education
10 and related services to children with dis-
11 abilities;

12 “(ii) shall be used to supplement
13 State, local, and other Federal funds and
14 not to supplant such funds; and

15 “(iii) shall not be used, except as pro-
16 vided in subparagraphs (B) and (C), to re-
17 duce the level of expenditures for the edu-
18 cation of children with disabilities made by
19 the local educational agency from local
20 funds below the level of those expenditures
21 for the preceding fiscal year.

22 “(B) EXCEPTION.—Notwithstanding the
23 restriction in subparagraph (A)(iii), a local edu-
24 cational agency may reduce the level of expendi-
25 tures where such reduction is attributable to—

1 “(i) the voluntary departure, by re-
2 tirement or otherwise, or departure for just
3 cause, of special education personnel;

4 “(ii) a decrease in the enrollment of
5 children with disabilities;

6 “(iii) the termination of the obligation
7 of the agency, consistent with this part, to
8 provide a program of special education to
9 a particular child with a disability that is
10 an exceptionally costly program, as deter-
11 mined by the State educational agency, be-
12 cause the child—

13 “(I) has left the jurisdiction of
14 the agency;

15 “(II) has reached the age at
16 which the obligation of the agency to
17 provide a free appropriate public edu-
18 cation to the child has terminated; or

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

21 “(iv) the termination of costly expend-
22 itures for long-term purchases, such as the
23 acquisition of equipment or the construc-
24 tion of school facilities.

1 “(C) TREATMENT OF FEDERAL FUNDS IN
2 CERTAIN FISCAL YEARS.—

3 (i) Notwithstanding clauses (ii) and
4 (iii) of subparagraph (A), for any fiscal
5 year for which amounts appropriated to
6 carry out section 611 exceeds
7 \$4,100,000,000, a local educational agency
8 may treat as local funds, for the purpose
9 of such clauses, up to 20 percent of the
10 amount of funds it receives under this part
11 that exceeds the amount it received under
12 this part for the previous fiscal year.

13 “(ii) Notwithstanding clause (i), if a
14 State educational agency determines that a
15 local educational agency is not meeting the
16 requirements of this part, the State edu-
17 cational agency may prohibit the local edu-
18 cational agency from treating funds re-
19 ceived under this part as local funds under
20 clause (i) for any fiscal year, only if it is
21 authorized to do so by the State constitu-
22 tion or a State statute.

23 “(D) SCHOOLWIDE PROGRAMS UNDER
24 TITLE I OF THE ESEA.—Notwithstanding sub-
25 paragraph (A) or any other provision of this

1 part, a local educational agency may use funds
2 received under this part for any fiscal year to
3 carry out a schoolwide program under section
4 1114 of the Elementary and Secondary Edu-
5 cation Act of 1965, except that the amount so
6 used in any such program shall not exceed—

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

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

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

15 “(3) PERSONNEL DEVELOPMENT.—The local
16 educational agency—

17 “(A) shall ensure that all personnel nec-
18 essary to carry out this part are appropriately
19 and adequately prepared, consistent with the re-
20 quirements of section 653(c)(3)(D); and

21 “(B) to the extent such agency determines
22 appropriate, shall contribute to and use the
23 comprehensive system of personnel development
24 of the State established under section
25 612(a)(14).

1 “(4) PERMISSIVE USE OF FUNDS.—Notwith-
2 standing paragraph (2)(A) or section 612(a)(18)(B)
3 (relating to commingled funds), funds provided to
4 the local educational agency under this part may be
5 used for the following activities:

6 “(A) SERVICES AND AIDS THAT ALSO BEN-
7 EFIT NONDISABLED CHILDREN.—For the costs
8 of special education and related services and
9 supplementary aids and services provided in a
10 regular class or other education-related setting
11 to a child with a disability in accordance with
12 the individualized education program of the
13 child, even if one or more nondisabled children
14 benefit from such services.

15 “(B) INTEGRATED AND COORDINATED
16 SERVICES SYSTEM.—To develop and implement
17 a fully integrated and coordinated services sys-
18 tem in accordance with subsection (f).

19 “(5) TREATMENT OF CHARTER SCHOOLS AND
20 THEIR STUDENTS.—In carrying out this part with
21 respect to charter schools that are public schools of
22 the local educational agency, the local educational
23 agency—

24 “(A) serves children with disabilities at-
25 tending those schools in the same manner as it

1 serves children with disabilities in its other
2 schools; and

3 “(B) provides funds under this part to
4 those schools in the same manner as it provides
5 those funds to its other schools.

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

15 “(7) PUBLIC INFORMATION.—The local edu-
16 cational agency shall make available to parents of
17 children with disabilities and to the general public
18 all documents relating to the eligibility of such agen-
19 cy under this part.

20 “(b) EXCEPTION FOR PRIOR LOCAL PLANS.—

21 “(1) IN GENERAL.—If a local educational agen-
22 cy or State agency has on file with the State edu-
23 cational agency policies and procedures that dem-
24 onstrate that such local educational agency, or such
25 State agency, as the case may be, meets any require-

1 ment of subsection (a), including any policies and
2 procedures filed under this part as in effect before
3 the effective date of the Individuals with Disabilities
4 Education Act Amendments of 1997, the State edu-
5 cational agency shall consider such local educational
6 agency or State agency, as the case may be, to have
7 met such requirement for purposes of receiving as-
8 sistance under this part.

9 “(2) MODIFICATION MADE BY LOCAL EDU-
10 CATIONAL AGENCY.—Subject to paragraph (3), an
11 application submitted by a local educational agency
12 in accordance with this section shall remain in effect
13 until it submits to the State educational agency such
14 modifications as the local educational agency deems
15 necessary.

16 “(3) MODIFICATIONS REQUIRED BY STATE
17 EDUCATIONAL AGENCY.—If, after the effective date
18 of the Individuals with Disabilities Education Act
19 Amendments of 1997, the provisions of this Act are
20 amended (or the regulations developed to carry out
21 this Act are amended), or there is a new interpreta-
22 tion of this Act by Federal or State courts, or there
23 is an official finding of noncompliance with Federal
24 or State law or regulations, the State educational
25 agency may require a local educational agency to

1 modify its application only to the extent necessary to
2 ensure the local educational agency's compliance
3 with this part or State law.

4 “(c) NOTIFICATION OF LOCAL EDUCATIONAL AGEN-
5 CY OR STATE AGENCY IN CASE OF INELIGIBILITY.—If the
6 State educational agency determines that a local edu-
7 cational agency or State agency is not eligible under this
8 section, the State educational agency shall notify the local
9 educational agency or State agency, as the case may be,
10 of that determination and shall provide such local edu-
11 cational agency or State agency with reasonable notice and
12 an opportunity for a hearing.

13 “(d) LOCAL EDUCATIONAL AGENCY COMPLIANCE.—

14 “(1) IN GENERAL.—If the State educational
15 agency, after reasonable notice and an opportunity
16 for a hearing, finds that a local educational agency
17 or State agency that has been determined to be eligi-
18 ble under this section is failing to comply with any
19 requirement described in subsection (a), the State
20 educational agency shall reduce or shall not provide
21 any further payments to the local educational agency
22 or State agency until the State educational agency
23 is satisfied that the local educational agency or State
24 agency, as the case may be, is complying with that
25 requirement.

1 “(2) ADDITIONAL REQUIREMENT.—Any State
2 agency or local educational agency in receipt of a no-
3 tice described in paragraph (1) shall, by means of
4 public notice, take such measures as may be nec-
5 essary to bring the pendency of an action pursuant
6 to this subsection to the attention of the public with-
7 in the jurisdiction of such agency.

8 “(3) CONSIDERATION.—In carrying out its re-
9 sponsibilities under paragraph (1), the State edu-
10 cational agency shall consider any decision made in
11 a hearing held under section 615 that is adverse to
12 the local educational agency or State agency involved
13 in that decision.

14 “(e) JOINT ESTABLISHMENT OF ELIGIBILITY.—

15 “(1) JOINT ESTABLISHMENT.—

16 “(A) IN GENERAL.—A State educational
17 agency may require a local educational agency
18 to establish its eligibility jointly with another
19 local educational agency if the State educational
20 agency determines that the local educational
21 agency would be ineligible under this section be-
22 cause the local educational agency would not be
23 able to establish and maintain programs of suf-
24 ficient size and scope to effectively meet the
25 needs of children with disabilities.

1 “(B) CHARTER SCHOOL EXCEPTION.—A
2 State educational agency may not require a
3 charter school that is a local educational agency
4 to jointly establish its eligibility under subpara-
5 graph (A) unless it is explicitly permitted to do
6 so under the State’s charter school statute.

7 “(2) AMOUNT OF PAYMENTS.—If a State edu-
8 cational agency requires the joint establishment of
9 eligibility under paragraph (1), the total amount of
10 funds made available to the affected local edu-
11 cational agencies shall be equal to the sum of the
12 payments that each such local educational agency
13 would have received under section 611(g) if such
14 agencies were eligible for such payments.

15 “(3) REQUIREMENTS.—Local educational agen-
16 cies that establish joint eligibility under this sub-
17 section shall—

18 “(A) adopt policies and procedures that
19 are consistent with the State’s policies and pro-
20 cedures under section 612(a); and

21 “(B) be jointly responsible for implement-
22 ing programs that receive assistance under this
23 part.

24 “(4) REQUIREMENTS FOR EDUCATIONAL SERV-
25 ICE AGENCIES.—

1 “(A) IN GENERAL.—If an educational serv-
2 ice agency is required by State law to carry out
3 programs under this part, the joint responsibil-
4 ities given to local educational agencies under
5 this subsection shall—

6 “(i) not apply to the administration
7 and disbursement of any payments re-
8 ceived by that educational service agency;
9 and

10 “(ii) be carried out only by that edu-
11 cational service agency.

12 “(B) ADDITIONAL REQUIREMENT.—Not-
13 withstanding any other provision of this sub-
14 section, an educational service agency shall pro-
15 vide for the education of children with disabil-
16 ities in the least restrictive environment, as re-
17 quired by section 612(a)(5).

18 “(f) COORDINATED SERVICES SYSTEM.—

19 “(1) IN GENERAL.—A local educational agency
20 may not use more than 5 percent of the amount
21 such agency receives under this part for any fiscal
22 year, in combination with other amounts (which
23 shall include amounts other than education funds),
24 to develop and implement a coordinated services sys-
25 tem designed to improve results for children and

1 families, including children with disabilities and their
2 families.

3 “(2) ACTIVITIES.—In implementing a coordi-
4 nated services system under this subsection, a local
5 educational agency may carry out activities that in-
6 clude—

7 “(A) improving the effectiveness and effi-
8 ciency of service delivery, including developing
9 strategies that promote accountability for re-
10 sults;

11 “(B) service coordination and case man-
12 agement that facilitates the linkage of individ-
13 ualized education programs under this part and
14 individualized family service plans under part C
15 with individualized service plans under multiple
16 Federal and State programs, such as title I of
17 the Rehabilitation Act of 1973 (vocational reha-
18 bilitation), title XIX of the Social Security Act
19 (Medicaid), and title XVI of the Social Security
20 Act (supplemental security income);

21 “(C) developing and implementing inter-
22 agency financing strategies for the provision of
23 education, health, mental health, and social
24 services, including transition services and relat-
25 ed services under this Act; and

1 “(D) interagency personnel development
2 for individuals working on coordinated services.

3 “(3) COORDINATION WITH CERTAIN PROJECTS
4 UNDER ELEMENTARY AND SECONDARY EDUCATION
5 ACT OF 1965.—If a local educational agency is carry-
6 ing out a coordinated services project under title XI
7 of the Elementary and Secondary Education Act of
8 1965 and a coordinated services project under this
9 part in the same schools, such agency shall use
10 amounts under this subsection in accordance with
11 the requirements of that title.

12 “(g) SCHOOL-BASED IMPROVEMENT PLAN.—

13 “(1) IN GENERAL.—Each local educational
14 agency may, in accordance with paragraph (2), use
15 funds made available under this part to permit a
16 public school within the jurisdiction of the local edu-
17 cational agency to design, implement, and evaluate
18 a school-based improvement plan that is consistent
19 with the purposes described in section 651(b) and
20 that is designed to improve educational and transi-
21 tional results for all children with disabilities and, as
22 appropriate, for other children consistent with sub-
23 paragraphs (A) and (B) of subsection (a)(4) in that
24 public school.

25 “(2) AUTHORITY.—

1 “(A) IN GENERAL.—A State educational
2 agency may grant authority to a local edu-
3 cational agency to permit a public school de-
4 scribed in paragraph (1) (through a school-
5 based standing panel established under para-
6 graph (4)(B)) to design, implement, and evalu-
7 ate a school-based improvement plan described
8 in paragraph (1) for a period not to exceed 3
9 years.

10 “(B) RESPONSIBILITY OF LOCAL EDU-
11 CATIONAL AGENCY.—If a State educational
12 agency grants the authority described in sub-
13 paragraph (A), a local educational agency that
14 is granted such authority shall have the sole re-
15 sponsibility of oversight of all activities relating
16 to the design, implementation, and evaluation of
17 any school-based improvement plan that a pub-
18 lic school is permitted to design under this sub-
19 section.

20 “(3) PLAN REQUIREMENTS.—A school-based
21 improvement plan described in paragraph (1) shall—

22 “(A) be designed to be consistent with the
23 purposes described in section 651(b) and to im-
24 prove educational and transitional results for all
25 children with disabilities and, as appropriate,

1 for other children consistent with subpara-
2 graphs (A) and (B) of subsection (a)(4), who
3 attend the school for which the plan is designed
4 and implemented;

5 “(B) be designed, evaluated, and, as ap-
6 propriate, implemented by a school-based stand-
7 ing panel established in accordance with para-
8 graph (4)(B);

9 “(C) include goals and measurable indica-
10 tors to assess the progress of the public school
11 in meeting such goals; and

12 “(D) ensure that all children with disabil-
13 ities receive the services described in the indi-
14 vidualized education programs of such children.

15 “(4) RESPONSIBILITIES OF THE LOCAL EDU-
16 CATIONAL AGENCY.—A local educational agency that
17 is granted authority under paragraph (2) to permit
18 a public school to design, implement, and evaluate a
19 school-based improvement plan shall—

20 “(A) select each school under the jurisdic-
21 tion of such agency that is eligible to design,
22 implement, and evaluate such a plan;

23 “(B) require each school selected under
24 subparagraph (A), in accordance with criteria
25 established by such local educational agency

1 under subparagraph (C), to establish a school-
2 based standing panel to carry out the duties de-
3 scribed in paragraph (3)(B);

4 “(C) establish—

5 “(i) criteria that shall be used by such
6 local educational agency in the selection of
7 an eligible school under subparagraph (A);

8 “(ii) criteria that shall be used by a
9 public school selected under subparagraph
10 (A) in the establishment of a school-based
11 standing panel to carry out the duties de-
12 scribed in paragraph (3)(B) and that shall
13 ensure that the membership of such panel
14 reflects the diversity of the community in
15 which the public school is located and in-
16 cludes, at a minimum—

17 “(I) parents of children with dis-
18 abilities who attend such public
19 school, including parents of children
20 with disabilities from unserved and
21 underserved populations, as appro-
22 priate;

23 “(II) special education and gen-
24 eral education teachers of such public
25 school;

1 “(III) special education and gen-
2 eral education administrators, or the
3 designee of such administrators, of
4 such public school; and

5 “(IV) related services providers
6 who are responsible for providing
7 services to the children with disabil-
8 ities who attend such public school;
9 and

10 “(iii) criteria that shall be used by
11 such local educational agency with respect
12 to the distribution of funds under this part
13 to carry out this subsection;

14 “(D) disseminate the criteria established
15 under subparagraph (C) to local school district
16 personnel and local parent organizations within
17 the jurisdiction of such local educational agen-
18 cy;

19 “(E) require a public school that desires to
20 design, implement, and evaluate a school-based
21 improvement plan to submit an application at
22 such time, in such manner, and accompanied by
23 such information as such local educational
24 agency shall reasonably require; and

1 “(F) establish procedures for approval by
2 such local educational agency of a school-based
3 improvement plan designed under this sub-
4 section.

5 “(5) LIMITATION.—A school-based improve-
6 ment plan described in paragraph (1) may be sub-
7 mitted to a local educational agency for approval
8 only if a consensus with respect to any matter relat-
9 ing to the design, implementation, or evaluation of
10 the goals of such plan is reached by the school-based
11 standing panel that designed such plan.

12 “(6) ADDITIONAL REQUIREMENTS.—

13 “(A) PARENTAL INVOLVEMENT.—In carry-
14 ing out the requirements of this subsection, a
15 local educational agency shall ensure that the
16 parents of children with disabilities are involved
17 in the design, evaluation, and, where appro-
18 priate, implementation of school-based improve-
19 ment plans in accordance with this subsection.

20 “(B) PLAN APPROVAL.—A local edu-
21 cational agency may approve a school-based im-
22 provement plan of a public school within the ju-
23 risdiction of such agency for a period of 3
24 years, if—

1 “(i) the approval is consistent with
2 the policies, procedures, and practices es-
3 tablished by such local educational agency
4 and in accordance with this subsection;
5 and

6 “(ii) a majority of parents of children
7 who are members of the school-based
8 standing panel, and a majority of other
9 members of the school-based standing
10 panel, that designed such plan agree in
11 writing to such plan.

12 “(7) EXTENSION OF PLAN.—If a public school
13 within the jurisdiction of a local educational agency
14 meets the applicable requirements and criteria de-
15 scribed in paragraphs (3) and (4) at the expiration
16 of the 3-year approval period described in paragraph
17 (6)(B), such agency may approve a school-based im-
18 provement plan of such school for an additional 3-
19 year period.

20 “(h) DIRECT SERVICES BY THE STATE EDU-
21 CATIONAL AGENCY.—

22 “(1) IN GENERAL.—A State educational agency
23 shall use the payments that would otherwise have
24 been available to a local educational agency or to a
25 State agency to provide special education and relat-

1 ed services directly to children with disabilities resid-
2 ing in the area served by that local agency, or for
3 whom that State agency is responsible, if the State
4 educational agency determines that the local edu-
5 cation agency or State agency, as the case may be—

6 “(A) has not provided the information
7 needed to establish the eligibility of such agency
8 under this section;

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

12 “(C) is unable or unwilling to be consoli-
13 dated with one or more local educational agen-
14 cies in order to establish and maintain such
15 programs; or

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

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

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

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

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

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

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

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

9 **“SEC. 614. EVALUATIONS, ELIGIBILITY DETERMINATIONS,**
 10 **INDIVIDUALIZED EDUCATION PROGRAMS,**
 11 **AND EDUCATIONAL PLACEMENTS.**

12 “(a) EVALUATIONS AND REEVALUATIONS.—

13 “(1) INITIAL EVALUATIONS.—

14 “(A) IN GENERAL.—A State educational
 15 agency, other State agency, or local educational
 16 agency shall conduct a full and individual initial
 17 evaluation, in accordance with this paragraph
 18 and subsection (b), before the initial provision
 19 of special education and related services to a
 20 child with a disability under this part.

21 “(B) PROCEDURES.—Such initial evalua-
 22 tion shall consist of procedures—

23 “(i) to determine whether a child is a
 24 child with a disability (as defined in sec-
 25 tion 602(3)); and

1 “(ii) to determine the educational
2 needs of such child.

3 “(C) PARENTAL CONSENT.—

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

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

22 “(2) REEVALUATIONS.—A local educational
23 agency shall ensure that a reevaluation of each child
24 with a disability is conducted—

1 “(A) if conditions warrant a reevaluation
2 or if the child’s parent or teacher requests a re-
3 evaluation, but at least once every 3 years; and

4 “(B) in accordance with subsections (b)
5 and (c).

6 “(b) EVALUATION PROCEDURES.—

7 “(1) NOTICE.—The local educational agency
8 shall provide notice to the parents of a child with a
9 disability, in accordance with subsections (b)(3),
10 (b)(4), and (c) of section 615, that describes any
11 evaluation procedures such agency proposes to con-
12 duct.

13 “(2) CONDUCT OF EVALUATION.—In conduct-
14 ing the evaluation, the local educational agency
15 shall—

16 “(A) use a variety of assessment tools and
17 strategies to gather relevant functional and de-
18 velopmental information, including information
19 provided by the parent, that may assist in de-
20 termining whether the child is a child with a
21 disability and the content of the child’s individ-
22 ualized education program, including informa-
23 tion related to enabling the child to be involved
24 in and progress in the general curriculum or,

1 for preschool children, to participate in appro-
2 priate activities;

3 “(B) not use any single procedure as the
4 sole criterion for determining whether a child is
5 a child with a disability or determining an ap-
6 propriate educational program for the child;
7 and

8 “(C) use technically sound instruments
9 that may assess the relative contribution of cog-
10 nitive and behavioral factors, in addition to
11 physical or developmental factors.

12 “(3) ADDITIONAL REQUIREMENTS.—Each local
13 educational agency shall ensure that—

14 “(A) tests and other evaluation materials
15 used to assess a child under this section—

16 “(i) are selected and administered so
17 as not to be discriminatory on a racial or
18 cultural basis; and

19 “(ii) are provided and administered in
20 the child’s native language or other mode
21 of communication, unless it is clearly not
22 feasible to do so; and

23 “(B) any standardized tests that are given
24 to the child—

1 “(i) have been validated for the spe-
2 cific purpose for which they are used;

3 “(ii) are administered by trained and
4 knowledgeable personnel; and

5 “(iii) are administered in accordance
6 with any instructions provided by the pro-
7 ducer of such tests;

8 “(C) the child is assessed in all areas of
9 suspected disability; and

10 “(D) assessment tools and strategies that
11 provide relevant information that directly as-
12 sists persons in determining the educational
13 needs of the child are provided.

14 “(4) DETERMINATION OF ELIGIBILITY.—Upon
15 completion of administration of tests and other eval-
16 uation materials—

17 “(A) the determination of whether the
18 child is a child with a disability as defined in
19 section 602(3) shall be made by a team of
20 qualified professionals and the parent of the
21 child in accordance with paragraph (5); and

22 “(B) a copy of the evaluation report and
23 the documentation of determination of eligibility
24 will be given to the parent.

1 “(5) SPECIAL RULE FOR ELIGIBILITY DETER-
2 MINATION.—In making a determination of eligibility
3 under paragraph (4)(A), a child shall not be deter-
4 mined to be a child with a disability if the deter-
5 minant factor for such determination is lack of in-
6 struction in reading or math or limited English pro-
7 ficiency.

8 “(c) ADDITIONAL REQUIREMENTS FOR EVALUATION
9 AND REEVALUATIONS.—

10 “(1) REVIEW OF EXISTING EVALUATION
11 DATA.—As part of an initial evaluation (if appro-
12 priate) and as part of any reevaluation under this
13 section, the IEP Team described in subsection
14 (d)(1)(B) and other qualified professionals, as ap-
15 propriate, shall—

16 “(A) review existing evaluation data on the
17 child, including evaluations and information
18 provided by the parents of the child, current
19 classroom-based assessments and observations,
20 and teacher and related services providers ob-
21 servation; and

22 “(B) on the basis of that review, and input
23 from the child’s parents, identify what addi-
24 tional data, if any, are needed to determine—

1 “(i) whether the child has a particular
2 category of disability, as described in sec-
3 tion 602(3), or, in case of a reevaluation of
4 a child, whether the child continues to have
5 such a disability;

6 “(ii) the present levels of performance
7 and educational needs of the child;

8 “(iii) whether the child needs special
9 education and related services, or in the
10 case of a reevaluation of a child, whether
11 the child continues to need special edu-
12 cation and related services; and

13 “(iv) whether any additions or modi-
14 fications to the special education and relat-
15 ed services are needed to enable the child
16 to meet the measurable annual goals set
17 out in the individualized education pro-
18 gram of the child and to participate, as ap-
19 propriate, in the general curriculum.

20 “(2) SOURCE OF DATA.—The local educational
21 agency shall administer such tests and other evalua-
22 tion materials as may be needed to produce the data
23 identified by the IEP Team under paragraph (1)(B).

24 “(3) PARENTAL CONSENT.—Each local edu-
25 cational agency shall obtain informed parental con-

1 sent, in accordance with subsection (a)(1)(C), prior
2 to conducting any reevaluation of a child with a dis-
3 ability, except that such informed parent consent
4 need not be obtained if the local educational agency
5 can demonstrate that it had taken reasonable meas-
6 ures to obtain such consent and the child's parent
7 has failed to respond.

8 “(4) REQUIREMENTS IF ADDITIONAL DATA ARE
9 NOT NEEDED.—If the IEP Team and other qualified
10 professionals, as appropriate, determine that no ad-
11 ditional data are needed to determine whether the
12 child continues to be a child with a disability, the
13 local educational agency—

14 “(A) shall notify the child's parents of—

15 “(i) that determination and the rea-
16 sons for it; and

17 “(ii) the right of such parents to re-
18 quest an assessment to determine whether
19 the child continues to be a child with a dis-
20 ability; and

21 “(B) shall not be required to conduct such
22 an assessment unless requested to by the child's
23 parents.

24 “(5) EVALUATIONS BEFORE CHANGE IN ELIGI-
25 BILITY.—A local educational agency shall evaluate a

1 child with a disability in accordance with this section
2 before determining that the child is no longer a child
3 with a disability.

4 “(d) INDIVIDUALIZED EDUCATION PROGRAMS.—

5 “(1) DEFINITIONS.—As used in this title:

6 “(A) INDIVIDUALIZED EDUCATION PRO-
7 GRAM.—The term ‘individualized education pro-
8 gram’ or ‘IEP’ means a written statement for
9 each child with a disability that is developed,
10 reviewed, and revised in accordance with this
11 section and that includes—

12 “(i) a statement of the child’s present
13 levels of educational performance, includ-
14 ing—

15 “(I) how the child’s disability af-
16 fects the child’s involvement and
17 progress in the general curriculum; or

18 “(II) for preschool children, as
19 appropriate, how the disability affects
20 the child’s participation in appropriate
21 activities;

22 “(ii) a statement of measurable an-
23 nual goals, including benchmarks or short-
24 term objectives, related to—

1 “(I) meeting the child’s needs
2 that result from the child’s disability
3 to enable the child to be involved in
4 and progress in the general curricu-
5 lum; and

6 “(II) meeting each of the child’s
7 other educational needs that result
8 from the child’s disability;

9 “(iii) a statement of the special edu-
10 cation and related services and supple-
11 mentary aids and services to be provided to
12 the child, or on behalf of the child, and a
13 statement of the program modifications or
14 supports for school personnel that will be
15 provided for the child—

16 “(I) to advance appropriately to-
17 ward attaining the annual goals;

18 “(II) to be involved and progress
19 in the general curriculum in accord-
20 ance with clause (i) and to participate
21 in extracurricular and other nonaca-
22 demic activities; and

23 “(III) to be educated and partici-
24 pate with other children with disabil-

1 ities and nondisabled children in the
2 activities described in this paragraph;

3 “(iv) an explanation of the extent, if
4 any, to which the child will not participate
5 with nondisabled children in the regular
6 class and in the activities described in
7 clause (iii);

8 “(v)(I) a statement of any individual
9 modifications in the administration of
10 State or districtwide assessments of stu-
11 dent achievement that are needed in order
12 for the child to participate in such assess-
13 ment; and

14 “(II) if the IEP Team determines
15 that the child will not participate in a par-
16 ticular State or districtwide assessment of
17 student achievement (or part of such an
18 assessment), a statement of—

19 “(aa) why that assessment
20 is not appropriate for the child;
21 and

22 “(bb) how the child will be
23 assessed;

24 “(vi) the projected date for the begin-
25 ning of the services and modifications de-

1 scribed in clause (iii), and the anticipated
2 frequency, location, and duration of those
3 services and modifications;

4 “(vii)(I) beginning at age 14, and up-
5 dated annually, a statement of the transi-
6 tion service needs of the child under the
7 applicable components of the child’s IEP
8 that focuses on the child’s courses of study
9 (such as participation in advanced-place-
10 ment courses or a vocational education
11 program);

12 “(II) beginning at age 16 (or younger,
13 if determined appropriate by the IEP
14 Team), a statement of needed transition
15 services for the child, including, when ap-
16 propriate, a statement of the interagency
17 responsibilities or any needed linkages; and

18 “(III) beginning at least one year be-
19 fore the child reaches the age of majority
20 under State law, a statement that the child
21 has been informed of his or her rights
22 under this title, if any, that will transfer to
23 the child on reaching the age of majority
24 under section 615(m); and

25 “(viii) a statement of—

1 “(I) how the child’s progress to-
2 ward the annual goals described in
3 clause (ii) will be measured; and

4 “(II) how the child’s parents will
5 be regularly informed (by such means
6 as periodic report cards), at least as
7 often as parents are informed of their
8 nondisabled children’s progress, of—

9 “(aa) their child’s progress
10 toward the annual goals de-
11 scribed in clause (ii); and

12 “(bb) the extent to which
13 that progress is sufficient to en-
14 able the child to achieve the goals
15 by the end of the year.

16 “(B) INDIVIDUALIZED EDUCATION PRO-
17 GRAM TEAM.—The term ‘individualized edu-
18 cation program team’ or ‘IEP Team’ means a
19 group of individuals composed of—

20 “(i) the parents of a child with a dis-
21 ability;

22 “(ii) at least one regular education
23 teacher of such child (if the child is, or
24 may be, participating in the regular edu-
25 cation environment);

1 “(iii) at least one special education
2 teacher, or where appropriate, at least one
3 special education provider of such child;

4 “(iv) a representative of the local edu-
5 cational agency who—

6 “(I) is qualified to provide, or su-
7 pervise the provision of, specially de-
8 signed instruction to meet the unique
9 needs of children with disabilities;

10 “(II) is knowledgeable about the
11 general curriculum; and

12 “(III) is knowledgeable about the
13 availability of resources of the local
14 educational agency;

15 “(v) an individual who can interpret
16 the instructional implications of evaluation
17 results, who may be a member of the team
18 described in clauses (ii) through (vi);

19 “(vi) at the discretion of the parent or
20 the agency, other individuals who have
21 knowledge or special expertise regarding
22 the child, including related services person-
23 nel as appropriate; and

24 “(vii) whenever appropriate, the child
25 with a disability.

1 “(2) REQUIREMENT THAT PROGRAM BE IN EF-
2 FECT.—

3 “(A) IN GENERAL.—At the beginning of
4 each school year, each local educational agency,
5 State educational agency, or other State agen-
6 cy, as the case may be, shall have in effect, for
7 each child with a disability in its jurisdiction,
8 an individualized education program, as defined
9 in paragraph (1)(A).

10 “(B) PROGRAM FOR CHILD AGED 3
11 THROUGH 5.—In the case of a child with a dis-
12 ability aged 3 through 5 (or, at the discretion
13 of the State educational agency, a 2 year-old
14 child with a disability who will turn age 3 dur-
15 ing the school year), an individualized family
16 service plan that contains the material de-
17 scribed in section 636, and that is developed in
18 accordance with this section, may serve as the
19 IEP of the child if using that plan as the IEP
20 is—

21 “(i) consistent with State policy; and

22 “(ii) agreed to by the agency and the
23 child’s parents.

24 “(3) DEVELOPMENT OF IEP.—

1 “(A) IN GENERAL.—In developing each
2 child’s IEP, the IEP Team, subject to subpara-
3 graph (C), shall consider—

4 “(i) the strengths of the child and the
5 concerns of the parents for enhancing the
6 education of their child; and

7 “(ii) the results of the initial evalua-
8 tion or most recent evaluation of the child.

9 “(B) CONSIDERATION OF SPECIAL FAC-
10 TORS.—The IEP Team shall—

11 “(i) in the case of a child whose be-
12 havior impedes his or her learning or that
13 of others, consider, when appropriate,
14 strategies, including positive behavioral
15 interventions, strategies, and supports to
16 address that behavior;

17 “(ii) in the case of a child with limited
18 English proficiency, consider the language
19 needs of the child as such needs relate to
20 the child’s IEP;

21 “(iii) in the case of a child who is
22 blind or visually impaired, provide for in-
23 struction in Braille and the use of Braille
24 unless the IEP Team determines, after an
25 evaluation of the child’s reading and writ-

1 ing skills, needs, and appropriate reading
2 and writing media (including an evaluation
3 of the child’s future needs for instruction
4 in Braille or the use of Braille), that in-
5 struction in Braille or the use of Braille is
6 not appropriate for the child;

7 “(iv) consider the communication
8 needs of the child, and in the case of a
9 child who is deaf or hard of hearing, con-
10 sider the child’s language and communica-
11 tion needs, opportunities for direct commu-
12 nications with peers and professional per-
13 sonnel in the child’s language and commu-
14 nication mode, academic level, and full
15 range of needs, including opportunities for
16 direct instruction in the child’s language
17 and communication mode; and

18 “(v) consider whether the child re-
19 quires assistive technology devices and
20 services.

21 “(C) REQUIREMENT WITH RESPECT TO
22 REGULAR EDUCATION TEACHER.—The regular
23 education teacher of the child, as a member of
24 the IEP Team, shall, to the extent appropriate,
25 participate in the development of the IEP of

1 the child, including the determination of appro-
2 priate positive behavioral interventions and
3 strategies and the determination of supple-
4 mentary aids and services, program modifica-
5 tions, and support for school personnel consist-
6 ent with paragraph (1)(A)(iii).

7 “(4) REVIEW AND REVISION OF IEP.—

8 “(A) IN GENERAL.—The local educational
9 agency shall ensure that, subject to subpara-
10 graph (B), the IEP Team—

11 “(i) reviews the child’s IEP periodi-
12 cally, but not less than annually to deter-
13 mine whether the annual goals for the
14 child are being achieved; and

15 “(ii) revises the IEP as appropriate to
16 address—

17 “(I) any lack of expected
18 progress toward the annual goals and
19 in the general curriculum, where ap-
20 propriate;

21 “(II) the results of any reevalua-
22 tion conducted under this section;

23 “(III) information about the
24 child provided to, or by, the parents,
25 as described in subsection (c)(1)(B);

1 “(IV) the child’s anticipated
2 needs; or

3 “(V) other matters.

4 “(B) REQUIREMENT WITH RESPECT TO
5 REGULAR EDUCATION TEACHER.—The regular
6 education teacher of the child, as a member of
7 the IEP Team, shall, to the extent appropriate,
8 participate in the review and revision of the
9 IEP of the child.

10 “(5) FAILURE TO MEET TRANSITION OBJEC-
11 TIVES.—If a participating agency, other than the
12 local educational agency, fails to provide the transi-
13 tion services described in the IEP in accordance with
14 paragraph (1)(A)(vii), the local educational agency
15 shall reconvene the IEP Team to identify alternative
16 strategies to meet the transition objectives for the
17 child set out in that program.

18 “(6) CHILDREN WITH DISABILITIES IN ADULT
19 PRISONS.—

20 “(A) IN GENERAL.—The following require-
21 ments do not apply to children with disabilities
22 who are convicted as adults under State law
23 and incarcerated in adult prisons:

24 “(i) The requirements contained in
25 section 612(a)(17) and paragraph

1 (1)(A)(v) of this subsection (relating to
2 participation of children with disabilities in
3 general assessments).

4 “(ii) The requirements of subclauses
5 (I) and (II) of paragraph (1)(A)(vii) of
6 this subsection (relating to transition plan-
7 ning and transition services), do not apply
8 with respect to such children whose eligi-
9 bility under this part will end, because of
10 their age, before they will be released from
11 prison.

12 “(B) ADDITIONAL REQUIREMENT.—If a
13 child with a disability is convicted as an adult
14 under State law and incarcerated in an adult
15 prison, the child’s IEP team may modify the
16 child’s IEP or placement notwithstanding the
17 requirements of sections 612(a)(5)(A) and
18 614(d)(1)(A) if the State has demonstrated a
19 bona fide security or compelling penological in-
20 terest that cannot otherwise be accommodated.

21 “(e) CONSTRUCTION.—Nothing in this section shall
22 be construed to require the IEP team to include informa-
23 tion under one component of a child’s IEP that is already
24 contained under another component of such IEP.

1 “(f) EDUCATIONAL PLACEMENTS.—Each local edu-
2 cational agency or State educational agency shall ensure
3 that the parents of each child with a disability are mem-
4 bers of any group that makes decisions on the educational
5 placement of their child.

6 **“SEC. 615. PROCEDURAL SAFEGUARDS.**

7 “(a) ESTABLISHMENT OF PROCEDURES.—Any State
8 educational agency, State agency, or local educational
9 agency that receives assistance under this part shall estab-
10 lish and maintain procedures in accordance with this sec-
11 tion to ensure that children with disabilities and their par-
12 ents are guaranteed procedural safeguards with respect to
13 the provision of free appropriate public education by such
14 agencies.

15 “(b) TYPES OF PROCEDURES.—The procedures re-
16 quired by this section shall include—

17 “(1) an opportunity for the parents of a child
18 with a disability to examine all records relating to
19 such child and to participate in meetings with re-
20 spect to the identification, evaluation, and edu-
21 cational placement of the child, and the provision of
22 a free appropriate public education to such child,
23 and to obtain an independent educational evaluation
24 of the child;

1 “(2) procedures to protect the rights of the
2 child whenever the parents of the child are not
3 known, the agency cannot, after reasonable efforts,
4 locate the parents, or the child is a ward of the
5 State, including the assignment of an individual
6 (who shall not be an employee of the State edu-
7 cational agency, the local educational agency, or any
8 other agency that is involved in the education or
9 care of the child) to act as a surrogate for the par-
10 ents;

11 “(3) written prior notice to the parents of the
12 child whenever such agency—

13 “(A) proposes to initiate or change; or

14 “(B) refuses to initiate or change;

15 the identification, evaluation, or educational place-
16 ment of the child, in accordance with subsection (c),
17 or the provision of a free appropriate public edu-
18 cation to the child;

19 “(4) procedures designed to ensure that the no-
20 tice required by paragraph (3) is in the native lan-
21 guage of the parents, unless it clearly is not feasible
22 to do so;

23 “(5) an opportunity for mediation in accordance
24 with subsection (e);

1 “(6) an opportunity to present complaints with
2 respect to any matter relating to the identification,
3 evaluation, or educational placement of the child, or
4 the provision of a free appropriate public education
5 to such child;

6 “(7) procedures that require the parent of a
7 child with a disability, or the attorney representing
8 the child, to provide notice (which shall remain con-
9 fidential)—

10 “(A) to the State educational agency or
11 local educational agency, as the case may be, in
12 the complaint filed under paragraph (6); and

13 “(B) that shall include—

14 “(i) the name of the child, the address
15 of the residence of the child, and the name
16 of the school the child is attending;

17 “(ii) a description of the nature of the
18 problem of the child relating to such pro-
19 posed initiation or change, including facts
20 relating to such problem; and

21 “(iii) a proposed resolution of the
22 problem to the extent known and available
23 to the parents at the time; and

24 “(8) procedures that require the State edu-
25 cational agency to develop a model form to assist

1 parents in filing a complaint in accordance with
2 paragraph (7).

3 “(c) CONTENT OF PRIOR WRITTEN NOTICE.—The
4 notice required by subsection (b)(3) shall include—

5 “(1) a description of the action proposed or re-
6 fused by the agency;

7 “(2) an explanation of why the agency proposes
8 or refuses to take the action;

9 “(3) a description of any other options that the
10 agency considered and the reasons why those options
11 were rejected;

12 “(4) a description of each evaluation procedure,
13 test, record, or report the agency used as a basis for
14 the proposed or refused action;

15 “(5) a description of any other factors that are
16 relevant to the agency’s proposal or refusal;

17 “(6) a statement that the parents of a child
18 with a disability have protection under the proce-
19 dural safeguards of this part and, if this notice is
20 not an initial referral for evaluation, the means by
21 which a copy of a description of the procedural safe-
22 guards can be obtained; and

23 “(7) sources for parents to contact to obtain as-
24 sistance in understanding the provisions of this part.

25 “(d) PROCEDURAL SAFEGUARDS NOTICE.—

1 “(1) IN GENERAL.—A copy of the procedural
2 safeguards available to the parents of a child with
3 a disability shall be given to the parents, at a mini-
4 mum—

5 “(A) upon initial referral for evaluation;

6 “(B) upon each notification of an individ-
7 ualized education program meeting and upon
8 reevaluation of the child; and

9 “(C) upon registration of a complaint
10 under subsection (b)(6).

11 “(2) CONTENTS.—The procedural safeguards
12 notice shall include a full explanation of the proce-
13 dural safeguards, written in the native language of
14 the parents, unless it clearly is not feasible to do so,
15 and written in an easily understandable manner,
16 available under this section and under regulations
17 promulgated by the Secretary relating to—

18 “(A) independent educational evaluation;

19 “(B) prior written notice;

20 “(C) parental consent;

21 “(D) access to educational records;

22 “(E) opportunity to present complaints;

23 “(F) the child’s placement during pend-
24 ency of due process proceedings;

1 “(G) procedures for students who are sub-
2 ject to placement in an interim alternative edu-
3 cational setting;

4 “(H) requirements for unilateral placement
5 by parents of children in private schools at pub-
6 lic expense;

7 “(I) mediation;

8 “(J) due process hearings, including re-
9 quirements for disclosure of evaluation results
10 and recommendations;

11 “(K) State-level appeals (if applicable in
12 that State);

13 “(L) civil actions; and

14 “(M) attorneys’ fees.

15 “(e) MEDIATION.—

16 “(1) IN GENERAL.—Any State educational
17 agency or local educational agency that receives as-
18 sistance under this part shall ensure that procedures
19 are established and implemented to allow parties to
20 disputes involving any matter described in sub-
21 section (b)(6) to resolve such disputes through a me-
22 diation process which, at a minimum, shall be avail-
23 able whenever a hearing is requested under sub-
24 section (f) or (k).

1 “(2) REQUIREMENTS.—Such procedures shall
2 meet the following requirements:

3 “(A) The procedures shall ensure that the
4 mediation process—

5 “(i) is voluntary on the part of the
6 parties;

7 “(ii) is not used to deny or delay a
8 parent’s right to a due process hearing
9 under subsection (f), or to deny any other
10 rights afforded under this part; and

11 “(iii) is conducted by a qualified and
12 impartial mediator who is trained in effec-
13 tive mediation techniques.

14 “(B) A local educational agency or a State
15 agency may establish procedures to require par-
16 ents who choose not to use the mediation proc-
17 ess to meet, at a time and location convenient
18 to the parents, with a disinterested party who
19 is under contract with—

20 “(i) a parent training and information
21 center or community parent resource cen-
22 ter in the State established under section
23 682 or 683; or

24 “(ii) an appropriate alternative dis-
25 pute resolution entity;

1 to encourage the use, and explain the benefits,
2 of the mediation process to the parents.

3 “(C) The State shall maintain a list of in-
4 dividuals who are qualified mediators and
5 knowledgeable in laws and regulations relating
6 to the provision of special education and related
7 services.

8 “(D) The State shall bear the cost of the
9 mediation process, including the costs of meet-
10 ings described in subparagraph (B).

11 “(E) Each session in the mediation process
12 shall be scheduled in a timely manner and shall
13 be held in a location that is convenient to the
14 parties to the dispute.

15 “(F) An agreement reached by the parties
16 to the dispute in the mediation process shall be
17 set forth in a written mediation agreement.

18 “(G) Discussions that occur during the
19 mediation process shall be confidential and may
20 not be used as evidence in any subsequent due
21 process hearings or civil proceedings and the
22 parties to the mediation process may be re-
23 quired to sign a confidentiality pledge prior to
24 the commencement of such process.

25 “(f) IMPARTIAL DUE PROCESS HEARING.—

1 “(1) IN GENERAL.—Whenever a complaint has
2 been received under subsection (b)(6) or (k) of this
3 section, the parents involved in such complaint shall
4 have an opportunity for an impartial due process
5 hearing, which shall be conducted by the State edu-
6 cational agency or by the local educational agency,
7 as determined by State law or by the State edu-
8 cational agency.

9 “(2) DISCLOSURE OF EVALUATIONS AND REC-
10 COMMENDATIONS.—

11 “(A) IN GENERAL.—At least 5 business
12 days prior to a hearing conducted pursuant to
13 paragraph (1), each party shall disclose to all
14 other parties all evaluations completed by that
15 date and recommendations based on the offer-
16 ing party’s evaluations that the party intends to
17 use at the hearing.

18 “(B) FAILURE TO DISCLOSE.—A hearing
19 officer may bar any party that fails to comply
20 with subparagraph (A) from introducing the
21 relevant evaluation or recommendation at the
22 hearing without the consent of the other party.

23 “(3) LIMITATION ON CONDUCT OF HEARING.—
24 A hearing conducted pursuant to paragraph (1) may
25 not be conducted by an employee of the State edu-

1 cational agency or the local educational agency in-
2 volved in the education or care of the child.

3 “(g) APPEAL.—If the hearing required by subsection
4 (f) is conducted by a local educational agency, any party
5 aggrieved by the findings and decision rendered in such
6 a hearing may appeal such findings and decision to the
7 State educational agency. Such agency shall conduct an
8 impartial review of such decision. The officer conducting
9 such review shall make an independent decision upon com-
10 pletion of such review.

11 “(h) SAFEGUARDS.—Any party to a hearing con-
12 ducted pursuant to subsection (f) or (k), or an appeal con-
13 ducted pursuant to subsection (g), shall be accorded—

14 “(1) the right to be accompanied and advised
15 by counsel and by individuals with special knowledge
16 or training with respect to the problems of children
17 with disabilities;

18 “(2) the right to present evidence and confront,
19 cross-examine, and compel the attendance of wit-
20 nesses;

21 “(3) the right to a written, or, at the option of
22 the parents, electronic verbatim record of such hear-
23 ing; and

24 “(4) the right to written, or, at the option of
25 the parents, electronic findings of fact and decisions

1 (which findings and decisions shall be made available
2 to the public consistent with the requirements of sec-
3 tion 617(c) (relating to the confidentiality of data,
4 information, and records) and shall also be transmit-
5 ted to the advisory panel established pursuant to
6 section 612(a)(21)).

7 “(i) ADMINISTRATIVE PROCEDURES.—

8 “(1) IN GENERAL.—

9 “(A) DECISION MADE IN HEARING.—A de-
10 cision made in a hearing conducted pursuant to
11 subsection (f) or (k) shall be final, except that
12 any party involved in such hearing may appeal
13 such decision under the provisions of subsection
14 (g) and paragraph (2) of this subsection.

15 “(B) DECISION MADE AT APPEAL.—A de-
16 cision made under subsection (g) shall be final,
17 except that any party may bring an action
18 under paragraph (2) of this subsection.

19 “(2) RIGHT TO BRING CIVIL ACTION.—

20 “(A) IN GENERAL.—Any party aggrieved
21 by the findings and decision made under sub-
22 section (f) or (k) who does not have the right
23 to an appeal under subsection (g), and any
24 party aggrieved by the findings and decision
25 under this subsection, shall have the right to

1 bring a civil action with respect to the com-
2 plaint presented pursuant to this section, which
3 action may be brought in any State court of
4 competent jurisdiction or in a district court of
5 the United States without regard to the amount
6 in controversy.

7 “(B) ADDITIONAL REQUIREMENTS.—In
8 any action brought under this paragraph, the
9 court—

10 “(i) shall receive the records of the
11 administrative proceedings;

12 “(ii) shall hear additional evidence at
13 the request of a party; and

14 “(iii) basing its decision on the pre-
15 ponderance of the evidence, shall grant
16 such relief as the court determines is ap-
17 propriate.

18 “(3) JURISDICTION OF DISTRICT COURTS; AT-
19 TORNEYS’ FEES.—

20 “(A) IN GENERAL.—The district courts of
21 the United States shall have jurisdiction of ac-
22 tions brought under this section without regard
23 to the amount in controversy.

24 “(B) AWARD OF ATTORNEYS’ FEES.—In
25 any action or proceeding brought under this

1 section, the court, in its discretion, may award
2 reasonable attorneys' fees as part of the costs
3 to the parents of a child with a disability who
4 is the prevailing party.

5 “(C) DETERMINATION OF AMOUNT OF AT-
6 TORNEYS' FEES.—Fees awarded under this
7 paragraph shall be based on rates prevailing in
8 the community in which the action or proceed-
9 ing arose for the kind and quality of services
10 furnished. No bonus or multiplier may be used
11 in calculating the fees awarded under this sub-
12 section.

13 “(D) PROHIBITION OF ATTORNEYS' FEES
14 AND RELATED COSTS FOR CERTAIN SERV-
15 ICES.—

16 “(i) Attorneys' fees may not be
17 awarded and related costs may not be re-
18 imbursed in any action or proceeding
19 under this section for services performed
20 subsequent to the time of a written offer of
21 settlement to a parent if—

22 “(I) the offer is made within the
23 time prescribed by Rule 68 of the
24 Federal Rules of Civil Procedure or,
25 in the case of an administrative pro-

1 ceeding, at any time more than ten
2 days before the proceeding begins;

3 “(II) the offer is not accepted
4 within 10 days; and

5 “(III) the court or administrative
6 hearing officer finds that the relief fi-
7 nally obtained by the parents is not
8 more favorable to the parents than
9 the offer of settlement.

10 “(ii) Attorneys’ fees may not be
11 awarded relating to any meeting of the
12 IEP Team unless such meeting is convened
13 as a result of an administrative proceeding
14 or judicial action, or, at the discretion of
15 the State, for a mediation described in
16 subsection (e) that is conducted prior to
17 the filing of a complaint under subsection
18 (b)(6) or (k) of this section.

19 “(E) EXCEPTION TO PROHIBITION ON AT-
20 TORNEYS’ FEES AND RELATED COSTS.—Not-
21 withstanding subparagraph (D), an award of
22 attorneys’ fees and related costs may be made
23 to a parent who is the prevailing party and who
24 was substantially justified in rejecting the set-
25 tlement offer.

1 “(F) REDUCTION IN AMOUNT OF ATTOR-
2 NEYS’ FEES.—Except as provided in subpara-
3 graph (G), whenever the court finds that—

4 “(i) the parent, during the course of
5 the action or proceeding, unreasonably pro-
6 tracted the final resolution of the con-
7 troversy;

8 “(ii) the amount of the attorneys’ fees
9 otherwise authorized to be awarded unrea-
10 sonably exceeds the hourly rate prevailing
11 in the community for similar services by
12 attorneys of reasonably comparable skill,
13 reputation, and experience;

14 “(iii) the time spent and legal services
15 furnished were excessive considering the
16 nature of the action or proceeding; or

17 “(iv) the attorney representing the
18 parent did not provide to the school dis-
19 trict the appropriate information in the
20 due process complaint in accordance with
21 subsection (b)(7);

22 the court shall reduce, accordingly, the amount
23 of the attorneys’ fees awarded under this sec-
24 tion.

1 “(G) EXCEPTION TO REDUCTION IN
2 AMOUNT OF ATTORNEYS’ FEES.—The provi-
3 sions of subparagraph (F) shall not apply in
4 any action or proceeding if the court finds that
5 the State or local educational agency unreason-
6 ably protracted the final resolution of the action
7 or proceeding or there was a violation of this
8 section.

9 “(j) MAINTENANCE OF CURRENT EDUCATIONAL
10 PLACEMENT.—Except as provided in subsection (k)(7),
11 during the pendency of any proceedings conducted pursu-
12 ant to this section, unless the State or local educational
13 agency and the parents otherwise agree, the child shall
14 remain in the then-current educational placement of such
15 child, or, if applying for initial admission to a public
16 school, shall, with the consent of the parents, be placed
17 in the public school program until all such proceedings
18 have been completed.

19 “(k) PLACEMENT IN ALTERNATIVE EDUCATIONAL
20 SETTING.—

21 “(1) AUTHORITY OF SCHOOL PERSONNEL.—

22 “(A) School personnel under this section
23 may order a change in the placement of a child
24 with a disability—

1 “(i) to an appropriate interim alter-
2 native educational setting, another setting,
3 or suspension, for not more than 10 school
4 days (to the extent such alternatives would
5 be applied to children without disabilities);
6 and

7 “(ii) to an appropriate interim alter-
8 native educational setting for the same
9 amount of time that a child without a dis-
10 ability would be subject to discipline, but
11 for not more than 45 days if—

12 “(I) the child carries a weapon to
13 school or to a school function under
14 the jurisdiction of a State or a local
15 educational agency; or

16 “(II) the child knowingly pos-
17 sesses or uses illegal drugs or sells or
18 solicits the sale of a controlled sub-
19 stance while at school or a school
20 function under the jurisdiction of a
21 State or local educational agency.

22 “(B) Either before or not later than 10
23 days after taking a disciplinary action described
24 in subparagraph (A)—

1 “(i) if the local educational agency did
2 not conduct a functional behavioral assess-
3 ment and implement a behavioral interven-
4 tion plan for such child before the behavior
5 that resulted in the suspension described in
6 subparagraph (A), the agency shall con-
7 vene an IEP meeting to develop an assess-
8 ment plan to address that behavior; or

9 “(ii) if the child already has a behav-
10 ioral intervention plan, the IEP Team shall
11 review the plan and modify it, as nec-
12 essary, to address the behavior.

13 “(2) AUTHORITY OF HEARING OFFICER.—A
14 hearing officer under this section may order a
15 change in the placement of a child with a disability
16 to an appropriate interim alternative educational set-
17 ting for not more than 45 days if the hearing offi-
18 cer—

19 “(A) determines that the public agency has
20 demonstrated by substantial evidence that
21 maintaining the current placement of such child
22 is substantially likely to result in injury to the
23 child or to others;

24 “(B) considers the appropriateness of the
25 child’s current placement;

1 “(C) considers whether the public agency
2 has made reasonable efforts to minimize the
3 risk of harm in the child’s current placement,
4 including the use of supplementary aids and
5 services; and

6 “(D) determines that the interim alter-
7 native educational setting meets the require-
8 ments of paragraph (3)(B).

9 “(3) DETERMINATION OF SETTING.—

10 “(A) IN GENERAL.—The alternative edu-
11 cational setting described in paragraph
12 (1)(A)(ii) shall be determined by the IEP
13 Team.

14 “(B) ADDITIONAL REQUIREMENTS.—Any
15 interim alternative educational setting in which
16 a child is placed under paragraph (1) or (2)
17 shall—

18 “(i) be selected so as to enable the
19 child to continue to participate in the gen-
20 eral curriculum, although in another set-
21 ting, and to continue to receive those serv-
22 ices and modifications, including those de-
23 scribed in the child’s current IEP, that will
24 enable the child to meet the goals set out
25 in that IEP; and

1 “(ii) include services and modifica-
 2 tions designed to address the behavior de-
 3 scribed in paragraph (1) or paragraph (2)
 4 so that it does not recur.

5 “(4) MANIFESTATION DETERMINATION RE-
 6 VIEW.—

7 “(A) IN GENERAL.—If a disciplinary ac-
 8 tion is contemplated as described in paragraph
 9 (1) or paragraph (2) for a behavior of a child
 10 with a disability described in either of those
 11 paragraphs, or if a disciplinary action involving
 12 a change of placement for more than 10 days
 13 is contemplated for a child with a disability who
 14 has engaged in other behavior that violated any
 15 rule or code of conduct of the local educational
 16 agency that applies to all children—

17 “(i) not later than the date on which
 18 the decision to take that action is made,
 19 the parents shall be notified of that deci-
 20 sion and of all procedural safeguards ac-
 21 corded under this section; and

22 “(ii) immediately, if possible, but in
 23 no case later than 10 school days after the
 24 date on which the decision to take that ac-
 25 tion is made, a review shall be conducted

1 of the relationship between the child’s dis-
2 ability and the behavior subject to the dis-
3 ciplinary action.

4 “(B) INDIVIDUALS TO CARRY OUT RE-
5 VIEW.—A review described in subparagraph (A)
6 shall be conducted by the IEP Team and other
7 qualified personnel.

8 “(C) CONDUCT OF REVIEW.—In carrying
9 out a review described in subparagraph (A), the
10 IEP Team may determine that the behavior of
11 the child was not a manifestation of such
12 child’s disability only if the IEP Team—

13 “(i) first considers, in terms of the be-
14 havior subject to disciplinary action, all rel-
15 evant information, including—

16 “(I) evaluation and diagnostic re-
17 sults, including such results or other
18 relevant information supplied by the
19 parents of the child;

20 “(II) observations of the child;
21 and

22 “(III) the child’s IEP and place-
23 ment; and

24 “(ii) then determines that—

1 “(I) in relationship to the behav-
2 ior subject to disciplinary action, the
3 child’s IEP and placement were ap-
4 propriate and the special education
5 services, supplementary aids and serv-
6 ices, and behavior intervention strate-
7 gies were provided consistent with the
8 child’s IEP and placement;

9 “(II) the child’s disability did not
10 impair the ability of the child to un-
11 derstand the impact and consequences
12 of the behavior subject to disciplinary
13 action; and

14 “(III) the child’s disability did
15 not impair the ability of the child to
16 control the behavior subject to dis-
17 ciplinary action.

18 “(5) DETERMINATION THAT BEHAVIOR WAS
19 NOT MANIFESTATION OF DISABILITY.—

20 “(A) IN GENERAL.—If the result of the re-
21 view described in paragraph (4) is a determina-
22 tion, consistent with paragraph (4)(C), that the
23 behavior of the child with a disability was not
24 a manifestation of the child’s disability, the rel-
25 evant disciplinary procedures applicable to chil-

1 dren without disabilities may be applied to the
2 child in the same manner in which they would
3 be applied to children without disabilities, ex-
4 cept as provided in section 612(a)(1).

5 “(B) ADDITIONAL REQUIREMENT.—If the
6 public agency initiates disciplinary procedures
7 applicable to all children, the agency shall en-
8 sure that the special education and disciplinary
9 records of the child with a disability are trans-
10 mitted for consideration by the person or per-
11 sons making the final determination regarding
12 the disciplinary action.

13 “(6) PARENT APPEAL.—

14 “(A) IN GENERAL.—

15 “(i) If the child’s parent disagrees
16 with a determination that the child’s be-
17 havior was not a manifestation of the
18 child’s disability or with any decision re-
19 garding placement, the parent may request
20 a hearing.

21 “(ii) The State or local educational
22 agency shall arrange for an expedited hear-
23 ing in any case described in this subsection
24 when requested by a parent.

25 “(B) REVIEW OF DECISION.—

1 “(i) In reviewing a decision with re-
2 spect to the manifestation determination,
3 the hearing officer shall determine whether
4 the public agency has demonstrated that
5 the child’s behavior was not a manifesta-
6 tion of such child’s disability consistent
7 with the requirements of paragraph (4)(C).

8 “(ii) In reviewing a decision under
9 paragraph (1)(A)(ii) to place the child in
10 an interim alternative educational setting,
11 the hearing officer shall apply the stand-
12 ards set out in paragraph (2).

13 “(7) PLACEMENT DURING APPEALS.—

14 “(A) IN GENERAL.—When a parent re-
15 quests a hearing regarding a disciplinary action
16 described in paragraph (1)(A)(ii) or paragraph
17 (2) to challenge the interim alternative edu-
18 cational setting or the manifestation determina-
19 tion, the child shall remain in the interim alter-
20 native educational setting pending the decision
21 of the hearing officer or until the expiration of
22 the time period provided for in paragraph
23 (1)(A)(ii) or paragraph (2), whichever occurs
24 first, unless the parent and the State or local
25 educational agency agree otherwise.

1 “(B) CURRENT PLACEMENT.—If a child is
2 placed in an interim alternative educational set-
3 ting pursuant to paragraph (1)(A)(ii) or para-
4 graph (2) and school personnel propose to
5 change the child’s placement after expiration of
6 the interim alternative placement, during the
7 pendency of any proceeding to challenge the
8 proposed change in placement, the child shall
9 remain in the current placement (the child’s
10 placement prior to the interim alternative edu-
11 cational setting), except as provided in subpara-
12 graph (C).

13 “(C) EXPEDITED HEARING.—

14 “(i) If school personnel maintain that
15 it is dangerous for the child to be in the
16 current placement (placement prior to re-
17 moval to the interim alternative education
18 setting) during the pendency of the due
19 process proceedings, the local educational
20 agency may request an expedited hearing.

21 “(ii) In determining whether the child
22 may be placed in the alternative edu-
23 cational setting or in another appropriate
24 placement ordered by the hearing officer,

1 the hearing officer shall apply the stand-
2 ards set out in paragraph (2).

3 “(8) PROTECTIONS FOR CHILDREN NOT YET
4 ELIGIBLE FOR SPECIAL EDUCATION AND RELATED
5 SERVICES.—

6 “(A) IN GENERAL.—A child who has not
7 been determined to be eligible for special edu-
8 cation and related services under this part and
9 who has engaged in behavior that violated any
10 rule or code of conduct of the local educational
11 agency, including any behavior described in
12 paragraph (1), may assert any of the protec-
13 tions provided for in this part if the local edu-
14 cational agency had knowledge (as determined
15 in accordance with this paragraph) that the
16 child was a child with a disability before the be-
17 havior that precipitated the disciplinary action
18 occurred.

19 “(B) BASIS OF KNOWLEDGE.—A local edu-
20 cational agency shall be deemed to have knowl-
21 edge that a child is a child with a disability if—

22 “(i) the parent of the child has ex-
23 pressed concern in writing (unless the par-
24 ent is illiterate or has a disability that pre-
25 vents compliance with the requirements

1 contained in this clause) to personnel of
2 the appropriate educational agency that
3 the child is in need of special education
4 and related services;

5 “(ii) the behavior or performance of
6 the child demonstrates the need for such
7 services;

8 “(iii) the parent of the child has re-
9 quested an evaluation of the child pursuant
10 to section 614; or

11 “(iv) the teacher of the child, or other
12 personnel of the local educational agency,
13 has expressed concern about the behavior
14 or performance of the child to the director
15 of special education of such agency or to
16 other personnel of the agency.

17 “(C) CONDITIONS THAT APPLY IF NO
18 BASIS OF KNOWLEDGE.—

19 “(i) IN GENERAL.—If a local edu-
20 cational agency does not have knowledge
21 that a child is a child with a disability (in
22 accordance with subparagraph (B)) prior
23 to taking disciplinary measures against the
24 child, the child may be subjected to the
25 same disciplinary measures as measures

1 applied to children without disabilities who
2 engaged in comparable behaviors consist-
3 ent with clause (ii).

4 “(ii) LIMITATIONS.—If a request is
5 made for an evaluation of a child during
6 the time period in which the child is sub-
7 jected to disciplinary measures under para-
8 graph (1) or (2), the evaluation shall be
9 conducted in an expedited manner. If the
10 child is determined to be a child with a dis-
11 ability, taking into consideration informa-
12 tion from the evaluation conducted by the
13 agency and information provided by the
14 parents, the agency shall provide special
15 education and related services in accord-
16 ance with the provisions of this part, ex-
17 cept that, pending the results of the eval-
18 uation, the child shall remain in the edu-
19 cational placement determined by school
20 authorities.

21 “(9) REFERRAL TO AND ACTION BY LAW EN-
22 FORCEMENT AND JUDICIAL AUTHORITIES.—

23 “(A) Nothing in this part shall be con-
24 strued to prohibit an agency from reporting a
25 crime committed by a child with a disability to

1 appropriate authorities or to prevent State law
2 enforcement and judicial authorities from exer-
3 cising their responsibilities with regard to the
4 application of Federal and State law to crimes
5 committed by a child with a disability.

6 “(B) An agency reporting a crime commit-
7 ted by a child with a disability shall ensure that
8 copies of the special education and disciplinary
9 records of the child are transmitted for consid-
10 eration by the appropriate authorities to whom
11 it reports the crime.

12 “(10) DEFINITIONS.—For purposes of this sub-
13 section, the following definitions apply:

14 “(A) CONTROLLED SUBSTANCE.—The
15 term ‘controlled substance’ means a drug or
16 other substance identified under schedules I, II,
17 III, IV, or V in section 202(c) of the Controlled
18 Substances Act (21 U.S.C. 812(c)).

19 “(B) ILLEGAL DRUG.—The term ‘illegal
20 drug’—

21 “(i) means a controlled substance; but

22 “(ii) does not include such a sub-
23 stance that is legally possessed or used
24 under the supervision of a licensed health-
25 care professional or that is legally pos-

1 sessed or used under any other authority
2 under that Act or under any other provi-
3 sion of Federal law.

4 “(C) WEAPON.—The term ‘weapon’ has
5 the meaning given the term ‘dangerous weapon’
6 under paragraph (2) of the first subsection (g)
7 of section 930 of title 18, United States Code.

8 “(D) SUBSTANTIAL EVIDENCE.—The term
9 ‘substantial evidence’ means beyond a prepon-
10 derance of the evidence.

11 “(1) RULE OF CONSTRUCTION.—Nothing in this part
12 shall be construed to restrict or limit the rights, proce-
13 dures, and remedies available under the Constitution, the
14 Americans with Disabilities Act of 1990, title V of the Re-
15 habilitation Act of 1973, or other Federal laws protecting
16 the rights of children with disabilities, except that before
17 the filing of a civil action under such laws seeking relief
18 that is also available under this part, the procedures under
19 subsections (f) and (g) shall be exhausted to the same ex-
20 tent as would be required had the action been brought
21 under this part.

22 “(m) TRANSFER OF PARENTAL RIGHTS AT AGE OF
23 MAJORITY.—

24 “(1) IN GENERAL.—A State that receives
25 amounts from a grant under this part may provide

1 that, when a child with a disability reaches the age
2 of majority under State law (except for a child with
3 a disability who has been determined to be incom-
4 petent under State law)—

5 “(A) the public agency shall provide any
6 notice required by this section to both the indi-
7 vidual and the parents;

8 “(B) all other rights accorded to parents
9 under this part transfer to the child;

10 “(C) the agency shall notify the individual
11 and the parents of the transfer of rights; and

12 “(D) all rights accorded to parents under
13 this part transfer to children who are incarcer-
14 ated in an adult or juvenile Federal, State, or
15 local correctional institution.

16 “(2) SPECIAL RULE.—If, under State law, a
17 child with a disability who has reached the age of
18 majority under State law, who has not been deter-
19 mined to be incompetent, but who is determined not
20 to have the ability to provide informed consent with
21 respect to the educational program of the child, the
22 State shall establish procedures for appointing the
23 parent of the child, or if the parent is not available,
24 another appropriate individual, to represent the edu-

1 cational interests of the child throughout the period
2 of eligibility of the child under this part.

3 **“SEC. 616. WITHHOLDING AND JUDICIAL REVIEW.**

4 (a) WITHHOLDING OF PAYMENTS.—

5 “(1) IN GENERAL.—Whenever the Secretary,
6 after reasonable notice and opportunity for hearing
7 to the State educational agency involved (and to any
8 local educational agency or State agency affected by
9 any failure described in subparagraph (B)), finds—

10 “(A) that there has been a failure by the
11 State to comply substantially with any provision
12 of this part; or

13 “(B) that there is a failure to comply with
14 any condition of a local educational agency’s or
15 State agency’s eligibility under this part, includ-
16 ing the terms of any agreement to achieve com-
17 pliance with this part within the timelines speci-
18 fied in the agreement;

19 the Secretary shall, after notifying the State edu-
20 cational agency, withhold, in whole or in part, any
21 further payments to the State under this part, or
22 refer the matter for appropriate enforcement action,
23 which may include referral to the Department of
24 Justice.

1 “(2) NATURE OF WITHHOLDING.—If the Sec-
2 retary withholds further payments under paragraph
3 (1), the Secretary may determine that such with-
4 holding will be limited to programs or projects, or
5 portions thereof, affected by the failure, or that the
6 State educational agency shall not make further pay-
7 ments under this part to specified local educational
8 agencies or State agencies affected by the failure.
9 Until the Secretary is satisfied that there is no
10 longer any failure to comply with the provisions of
11 this part, as specified in subparagraph (A) or (B) of
12 paragraph (1), payments to the State under this
13 part shall be withheld in whole or in part, or pay-
14 ments by the State educational agency under this
15 part shall be limited to local educational agencies
16 and State agencies whose actions did not cause or
17 were not involved in the failure, as the case may be.
18 Any State educational agency, State agency, or local
19 educational agency that has received notice under
20 paragraph (1) shall, by means of a public notice,
21 take such measures as may be necessary to bring
22 the pendency of an action pursuant to this sub-
23 section to the attention of the public within the ju-
24 risdiction of such agency.

25 “(b) JUDICIAL REVIEW.—

1 “(1) IN GENERAL.—If any State is dissatisfied
2 with the Secretary’s final action with respect to the
3 eligibility of the State under section 612, such State
4 may, not later than 60 days after notice of such ac-
5 tion, file with the United States court of appeals for
6 the circuit in which such State is located a petition
7 for review of that action. A copy of the petition shall
8 be forthwith transmitted by the clerk of the court to
9 the Secretary. The Secretary thereupon shall file in
10 the court the record of the proceedings upon which
11 the Secretary’s action was based, as provided in sec-
12 tion 2112 of title 28, United States Code.

13 “(2) JURISDICTION; REVIEW BY UNITED
14 STATES SUPREME COURT.—Upon the filing of such
15 petition, the court shall have jurisdiction to affirm
16 the action of the Secretary or to set it aside, in
17 whole or in part. The judgment of the court shall be
18 subject to review by the Supreme Court of the Unit-
19 ed States upon certiorari or certification as provided
20 in section 1254 of title 28, United States Code.

21 “(3) STANDARD OF REVIEW.—The findings of
22 fact by the Secretary, if supported by substantial
23 evidence, shall be conclusive, but the court, for good
24 cause shown, may remand the case to the Secretary
25 to take further evidence, and the Secretary may

1 thereupon make new or modified findings of fact and
2 may modify the Secretary's previous action, and
3 shall file in the court the record of the further pro-
4 ceedings. Such new or modified findings of fact shall
5 likewise be conclusive if supported by substantial evi-
6 dence.

7 “(c) DIVIDED STATE AGENCY RESPONSIBILITY.—
8 For purposes of this section, where responsibility for en-
9 suring that the requirements of this part are met with re-
10 spect to children with disabilities who are convicted as
11 adults under State law and incarcerated in adult prisons
12 is assigned to a public agency other than the State edu-
13 cational agency pursuant to section 612(a)(11)(C), the
14 Secretary, in instances where the Secretary finds that the
15 failure to comply substantially with the provisions of this
16 part are related to a failure by the public agency, shall
17 take appropriate corrective action to ensure compliance
18 with this part, except—

19 “(1) any reduction or withholding of payments
20 to the State is proportionate to the total funds allot-
21 ted under section 611 to the State as the number of
22 eligible children with disabilities in adult prisons
23 under the supervision of the other public agency is
24 proportionate to the number of eligible individuals

1 with disabilities in the State under the supervision
2 of the State educational agency; and

3 “(2) any withholding of funds under paragraph
4 (1) shall be limited to the specific agency responsible
5 for the failure to comply with this part.

6 **“SEC. 617. ADMINISTRATION.**

7 “(a) **RESPONSIBILITIES OF SECRETARY.**—In carry-
8 ing out this part, the Secretary shall—

9 “(1) cooperate with, and (directly or by grant
10 or contract) furnish technical assistance necessary
11 to, the State in matters relating to—

12 “(A) the education of children with disabil-
13 ities; and

14 “(B) carrying out this part; and

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

17 “(b) **RULES AND REGULATIONS.**—In carrying out
18 the provisions of this part, the Secretary shall issue regu-
19 lations under this Act only to the extent that such regula-
20 tions are necessary to ensure that there is compliance with
21 the specific requirements of this Act.

22 “(c) **CONFIDENTIALITY.**—The Secretary shall take
23 appropriate action, in accordance with the provisions of
24 section 444 of the General Education Provisions Act (20
25 U.S.C. 1232g), to assure the protection of the confiden-

1 tiality of any personally identifiable data, information, and
 2 records collected or maintained by the Secretary and by
 3 State and local educational agencies pursuant to the provi-
 4 sions of this part.

5 “(d) PERSONNEL.—The Secretary is authorized to
 6 hire qualified personnel necessary to carry out the Sec-
 7 retary’s duties under subsection (a) and under sections
 8 618, 661 and 673 (or their predecessor authorities
 9 through October 1, 1997) without regard to the provisions
 10 of title 5, United States Code, relating to appointments
 11 in the competitive service and without regard to chapter
 12 51 and subchapter III of chapter 53 of such title relating
 13 to classification and general schedule pay rates, except
 14 that no more than twenty such personnel shall be em-
 15 ployed at any time.

16 **“SEC. 618. PROGRAM INFORMATION.**

17 “(a) IN GENERAL.—Each State that receives assist-
 18 ance under this part, and the Secretary of the Interior,
 19 shall provide data each year to the Secretary—

20 “(1)(A) on—

21 “(i) the number of children with dis-
 22 abilities, by race, ethnicity, and disability
 23 category, who are receiving a free appro-
 24 priate public education;

1 “(ii) the number of children with dis-
2 abilities, by race and ethnicity, who are re-
3 ceiving early intervention services;

4 “(iii) the number of children with dis-
5 abilities, by race, ethnicity, and disability
6 category, who are participating in regular
7 education;

8 “(iv) the number of children with dis-
9 abilities, by race, ethnicity, and disability
10 category, who are in separate classes, sepa-
11 rate schools or facilities, or public or pri-
12 vate residential facilities;

13 “(v) the number of children with dis-
14 abilities, by race, ethnicity, and disability
15 category, who, for each year of age from
16 age 14 to 21, stopped receiving special
17 education and related services because of
18 program completion or other reasons and
19 the reasons why those children stopped re-
20 ceiving special education and related serv-
21 ices;

22 “(vi) the number of children with dis-
23 abilities, by race and ethnicity, who, from
24 birth through age two, stopped receiving

1 early intervention services because of pro-
2 gram completion or for other reasons; and

3 “(vii)(I) the number of children with
4 disabilities, by race, ethnicity, and disabil-
5 ity category, who under subparagraphs
6 (A)(ii) and (B) of section 615(k)(1), are
7 removed to an interim alternative edu-
8 cational setting;

9 “(II) the acts or items precipitating
10 those removals; and

11 “(III) the number of children with
12 disabilities who are subject to long-term
13 suspensions or expulsions; and

14 “(B) on the number of infants and toddlers, by
15 race and ethnicity, who are at risk of having sub-
16 stantial developmental delays (as described in sec-
17 tion 632), and who are receiving early intervention
18 services under part C; and

19 “(2) on any other information that may be re-
20 quired by the Secretary.

21 “(b) SAMPLING.—The Secretary may permit States
22 and the Secretary of the Interior to obtain the data de-
23 scribed in subsection (a) through sampling.

24 “(c) DISPROPORTIONALITY.—

1 “(1) IN GENERAL.—Each State that receives
2 assistance under this part, and the Secretary of the
3 Interior, shall provide for the collection and exam-
4 ination of data to determine if significant
5 disproportionality based on race is occurring in the
6 State with respect to—

7 “(A) the identification of children as chil-
8 dren with disabilities, including the identifica-
9 tion of children as children with disabilities in
10 accordance with a particular impairment de-
11 scribed in section 602(3); and

12 “(B) the placement in particular edu-
13 cational settings of such children.

14 “(2) REVIEW AND REVISION OF POLICIES,
15 PRACTICES, AND PROCEDURES.—In the case of a de-
16 termination of significant disproportionality with re-
17 spect to the identification of children as children
18 with disabilities, or the placement in particular edu-
19 cational settings of such children, in accordance with
20 paragraph (1), the State or the Secretary of the In-
21 terior, as the case may be, shall provide for the re-
22 view and, if appropriate, revision of the policies, pro-
23 cedures, and practices used in such identification or
24 placement to ensure that such policies, procedures,

1 and practices comply with the requirements of this
2 Act.

3 **“SEC. 619. PRESCHOOL GRANTS.**

4 “(a) IN GENERAL.—The Secretary shall provide
5 grants under this section to assist States to provide special
6 education and related services, in accordance with this
7 part—

8 “(1) to children with disabilities aged 3 to 5, in-
9 clusive; and

10 “(2) at the State’s discretion, to 2-year-old chil-
11 dren with disabilities who will turn 3 during the
12 school year.

13 “(b) ELIGIBILITY.—A State shall be eligible for a
14 grant under this section if such State—

15 “(1) is eligible under section 612 to receive a
16 grant under this part; and

17 “(2) makes a free appropriate public education
18 available to all children with disabilities, aged 3
19 through 5, residing in the State.

20 “(c) ALLOCATIONS TO STATES.—

21 “(1) IN GENERAL.—After reserving funds for
22 studies and evaluations under section 674(e), the
23 Secretary shall allocate the remaining amount
24 among the States in accordance with paragraph (2)
25 or (3), as the case may be.

1 “(2) INCREASE IN FUNDS.—If the amount
2 available for allocations to States under paragraph
3 (1) is equal to or greater than the amount allocated
4 to the States under this section for the preceding
5 fiscal year, those allocations shall be calculated as
6 follows:

7 “(A)(i) Except as provided in subpara-
8 graph (B), the Secretary shall—

9 “(I) allocate to each State the amount
10 it received for fiscal year 1997;

11 “(II) allocate 85 percent of any re-
12 maining funds to States on the basis of
13 their relative populations of children aged
14 3 through 5; and

15 “(III) allocate 15 percent of those re-
16 maining funds to States on the basis of
17 their relative populations of all children
18 aged 3 through 5 who are living in poverty.

19 “(ii) For the purpose of making grants
20 under this paragraph, the Secretary shall use
21 the most recent population data, including data
22 on children living in poverty, that are available
23 and satisfactory to the Secretary.

1 “(B) Notwithstanding subparagraph (A),
2 allocations under this paragraph shall be sub-
3 ject to the following:

4 “(i) No State’s allocation shall be less
5 than its allocation for the preceding fiscal
6 year.

7 “(ii) No State’s allocation shall be less
8 than the greatest of—

9 “(I) the sum of—

10 “(aa) the amount it received
11 for fiscal year 1997; and

12 “(bb) one third of one per-
13 cent of the amount by which the
14 amount appropriated under sub-
15 section (j) exceeds the amount
16 appropriated under this section
17 for fiscal year 1997;

18 “(II) the sum of—

19 “(aa) the amount it received
20 for the preceding fiscal year; and

21 “(bb) that amount multi-
22 plied by the percentage by which
23 the increase in the funds appro-
24 priated from the preceding fiscal
25 year exceeds 1.5 percent; or

1 “(III) the sum of—

2 “(aa) the amount it received
3 for the preceding fiscal year; and

4 “(bb) that amount multi-
5 plied by 90 percent of the per-
6 centage increase in the amount
7 appropriated from the preceding
8 fiscal year.

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

12 “(I) the amount it received for
13 the preceding fiscal year; and

14 “(II) that amount multiplied by
15 the sum of 1.5 percent and the per-
16 centage increase in the amount appro-
17 priated.

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

23 “(3) DECREASE IN FUNDS.—If the amount
24 available for allocations to States under paragraph
25 (1) is less than the amount allocated to the States

1 under this section for the preceding fiscal year, those
2 allocations shall be calculated as follows:

3 “(A) If the amount available for allocations
4 is greater than the amount allocated to the
5 States for fiscal year 1997, each State shall be
6 allocated the sum of—

7 “(i) the amount it received for fiscal
8 year 1997; and

9 “(ii) an amount that bears the same
10 relation to any remaining funds as the in-
11 crease the State received for the preceding
12 fiscal year over fiscal year 1997 bears to
13 the total of all such increases for all
14 States.

15 “(B) If the amount available for alloca-
16 tions is equal to or less than the amount allo-
17 cated to the States for fiscal year 1997, each
18 State shall be allocated the amount it received
19 for that year, ratably reduced, if necessary.

20 “(4) OUTLYING AREAS.—The Secretary shall
21 increase the fiscal year 1998 allotment of each outly-
22 ing area under section 611 by at least the amount
23 that area received under this section for fiscal year
24 1997.

25 “(d) RESERVATION FOR STATE ACTIVITIES.—

1 “(1) IN GENERAL.—Each State may retain not
2 more than the amount described in paragraph (2)
3 for administration and other State-level activities in
4 accordance with subsections (e) and (f).

5 “(2) AMOUNT DESCRIBED.—For each fiscal
6 year, the Secretary shall determine and report to the
7 State educational agency an amount that is 25 per-
8 cent of the amount the State received under this sec-
9 tion for fiscal year 1997, cumulatively adjusted by
10 the Secretary for each succeeding fiscal year by the
11 lesser of—

12 “(A) the percentage increase, if any, from
13 the preceding fiscal year in the State’s alloca-
14 tion under this section; or

15 “(B) the percentage increase, if any, from
16 the preceding fiscal year in the Consumer Price
17 Index For All Urban Consumers published by
18 the Bureau of Labor Statistics of the Depart-
19 ment of Labor.

20 “(e) STATE ADMINISTRATION.—

21 “(1) IN GENERAL.—For the purpose of admin-
22 istering this section (including the coordination of
23 activities under this part with, and providing tech-
24 nical assistance to, other programs that provide
25 services to children with disabilities) a State may

1 use not more than 20 percent of the maximum
2 amount it may retain under subsection (d) for any
3 fiscal year.

4 “(2) ADMINISTRATION OF PART C.—Funds de-
5 scribed in paragraph (1) may also be used for the
6 administration of part C of this Act, if the State
7 educational agency is the lead agency for the State
8 under that part.

9 “(f) OTHER STATE-LEVEL ACTIVITIES.—Each State
10 shall use any funds it retains under subsection (d) and
11 does not use for administration under subsection (e)—

12 “(1) for support services (including establishing
13 and implementing the mediation process required by
14 section 615(e)), which may benefit children with dis-
15 abilities younger than 3 or older than 5 as long as
16 those services also benefit children with disabilities
17 aged 3 through 5;

18 “(2) for direct services for children eligible for
19 services under this section;

20 “(3) to develop a State improvement plan under
21 subpart 1 of part D;

22 “(4) for activities at the State and local levels
23 to meet the performance goals established by the
24 State under section 612(a)(16) and to support im-
25 plementation of the State improvement plan under

1 subpart 1 of part D if the State receives funds
2 under that subpart; or

3 “(5) to supplement other funds used to develop
4 and implement a Statewide coordinated services sys-
5 tem designed to improve results for children and
6 families, including children with disabilities and their
7 families, but not to exceed one percent of the
8 amount received by the State under this section for
9 a fiscal year.

10 “(g) SUBGRANTS TO LOCAL EDUCATIONAL AGEN-
11 CIES.—

12 “(1) SUBGRANTS REQUIRED.—Each State that
13 receives a grant under this section for any fiscal
14 year shall distribute any of the grant funds that it
15 does not reserve under subsection (d) to local edu-
16 cational agencies in the State that have established
17 their eligibility under section 613, as follows:

18 “(A) BASE PAYMENTS.—The State shall
19 first award each agency described in paragraph
20 (1) the amount that agency would have received
21 under this section for fiscal year 1997 if the
22 State had distributed 75 percent of its grant for
23 that year under section 619(c)(3), as then in ef-
24 fect.

1 “(B) ALLOCATION OF REMAINING
2 FUNDS.—After making allocations under sub-
3 paragraph (A), the State shall—

4 “(i) allocate 85 percent of any re-
5 maining funds to those agencies on the
6 basis of the relative numbers of children
7 enrolled in public and private elementary
8 and secondary schools within the agency’s
9 jurisdiction; and

10 “(ii) allocate 15 percent of those re-
11 maining funds to those agencies in accord-
12 ance with their relative numbers of chil-
13 dren living in poverty, as determined by
14 the State educational agency.

15 “(2) REALLOCATION OF FUNDS.—If a
16 State educational agency determines that a
17 local educational agency is adequately providing
18 a free appropriate public education to all chil-
19 dren with disabilities aged three through five
20 residing in the area served by that agency with
21 State and local funds, the State educational
22 agency may reallocate any portion of the funds
23 under this section that are not needed by that
24 local agency to provide a free appropriate public
25 education to other local educational agencies in

1 “(2) to reduce the educational costs to our soci-
2 ety, including our Nation’s schools, by minimizing
3 the need for special education and related services
4 after infants and toddlers with disabilities reach
5 school age;

6 “(3) to minimize the likelihood of institutional-
7 ization of individuals with disabilities and maximize
8 the potential for their independently living in society;

9 “(4) to enhance the capacity of families to meet
10 the special needs of their infants and toddlers with
11 disabilities; and

12 “(5) to enhance the capacity of State and local
13 agencies and service providers to identify, evaluate,
14 and meet the needs of historically underrepresented
15 populations, particularly minority, low-income, inner-
16 city, and rural populations.

17 “(b) POLICY.—It is therefore the policy of the United
18 States to provide financial assistance to States—

19 “(1) to develop and implement a statewide,
20 comprehensive, coordinated, multidisciplinary, inter-
21 agency system that provides early intervention serv-
22 ices for infants and toddlers with disabilities and
23 their families;

24 “(2) to facilitate the coordination of payment
25 for early intervention services from Federal, State,

1 local, and private sources (including public and pri-
2 vate insurance coverage);

3 “(3) to enhance their capacity to provide qual-
4 ity early intervention services and expand and im-
5 prove existing early intervention services being pro-
6 vided to infants and toddlers with disabilities and
7 their families; and

8 “(4) to encourage States to expand opportuni-
9 ties for children under 3 years of age who would be
10 at risk of having substantial developmental delay if
11 they did not receive early intervention services.

12 **“SEC. 632. DEFINITIONS.**

13 “As used in this part:

14 “(1) **AT-RISK INFANT OR TODDLER.**—The term
15 ‘at-risk infant or toddler’ means an individual under
16 3 years of age who would be at risk of experiencing
17 a substantial developmental delay if early interven-
18 tion services were not provided to the individual.

19 “(2) **COUNCIL.**—The term ‘council’ means a
20 State interagency coordinating council established
21 under section 641.

22 “(3) **DEVELOPMENTAL DELAY.**—The term ‘de-
23 velopmental delay’, when used with respect to an in-
24 dividual residing in a State, has the meaning given
25 such term by the State under section 635(a)(1).

1 “(4) EARLY INTERVENTION SERVICES.—The
2 term ‘early intervention services’ means developmen-
3 tal services which—

4 “(A) are provided under public supervision;

5 “(B) are provided at no cost except where
6 Federal or State law provides for a system of
7 payments by families, including a schedule of
8 sliding fees;

9 “(C) are designed to meet the developmen-
10 tal needs of an infant or toddler with a disabili-
11 ty in any one or more of the following areas—

12 “(i) physical development;

13 “(ii) cognitive development;

14 “(iii) communication development;

15 “(iv) social or emotional development;

16 or

17 “(v) adaptive development;

18 “(D) meet the standards of the State in
19 which they are provided, including the require-
20 ments of this part;

21 “(E) include—

22 “(i) family training, counseling, and
23 home visits;

24 “(ii) special instruction;

- 1 “(iii) speech-language pathology and
2 audiology services;
3 “(iv) occupational therapy;
4 “(v) physical therapy;
5 “(vi) psychological services;
6 “(vii) service coordination services;
7 “(viii) medical services only for diag-
8 nostic or evaluation purposes;
9 “(ix) early identification, screening,
10 and assessment services;
11 “(x) health services necessary to en-
12 able the infant or toddler to benefit from
13 the other early intervention services;
14 “(xi) social work services;
15 “(xii) vision services;
16 “(xiii) assistive technology devices and
17 assistive technology services; and
18 “(xiv) transportation and related costs
19 that are necessary to enable an infant or
20 toddler and the infant’s or toddler’s family
21 to receive another service described in this
22 paragraph;
23 “(F) are provided by qualified personnel,
24 including—
25 “(i) special educators;

- 1 “(ii) speech-language pathologists and
2 audiologists;
3 “(iii) occupational therapists;
4 “(iv) physical therapists;
5 “(v) psychologists;
6 “(vi) social workers;
7 “(vii) nurses;
8 “(viii) nutritionists;
9 “(ix) family therapists;
10 “(x) orientation and mobility special-
11 ists; and
12 “(xi) pediatricians and other physi-
13 cians;
14 “(G) to the maximum extent appropriate,
15 are provided in natural environments, including
16 the home, and community settings in which
17 children without disabilities participate; and
18 “(H) are provided in conformity with an
19 individualized family service plan adopted in ac-
20 cordance with section 636.
21 “(5) INFANT OR TODDLER WITH A DISABIL-
22 ITY.—The term ‘infant or toddler with a disabil-
23 ity’—

1 “(A) means an individual under 3 years of
2 age who needs early intervention services be-
3 cause the individual—

4 “(i) is experiencing developmental
5 delays, as measured by appropriate diag-
6 nostic instruments and procedures in one
7 or more of the areas of cognitive develop-
8 ment, physical development, communica-
9 tion development, social or emotional devel-
10 opment, and adaptive development; or

11 “(ii) has a diagnosed physical or men-
12 tal condition which has a high probability
13 of resulting in developmental delay; and

14 “(B) may also include, at a State’s discre-
15 tion, at-risk infants and toddlers.

16 **“SEC. 633. GENERAL AUTHORITY.**

17 “The Secretary shall, in accordance with this part,
18 make grants to States (from their allocations under sec-
19 tion 643) to assist each State to maintain and implement
20 a statewide, comprehensive, coordinated, multidisciplinary,
21 interagency system to provide early intervention services
22 for infants and toddlers with disabilities and their families.

1 **“SEC. 634. ELIGIBILITY.**

2 “In order to be eligible for a grant under section 633,
3 a State shall demonstrate to the Secretary that the
4 State—

5 “(1) has adopted a policy that appropriate early
6 intervention services are available to all infants and
7 toddlers with disabilities in the State and their fami-
8 lies, including Indian infants and toddlers with dis-
9 abilities and their families residing on a reservation
10 geographically located in the State; and

11 “(2) has in effect a statewide system that meets
12 the requirements of section 635.

13 **“SEC. 635. REQUIREMENTS FOR STATEWIDE SYSTEM.**

14 “(a) IN GENERAL.—A statewide system described in
15 section 633 shall include, at a minimum, the following
16 components:

17 “(1) A definition of the term ‘developmental
18 delay’ that will be used by the State in carrying out
19 programs under this part.

20 “(2) A State policy that is in effect and that
21 ensures that appropriate early intervention services
22 are available to all infants and toddlers with disabil-
23 ities and their families, including Indian infants and
24 toddlers and their families residing on a reservation
25 geographically located in the State.

1 “(3) A timely, comprehensive, multidisciplinary
2 evaluation of the functioning of each infant or tod-
3 dler with a disability in the State, and a family-di-
4 rected identification of the needs of each family of
5 such an infant or toddler, to appropriately assist in
6 the development of the infant or toddler.

7 “(4) For each infant or toddler with a disability
8 in the State, an individualized family service plan in
9 accordance with section 636, including service co-
10 ordination services in accordance with such service
11 plan.

12 “(5) A comprehensive child find system, con-
13 sistent with part B, including a system for making
14 referrals to service providers that includes timelines
15 and provides for participation by primary referral
16 sources.

17 “(6) A public awareness program focusing on
18 early identification of infants and toddlers with dis-
19 abilities, including the preparation and dissemination
20 by the lead agency designated or established under
21 paragraph (10) to all primary referral sources, espe-
22 cially hospitals and physicians, of information for
23 parents on the availability of early intervention serv-
24 ices, and procedures for determining the extent to

1 which such sources disseminate such information to
2 parents of infants and toddlers.

3 “(7) A central directory which includes infor-
4 mation on early intervention services, resources, and
5 experts available in the State and research and dem-
6 onstration projects being conducted in the State.

7 “(8) A comprehensive system of personnel de-
8 velopment, including the training of paraprofes-
9 sionals and the training of primary referral sources
10 respecting the basic components of early intervention
11 services available in the State, that is consistent
12 with the comprehensive system of personnel develop-
13 ment described in section 612(a)(14) and may in-
14 clude—

15 “(A) implementing innovative strategies
16 and activities for the recruitment and retention
17 of early education service providers;

18 “(B) promoting the preparation of early
19 intervention providers who are fully and appro-
20 priately qualified to provide early intervention
21 services under this part;

22 “(C) training personnel to work in rural
23 and inner-city areas; and

24 “(D) training personnel to coordinate tran-
25 sition services for infants and toddlers served

1 under this part from an early intervention pro-
2 gram under this part to preschool or other ap-
3 propriate services.

4 “(9) Subject to subsection (b), policies and pro-
5 cedures relating to the establishment and mainte-
6 nance of standards to ensure that personnel nec-
7 essary to carry out this part are appropriately and
8 adequately prepared and trained, including—

9 “(A) the establishment and maintenance of
10 standards which are consistent with any State-
11 approved or recognized certification, licensing,
12 registration, or other comparable requirements
13 which apply to the area in which such personnel
14 are providing early intervention services; and

15 “(B) to the extent such standards are not
16 based on the highest requirements in the State
17 applicable to a specific profession or discipline,
18 the steps the State is taking to require the re-
19 training or hiring of personnel that meet appro-
20 priate professional requirements in the State;

21 except that nothing in this part, including this para-
22 graph, prohibits the use of paraprofessionals and as-
23 sistants who are appropriately trained and super-
24 vised, in accordance with State law, regulations, or
25 written policy, to assist in the provision of early

1 intervention services to infants and toddlers with
2 disabilities under this part.

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

6 “(A) the general administration and super-
7 vision of programs and activities receiving as-
8 sistance under section 633, and the monitoring
9 of programs and activities used by the State to
10 carry out this part, whether or not such pro-
11 grams or activities are receiving assistance
12 made available under section 633, to ensure
13 that the State complies with this part;

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

17 “(C) the assignment of financial respon-
18 sibility in accordance with section 637(a)(2) to
19 the appropriate agencies;

20 “(D) the development of procedures to en-
21 sure that services are provided to infants and
22 toddlers and their families under this part in a
23 timely manner pending the resolution of any
24 disputes among public agencies or service pro-
25 viders;

1 “(E) the resolution of intra- and inter-
2 agency disputes; and

3 “(F) the entry into formal interagency
4 agreements that define the financial responsibil-
5 ity of each agency for paying for early interven-
6 tion services (consistent with State law) and
7 procedures for resolving disputes and that in-
8 clude all additional components necessary to en-
9 sure meaningful cooperation and coordination.

10 “(11) A policy pertaining to the contracting or
11 making of other arrangements with service providers
12 to provide early intervention services in the State,
13 consistent with the provisions of this part, including
14 the contents of the application used and the condi-
15 tions of the contract or other arrangements.

16 “(12) A procedure for securing timely reim-
17 bursements of funds used under this part in accord-
18 ance with section 640(a).

19 “(13) Procedural safeguards with respect to
20 programs under this part, as required by section
21 639.

22 “(14) A system for compiling data requested by
23 the Secretary under section 618 that relates to this
24 part.

1 “(15) A State interagency coordinating council
2 that meets the requirements of section 641.

3 “(16) Policies and procedures to ensure that,
4 consistent with section 636(d)(5)—

5 “(A) to the maximum extent appropriate,
6 early intervention services are provided in natu-
7 ral environments; and

8 “(B) the provision of early intervention
9 services for any infant or toddler occurs in a
10 setting other than a natural environment only
11 when early intervention cannot be achieved sat-
12 isfactorily for the infant or toddler in a natural
13 environment.

14 “(b) POLICY.—In implementing subsection (a)(9), a
15 State may adopt a policy that includes making ongoing
16 good-faith efforts to recruit and hire appropriately and
17 adequately trained personnel to provide early intervention
18 services to infants and toddlers with disabilities, including,
19 in a geographic area of the State where there is a shortage
20 of such personnel, the most qualified individuals available
21 who are making satisfactory progress toward completing
22 applicable course work necessary to meet the standards
23 described in subsection (a)(9) within 3 years.

1 **“SEC. 636. INDIVIDUALIZED FAMILY SERVICE PLAN.**

2 “(a) ASSESSMENT AND PROGRAM DEVELOPMENT.—

3 A statewide system described in section 633 shall provide,
4 at a minimum, for each infant or toddler with a disability,
5 and the infant’s or toddler’s family, to receive—

6 “(1) a multidisciplinary assessment of the
7 unique strengths and needs of the infant or toddler
8 and the identification of services appropriate to meet
9 such needs;

10 “(2) a family-directed assessment of the re-
11 sources, priorities, and concerns of the family and
12 the identification of the supports and services nec-
13 essary to enhance the family’s capacity to meet the
14 developmental needs of the infant or toddler; and

15 “(3) a written individualized family service plan
16 developed by a multidisciplinary team, including the
17 parents, as required by subsection (e).

18 “(b) PERIODIC REVIEW.—The individualized family
19 service plan shall be evaluated once a year and the family
20 shall be provided a review of the plan at 6-month intervals
21 (or more often where appropriate based on infant or tod-
22 dler and family needs).

23 “(c) PROMPTNESS AFTER ASSESSMENT.—The indi-
24 vidualized family service plan shall be developed within a
25 reasonable time after the assessment required by sub-
26 section (a)(1) is completed. With the parents’ consent,

1 early intervention services may commence prior to the
2 completion of the assessment.

3 “(d) CONTENT OF PLAN.—The individualized family
4 service plan shall be in writing and contain—

5 “(1) a statement of the infant’s or toddler’s
6 present levels of physical development, cognitive de-
7 velopment, communication development, social or
8 emotional development, and adaptive development,
9 based on objective criteria;

10 “(2) a statement of the family’s resources, pri-
11 orities, and concerns relating to enhancing the devel-
12 opment of the family’s infant or toddler with a dis-
13 ability;

14 “(3) a statement of the major outcomes ex-
15 pected to be achieved for the infant or toddler and
16 the family, and the criteria, procedures, and
17 timelines used to determine the degree to which
18 progress toward achieving the outcomes is being
19 made and whether modifications or revisions of the
20 outcomes or services are necessary;

21 “(4) a statement of specific early intervention
22 services necessary to meet the unique needs of the
23 infant or toddler and the family, including the fre-
24 quency, intensity, and method of delivering services;

1 “(5) a statement of the natural environments in
2 which early intervention services shall appropriately
3 be provided, including a justification of the extent,
4 if any, to which the services will not be provided in
5 a natural environment;

6 “(6) the projected dates for initiation of serv-
7 ices and the anticipated duration of the services;

8 “(7) the identification of the service coordinator
9 from the profession most immediately relevant to the
10 infant’s or toddler’s or family’s needs (or who is oth-
11 erwise qualified to carry out all applicable respon-
12 sibilities under this part) who will be responsible for
13 the implementation of the plan and coordination
14 with other agencies and persons; and

15 “(8) the steps to be taken to support the transi-
16 tion of the toddler with a disability to preschool or
17 other appropriate services.

18 “(e) PARENTAL CONSENT.—The contents of the in-
19 dividualized family service plan shall be fully explained to
20 the parents and informed written consent from the par-
21 ents shall be obtained prior to the provision of early inter-
22 vention services described in such plan. If the parents do
23 not provide consent with respect to a particular early
24 intervention service, then the early intervention services
25 to which consent is obtained shall be provided.

1 **“SEC. 637. STATE APPLICATION AND ASSURANCES.**

2 “(a) APPLICATION.—A State desiring to receive a
3 grant under section 633 shall submit an application to the
4 Secretary at such time and in such manner as the Sec-
5 retary may reasonably require. The application shall con-
6 tain—

7 “(1) a designation of the lead agency in the
8 State that will be responsible for the administration
9 of funds provided under section 633;

10 “(2) a designation of an individual or entity re-
11 sponsible for assigning financial responsibility
12 among appropriate agencies;

13 “(3) information demonstrating eligibility of the
14 State under section 634, including—

15 “(A) information demonstrating to the
16 Secretary’s satisfaction that the State has in ef-
17 fect the statewide system required by section
18 633; and

19 “(B) a description of services to be pro-
20 vided to infants and toddlers with disabilities
21 and their families through the system;

22 “(4) if the State provides services to at-risk in-
23 fants and toddlers through the system, a description
24 of such services;

25 “(5) a description of the uses for which funds
26 will be expended in accordance with this part;

1 “(6) a description of the procedure used to en-
2 sure that resources are made available under this
3 part for all geographic areas within the State;

4 “(7) a description of State policies and proce-
5 dures that ensure that, prior to the adoption by the
6 State of any other policy or procedure necessary to
7 meet the requirements of this part, there are public
8 hearings, adequate notice of the hearings, and an
9 opportunity for comment available to the general
10 public, including individuals with disabilities and
11 parents of infants and toddlers with disabilities;

12 “(8) a description of the policies and procedures
13 to be used—

14 “(A) to ensure a smooth transition for tod-
15 dlers receiving early intervention services under
16 this part to preschool or other appropriate serv-
17 ices, including a description of how--

18 “(i) the families of such toddlers will
19 be included in the transition plans required
20 by subparagraph (C); and

21 “(ii) the lead agency designated or es-
22 tablished under section 636(a)(10) will—

23 “(I) notify the local educational
24 agency for the area in which such a
25 child resides that the child will shortly

1 reach the age of eligibility for pre-
2 school services under part B, as deter-
3 mined in accordance with State law;

4 “(II) in the case of a child who
5 may be eligible for such preschool
6 services, with the approval of the fam-
7 ily of the child, convene a conference
8 among the lead agency, the family,
9 and the local educational agency at
10 least 90 days (and at the discretion of
11 all such parties, up to 6 months) be-
12 fore the child is eligible for the pre-
13 school services, to discuss any such
14 services that the child may receive;
15 and

16 “(III) in the case of a child who
17 may not be eligible for such preschool
18 services, with the approval of the fam-
19 ily, make reasonable efforts to con-
20 vene a conference among the lead
21 agency, the family, and providers of
22 other appropriate services for children
23 who are not eligible for preschool serv-
24 ices under part B, to discuss the ap-

1 appropriate services that the child may
2 receive;

3 “(B) to review the child’s program options
4 for the period from the child’s third birthday
5 through the remainder of the school year; and

6 “(C) to establish a transition plan; and

7 “(9) such other information and assurances as
8 the Secretary may reasonably require.

9 “(b) ASSURANCES.—The application described in
10 subsection (a)—

11 “(1) shall provide satisfactory assurance that
12 Federal funds made available under section 643 to
13 the State will be expended in accordance with this
14 part;

15 “(2) shall contain an assurance that the State
16 will comply with the requirements of section 640;

17 “(3) shall provide satisfactory assurance that
18 the control of funds provided under section 643, and
19 title to property derived from those funds, will be in
20 a public agency for the uses and purposes provided
21 in this part and that a public agency will administer
22 such funds and property;

23 “(4) shall provide for—

24 “(A) making such reports in such form
25 and containing such information as the Sec-

1 retary may require to carry out the Secretary’s
2 functions under this part; and

3 “(B) keeping such records and affording
4 such access to them as the Secretary may find
5 necessary to ensure the correctness and ver-
6 ification of those reports and proper disburse-
7 ment of Federal funds under this part;

8 “(5) provide satisfactory assurance that Federal
9 funds made available under section 643 to the
10 State—

11 “(A) will not be commingled with State
12 funds; and

13 “(B) will be used so as to supplement the
14 level of State and local funds expended for in-
15 fants and toddlers with disabilities and their
16 families and in no case to supplant those State
17 and local funds;

18 “(6) shall provide satisfactory assurance that
19 such fiscal control and fund accounting procedures
20 will be adopted as may be necessary to ensure prop-
21 er disbursement of, and accounting for, Federal
22 funds paid under section 643 to the State;

23 “(7) shall provide satisfactory assurance that
24 policies and procedures have been adopted to ensure
25 meaningful involvement of underserved groups, in-

1 including minority, low-income, and rural families, in
2 the planning and implementation of all the require-
3 ments of this part; and

4 “(8) shall contain such other information and
5 assurances as the Secretary may reasonably require
6 by regulation.

7 “(c) STANDARD FOR DISAPPROVAL OF APPLICA-
8 TION.—The Secretary may not disapprove such an appli-
9 cation unless the Secretary determines, after notice and
10 opportunity for a hearing, that the application fails to
11 comply with the requirements of this section.

12 “(d) SUBSEQUENT STATE APPLICATION.—If a State
13 has on file with the Secretary a policy, procedure, or as-
14 surance that demonstrates that the State meets a require-
15 ment of this section, including any policy or procedure
16 filed under part H (as in effect before July 1, 1998), the
17 Secretary shall consider the State to have met the require-
18 ment for purposes of receiving a grant under this part.

19 “(e) MODIFICATION OF APPLICATION.—An applica-
20 tion submitted by a State in accordance with this section
21 shall remain in effect until the State submits to the Sec-
22 retary such modifications as the State determines nec-
23 essary. This section shall apply to a modification of an
24 application to the same extent and in the same manner
25 as this section applies to the original application.

1 “(f) MODIFICATIONS REQUIRED BY THE SEC-
2 RETARY.—The Secretary may require a State to modify
3 its application under this section, but only to the extent
4 necessary to ensure the State’s compliance with this part,
5 if—

6 “(1) an amendment is made to this Act, or a
7 Federal regulation issued under this Act;

8 “(2) a new interpretation of this Act is made by
9 a Federal court or the State’s highest court; or

10 “(3) an official finding of noncompliance with
11 Federal law or regulations is made with respect to
12 the State.

13 **“SEC. 638. USES OF FUNDS.**

14 “In addition to using funds provided under section
15 633 to maintain and implement the statewide system re-
16 quired by such section, a State may use such funds—

17 “(1) for direct early intervention services for in-
18 fants and toddlers with disabilities, and their fami-
19 lies, under this part that are not otherwise funded
20 through other public or private sources;

21 “(2) to expand and improve on services for in-
22 fants and toddlers and their families under this part
23 that are otherwise available;

24 “(3) to provide a free appropriate public edu-
25 cation, in accordance with part B, to children with

1 disabilities from their third birthday to the begin-
2 ning of the following school year; and

3 “(4) in any State that does not provide services
4 for at-risk infants and toddlers under section
5 637(a)(4), to strengthen the statewide system by ini-
6 tiating, expanding, or improving collaborative efforts
7 related to at-risk infants and toddlers, including es-
8 tablishing linkages with appropriate public or private
9 community-based organizations, services, and per-
10 sonnel for the purposes of—

11 “(A) identifying and evaluating at-risk in-
12 fants and toddlers;

13 “(B) making referrals of the infants and
14 toddlers identified and evaluated under sub-
15 paragraph (A); and

16 “(C) conducting periodic follow-up on each
17 such referral to determine if the status of the
18 infant or toddler involved has changed with re-
19 spect to the eligibility of the infant or toddler
20 for services under this part.

21 **“SEC. 639. PROCEDURAL SAFEGUARDS.**

22 “(a) MINIMUM PROCEDURES.—The procedural safe-
23 guards required to be included in a statewide system
24 under section 635(a)(13) shall provide, at a minimum, the
25 following:

1 “(1) The timely administrative resolution of
2 complaints by parents. Any party aggrieved by the
3 findings and decision regarding an administrative
4 complaint shall have the right to bring a civil action
5 with respect to the complaint in any State court of
6 competent jurisdiction or in a district court of the
7 United States without regard to the amount in con-
8 troversy. In any action brought under this para-
9 graph, the court shall receive the records of the ad-
10 ministrative proceedings, shall hear additional evi-
11 dence at the request of a party, and, basing its deci-
12 sion on the preponderance of the evidence, shall
13 grant such relief as the court determines is appro-
14 priate.

15 “(2) The right to confidentiality of personally
16 identifiable information, including the right of par-
17 ents to written notice of and written consent to the
18 exchange of such information among agencies con-
19 sistent with Federal and State law.

20 “(3) The right of the parents to determine
21 whether they, their infant or toddler, or other family
22 members will accept or decline any early intervention
23 service under this part in accordance with State law
24 without jeopardizing other early intervention services
25 under this part.

1 “(4) The opportunity for parents to examine
2 records relating to assessment, screening, eligibility
3 determinations, and the development and implemen-
4 tation of the individualized family service plan.

5 “(5) Procedures to protect the rights of the in-
6 fant or toddler whenever the parents of the child are
7 not known or cannot be found or the child is a ward
8 of the State, including the assignment of an individ-
9 ual (who shall not be an employee of the State lead
10 agency, or other State agency, and who shall not be
11 any person, or any employee of a person, providing
12 early intervention services to the infant or toddler or
13 any family member of the infant or toddler) to act
14 as a surrogate for the parents.

15 “(6) Written prior notice to the parents of the
16 infant or toddler with a disability whenever the State
17 agency or service provider proposes to initiate or
18 change or refuses to initiate or change the identifica-
19 tion, evaluation, or placement of the infant or tod-
20 dler with a disability, or the provision of appropriate
21 early intervention services to the infant or toddler.

22 “(7) Procedures designed to ensure that the no-
23 tice required by paragraph (6) fully informs the par-
24 ents, in the parents’ native language, unless it clear-

1 ly is not feasible to do so, of all procedures available
 2 pursuant to this section.

3 “(8) The right of parents to use mediation in
 4 accordance with section 615(e), except that—

5 “(A) any reference in the section to a
 6 State educational agency shall be considered to
 7 be a reference to a State’s lead agency estab-
 8 lished or designated under section 635(a)(10);

9 “(B) any reference in the section to a local
 10 educational agency shall be considered to be a
 11 reference to a local service provider or the
 12 State’s lead agency under this part, as the case
 13 may be; and

14 “(C) any reference in the section to the
 15 provision of free appropriate public education to
 16 children with disabilities shall be considered to
 17 be a reference to the provision of appropriate
 18 early intervention services to infants and tod-
 19 dlers with disabilities.

20 “(b) SERVICES DURING PENDENCY OF PROCEED-
 21 INGS.—During the pendency of any proceeding or action
 22 involving a complaint by the parents of an infant or tod-
 23 dler with a disability, unless the State agency and the par-
 24 ents otherwise agree, the infant or toddler shall continue
 25 to receive the appropriate early intervention services cur-

1 rently being provided or, if applying for initial services,
2 shall receive the services not in dispute.

3 **“SEC. 640. PAYOR OF LAST RESORT.**

4 “(a) NONSUBSTITUTION.—Funds provided under
5 section 643 may not be used to satisfy a financial commit-
6 ment for services that would have been paid for from an-
7 other public or private source, including any medical pro-
8 gram administered by the Secretary of Defense, but for
9 the enactment of this part, except that whenever consid-
10 ered necessary to prevent a delay in the receipt of appro-
11 priate early intervention services by an infant, toddler, or
12 family in a timely fashion, funds provided under section
13 643 may be used to pay the provider of services pending
14 reimbursement from the agency that has ultimate respon-
15 sibility for the payment.

16 “(b) REDUCTION OF OTHER BENEFITS.—Nothing in
17 this part shall be construed to permit the State to reduce
18 medical or other assistance available or to alter eligibility
19 under title V of the Social Security Act (relating to mater-
20 nal and child health) or title XIX of the Social Security
21 Act (relating to medicaid for infants or toddlers with dis-
22 abilities) within the State.

23 **“SEC. 641. STATE INTERAGENCY COORDINATING COUNCIL.**

24 “(a) ESTABLISHMENT.—

1 “(1) IN GENERAL.—A State that desires to re-
2 ceive financial assistance under this part shall estab-
3 lish a State interagency coordinating council.

4 “(2) APPOINTMENT.—The council shall be ap-
5 pointed by the Governor. In making appointments to
6 the council, the Governor shall ensure that the mem-
7 bership of the council reasonably represents the pop-
8 ulation of the State.

9 “(3) CHAIRPERSON.—The Governor shall des-
10 ignate a member of the council to serve as the chair-
11 person of the council, or shall require the council to
12 so designate such a member. Any member of the
13 council who is a representative of the lead agency
14 designated under section 635(a)(10) may not serve
15 as the chairperson of the council.

16 “(b) COMPOSITION.—

17 “(1) IN GENERAL.—The council shall be com-
18 posed as follows:

19 “(A) PARENTS.—At least 20 percent of
20 the members shall be parents of infants or tod-
21 dlers with disabilities or children with disabil-
22 ities aged 12 or younger, with knowledge of, or
23 experience with, programs for infants and tod-
24 dlers with disabilities. At least one such mem-
25 ber shall be a parent of an infant or toddler

1 with a disability or a child with a disability
2 aged 6 or younger.

3 “(B) SERVICE PROVIDERS.—At least 20
4 percent of the members shall be public or pri-
5 vate providers of early intervention services.

6 “(C) STATE LEGISLATURE.—At least one
7 member shall be from the State legislature.

8 “(D) PERSONNEL PREPARATION.—At least
9 one member shall be involved in person-
10 nel preparation.

11 “(E) AGENCY FOR EARLY INTERVENTION
12 SERVICES.—At least one member shall be from
13 each of the State agencies involved in the provi-
14 sion of, or payment for, early intervention serv-
15 ices to infants and toddlers with disabilities and
16 their families and shall have sufficient authority
17 to engage in policy planning and implementa-
18 tion on behalf of such agencies.

19 “(F) AGENCY FOR PRESCHOOL SERV-
20 ICES.—At least one member shall be from the
21 State educational agency responsible for pre-
22 school services to children with disabilities and
23 shall have sufficient authority to engage in pol-
24 icy planning and implementation on behalf of
25 such agency.

1 “(G) AGENCY FOR HEALTH INSURANCE.—

2 At least one member shall be from the agency
3 responsible for the State governance of health
4 insurance.

5 “(H) HEAD START AGENCY.—A represent-
6 ative from a Head Start agency or program in
7 the State.

8 “(I) CHILD CARE AGENCY.—A representa-
9 tive from a State agency responsible for child
10 care.

11 “(2) OTHER MEMBERS.—The council may in-
12 clude other members selected by the Governor, in-
13 cluding a representative from the Bureau of Indian
14 Affairs, or where there is no BIA-operated or BIA-
15 funded school, from the Indian Health Service or the
16 tribe or tribal council.

17 “(c) MEETINGS.—The council shall meet at least
18 quarterly and in such places as it deems necessary. The
19 meetings shall be publicly announced, and, to the extent
20 appropriate, open and accessible to the general public.

21 “(d) MANAGEMENT AUTHORITY.—Subject to the ap-
22 proval of the Governor, the council may prepare and ap-
23 prove a budget using funds under this part to conduct
24 hearings and forums, to reimburse members of the council
25 for reasonable and necessary expenses for attending coun-

1 cil meetings and performing council duties (including child
2 care for parent representatives), to pay compensation to
3 a member of the council if the member is not employed
4 or must forfeit wages from other employment when per-
5 forming official council business, to hire staff, and to ob-
6 tain the services of such professional, technical, and cleri-
7 cal personnel as may be necessary to carry out its func-
8 tions under this part.

9 “(e) FUNCTIONS OF COUNCIL.—

10 “(1) DUTIES.—The council shall—

11 “(A) advise and assist the lead agency des-
12 ignated or established under section 635(a)(10)
13 in the performance of the responsibilities set
14 out in such section, particularly the identifica-
15 tion of the sources of fiscal and other support
16 for services for early intervention programs, as-
17 signment of financial responsibility to the ap-
18 propriate agency, and the promotion of the
19 interagency agreements;

20 “(B) advise and assist the lead agency in
21 the preparation of applications and amend-
22 ments thereto;

23 “(C) advise and assist the State edu-
24 cational agency regarding the transition of tod-

1 dlers with disabilities to preschool and other ap-
2 propriate services; and

3 “(D) prepare and submit an annual report
4 to the Governor and to the Secretary on the
5 status of early intervention programs for in-
6 fants and toddlers with disabilities and their
7 families operated within the State.

8 “(2) AUTHORIZED ACTIVITY.—The council may
9 advise and assist the lead agency and the State edu-
10 cational agency regarding the provision of appro-
11 priate services for children from birth through age
12 5. The council may advise appropriate agencies in
13 the State with respect to the integration of services
14 for infants and toddlers with disabilities and at-risk
15 infants and toddlers and their families, regardless of
16 whether at-risk infants and toddlers are eligible for
17 early intervention services in the State.

18 “(f) CONFLICT OF INTEREST.—No member of the
19 council shall cast a vote on any matter that would provide
20 direct financial benefit to that member or otherwise give
21 the appearance of a conflict of interest under State law.

22 **“SEC. 642. FEDERAL ADMINISTRATION.**

23 “Sections 616, 617, and 618 shall, to the extent not
24 inconsistent with this part, apply to the program author-
25 ized by this part, except that—

1 “(1) any reference in such sections to a State
2 educational agency shall be considered to be a ref-
3 erence to a State’s lead agency established or des-
4 igned under section 635(a)(10);

5 “(2) any reference in such sections to a local
6 educational agency, educational service agency, or a
7 State agency shall be considered to be a reference to
8 an early intervention service provider under this
9 part; and

10 “(3) any reference to the education of children
11 with disabilities or the education of all children with
12 disabilities shall be considered to be a reference to
13 the provision of appropriate early intervention serv-
14 ices to infants and toddlers with disabilities.

15 **“SEC. 643. ALLOCATION OF FUNDS.**

16 “(a) RESERVATION OF FUNDS FOR TERRITORIES.—

17 “(1) IN GENERAL.—From the sums appro-
18 priated to carry out this part for any fiscal year, the
19 Secretary may reserve up to one percent for pay-
20 ments to Guam, American Samoa, the Virgin Is-
21 lands, and the Commonwealth of the Northern Mari-
22 ana Islands in accordance with their respective
23 needs.

24 “(2) CONSOLIDATION OF FUNDS.—The provi-
25 sions of Public Law 95–134, permitting the consoli-

1 dation of grants to the outlying areas, shall not
2 apply to funds those areas receive under this part.

3 “(b) PAYMENTS TO INDIANS.—

4 “(1) IN GENERAL.—The Secretary shall, sub-
5 ject to this subsection, make payments to the Sec-
6 retary of the Interior to be distributed to tribes,
7 tribal organizations (as defined under section 4 of
8 the Indian Self-Determination and Education Assist-
9 ance Act), or consortia of the above entities for the
10 coordination of assistance in the provision of early
11 intervention services by the States to infants and
12 toddlers with disabilities and their families on res-
13 ervations served by elementary and secondary
14 schools for Indian children operated or funded by
15 the Department of the Interior. The amount of such
16 payment for any fiscal year shall be 1.25 percent of
17 the aggregate of the amount available to all States
18 under this part for such fiscal year.

19 “(2) ALLOCATION.—For each fiscal year, the
20 Secretary of the Interior shall distribute the entire
21 payment received under paragraph (1) by providing
22 to each tribe, tribal organization, or consortium an
23 amount based on the number of infants and toddlers
24 residing on the reservation as determined annually

1 divided by the total of such children served by all
2 tribes, tribal organizations, or consortia.

3 “(3) INFORMATION.—To receive a payment
4 under this paragraph, the tribe, tribal organization,
5 or consortium shall submit such information to the
6 Secretary of the Interior as is needed to determine
7 the amounts to be allocated under paragraph (2).

8 “(4) USE OF FUNDS.—The funds received by a
9 tribe, tribal organization, or consortium shall be
10 used to assist States in child-find, screening, and
11 other procedures for the early identification of In-
12 dian children under 3 years of age and for parent
13 training. Such funds may also be used to provide
14 early intervention services in accordance with this
15 part. Such activities may be carried out directly or
16 through contracts or cooperative agreements with
17 the BIA, local educational agencies, and other public
18 or private nonprofit organizations. The tribe, tribal
19 organization, or consortium is encouraged to involve
20 Indian parents in the development and implementa-
21 tion of these activities. The above entities shall, as
22 appropriate, make referrals to local, State, or Fed-
23 eral entities for the provision of services or further
24 diagnosis.

1 “(5) REPORTS.—To be eligible to receive a
2 grant under paragraph (2), a tribe, tribal organiza-
3 tion, or consortium shall make a biennial report to
4 the Secretary of the Interior of activities undertaken
5 under this subsection, including the number of con-
6 tracts and cooperative agreements entered into, the
7 number of children contacted and receiving services
8 for each year, and the estimated number of children
9 needing services during the 2 years following the
10 year in which the report is made. The Secretary of
11 the Interior shall include a summary of this informa-
12 tion on a biennial basis to the Secretary of Edu-
13 cation along with such other information as required
14 under section 611(i)(3)(E). The Secretary of Edu-
15 cation may require any additional information from
16 the Secretary of the Interior.

17 “(6) PROHIBITED USES OF FUNDS.—None of
18 the funds under this subsection may be used by the
19 Secretary of the Interior for administrative pur-
20 poses, including child count, and the provision of
21 technical assistance.

22 “(c) STATE ALLOTMENTS.—

23 “(1) IN GENERAL.—Except as provided in para-
24 graphs (2), (3), and (4), from the funds remaining
25 for each fiscal year after the reservation and pay-

1 ments under subsections (a) and (b), the Secretary
2 shall first allot to each State an amount that bears
3 the same ratio to the amount of such remainder as
4 the number of infants and toddlers in the State
5 bears to the number of infants and toddlers in all
6 States.

7 “(2) MINIMUM ALLOTMENTS.—Except as pro-
8 vided in paragraphs (3) and (4), no State shall re-
9 ceive an amount under this section for any fiscal
10 year that is less than the greatest of—

11 “(A) one-half of one percent of the remain-
12 ing amount described in paragraph (1); or

13 “(B) \$500,000.

14 “(3) SPECIAL RULE FOR 1998 AND 1999.—

15 “(A) IN GENERAL.—Except as provided in
16 paragraph (4), no State may receive an amount
17 under this section for either fiscal year 1998 or
18 1999 that is less than the sum of the amounts
19 such State received for fiscal year 1994
20 under—

21 “(i) part H (as in effect for such fis-
22 cal year); and

23 “(ii) subpart 2 of part D of chapter 1
24 of title I of the Elementary and Secondary
25 Education Act of 1965 (as in effect on the

1 day before the date of the enactment of the
2 Improving America’s Schools Act of 1994)
3 for children with disabilities under 3 years
4 of age.

5 “(B) EXCEPTION.—If, for fiscal year 1998
6 or 1999, the number of infants and toddlers in
7 a State, as determined under paragraph (1), is
8 less than the number of infants and toddlers so
9 determined for fiscal year 1994, the amount de-
10 termined under subparagraph (A) for the State
11 shall be reduced by the same percentage by
12 which the number of such infants and toddlers
13 so declined.

14 “(4) RATABLE REDUCTION.—

15 “(A) IN GENERAL.—If the sums made
16 available under this part for any fiscal year are
17 insufficient to pay the full amounts that all
18 States are eligible to receive under this sub-
19 section for such year, the Secretary shall rat-
20 ably reduce the allocations to such States for
21 such year.

22 “(B) ADDITIONAL FUNDS.—If additional
23 funds become available for making payments
24 under this subsection for a fiscal year, alloca-
25 tions that were reduced under subparagraph

1 (A) shall be increased on the same basis they
2 were reduced.

3 “(5) DEFINITIONS.—For the purpose of this
4 subsection—

5 “(A) the terms ‘infants’ and ‘toddlers’
6 mean children under 3 years of age; and

7 “(B) the term ‘State’ means each of the 50
8 States, the District of Columbia, and the Com-
9 monwealth of Puerto Rico.

10 “(d) REALLOTMENT OF FUNDS.—If a State elects
11 not to receive its allotment under subsection (c), the Sec-
12 retary shall reallocate, among the remaining States, amounts
13 from such State in accordance with such subsection.

14 **“SEC. 644. FEDERAL INTERAGENCY COORDINATING COUN-
15 CIL.**

16 “(a) ESTABLISHMENT AND PURPOSE.—

17 “(1) IN GENERAL.—The Secretary shall estab-
18 lish a Federal Interagency Coordinating Council in
19 order to—

20 “(A) minimize duplication of programs and
21 activities across Federal, State, and local agen-
22 cies, relating to—

23 “(i) early intervention services for in-
24 fants and toddlers with disabilities (includ-

1 ing at-risk infants and toddlers) and their
2 families; and

3 “(ii) preschool or other appropriate
4 services for children with disabilities;

5 “(B) ensure the effective coordination of
6 Federal early intervention and preschool pro-
7 grams and policies across Federal agencies;

8 “(C) coordinate the provision of Federal
9 technical assistance and support activities to
10 States;

11 “(D) identify gaps in Federal agency pro-
12 grams and services; and

13 “(E) identify barriers to Federal inter-
14 agency cooperation.

15 “(2) APPOINTMENTS.—The council established
16 under paragraph (1) (hereafter in this section re-
17 ferred to as the “Council”) and the chairperson of
18 the Council shall be appointed by the Secretary in
19 consultation with other appropriate Federal agen-
20 cies. In making the appointments, the Secretary
21 shall ensure that each member has sufficient author-
22 ity to engage in policy planning and implementation
23 on behalf of the department, agency, or program
24 that the member represents.

1 “(b) COMPOSITION.—The Council shall be composed
2 of—

3 “(1) a representative of the Office of Special
4 Education Programs;

5 “(2) a representative of the National Institute
6 on Disability and Rehabilitation Research and a rep-
7 resentative of the Office of Educational Research
8 and Improvement;

9 “(3) a representative of the Maternal and Child
10 Health Services Block Grant Program;

11 “(4) a representative of programs administered
12 under the Developmental Disabilities Assistance and
13 Bill of Rights Act;

14 “(5) a representative of the Health Care Fi-
15 nancing Administration;

16 “(6) a representative of the Division of Birth
17 Defects and Developmental Disabilities of the Cen-
18 ters for Disease Control;

19 “(7) a representative of the Social Security Ad-
20 ministration;

21 “(8) a representative of the special supple-
22 mental nutrition program for women, infants, and
23 children of the Department of Agriculture;

24 “(9) a representative of the National Institute
25 of Mental Health;

1 “(10) a representative of the National Institute
2 of Child Health and Human Development;

3 “(11) a representative of the Bureau of Indian
4 Affairs of the Department of the Interior;

5 “(12) a representative of the Indian Health
6 Service;

7 “(13) a representative of the Surgeon General;

8 “(14) a representative of the Department of
9 Defense;

10 “(15) a representative of the Children’s Bu-
11 reau, and a representative of the Head Start Bu-
12 reau, of the Administration for Children and Fami-
13 lies;

14 “(16) a representative of the Substance Abuse
15 and Mental Health Services Administration;

16 “(17) a representative of the Pediatric AIDS
17 Health Care Demonstration Program in the Public
18 Health Service;

19 “(18) parents of children with disabilities age
20 12 or under (who shall constitute at least 20 percent
21 of the members of the Council), of whom at least
22 one must have a child with a disability under the
23 age of 6;

24 “(19) at least 2 representatives of State lead
25 agencies for early intervention services to infants

1 and toddlers, one of whom must be a representative
2 of a State educational agency and the other a rep-
3 resentative of a non-educational agency;

4 “(20) other members representing appropriate
5 agencies involved in the provision of, or payment for,
6 early intervention services and special education and
7 related services to infants and toddlers with disabil-
8 ities and their families and preschool children with
9 disabilities; and

10 “(21) other persons appointed by the Secretary.

11 “(c) MEETINGS.—The Council shall meet at least
12 quarterly and in such places as the Council deems nec-
13 essary. The meetings shall be publicly announced, and, to
14 the extent appropriate, open and accessible to the general
15 public.

16 “(d) FUNCTIONS OF THE COUNCIL.—The Council
17 shall—

18 “(1) advise and assist the Secretary of Edu-
19 cation, the Secretary of Health and Human Services,
20 the Secretary of Defense, the Secretary of the Inte-
21 rior, the Secretary of Agriculture, and the Commis-
22 sioner of Social Security in the performance of their
23 responsibilities related to serving children from birth
24 through age 5 who are eligible for services under
25 this part or under part B;

1 “(2) conduct policy analyses of Federal pro-
2 grams related to the provision of early intervention
3 services and special educational and related services
4 to infants and toddlers with disabilities and their
5 families, and preschool children with disabilities, in
6 order to determine areas of conflict, overlap, duplica-
7 tion, or inappropriate omission;

8 “(3) identify strategies to address issues de-
9 scribed in paragraph (2);

10 “(4) develop and recommend joint policy memo-
11 randa concerning effective interagency collaboration,
12 including modifications to regulations, and the elimi-
13 nation of barriers to interagency programs and ac-
14 tivities;

15 “(5) coordinate technical assistance and dis-
16 seminate information on best practices, effective pro-
17 gram coordination strategies, and recommendations
18 for improved early intervention programming for in-
19 fants and toddlers with disabilities and their families
20 and preschool children with disabilities; and

21 “(6) facilitate activities in support of States’
22 interagency coordination efforts.

23 “(e) CONFLICT OF INTEREST.—No member of the
24 Council shall cast a vote on any matter that would provide

1 direct financial benefit to that member or otherwise give
2 the appearance of a conflict of interest under Federal law.

3 “(f) FEDERAL ADVISORY COMMITTEE ACT.—The
4 Federal Advisory Committee Act (5 U.S.C. App.) shall not
5 apply to the establishment or operation of the Council.

6 **“SEC. 645. AUTHORIZATION OF APPROPRIATIONS.**

7 “For the purpose of carrying out this part, there are
8 authorized to be appropriated \$400,000,000 for fiscal year
9 1998 and such sums as may be necessary for each of the
10 fiscal years 1999 through 2002.

11 **“PART D—NATIONAL ACTIVITIES TO IMPROVE**
12 **EDUCATION OF CHILDREN WITH DISABILITIES**
13 **“Subpart 1—State Program Improvement Grants for**
14 **Children with Disabilities**

15 **“SEC. 651. FINDINGS AND PURPOSE.**

16 “(a) FINDINGS.—The Congress finds the following:

17 “(1) States are responding with some success to
18 multiple pressures to improve educational and tran-
19 sitional services and results for children with disabil-
20 ities in response to growing demands imposed by
21 ever-changing factors, such as demographics, social
22 policies, and labor and economic markets.

23 “(2) In order for States to address such de-
24 mands and to facilitate lasting systemic change that
25 is of benefit to all students, including children with

1 disabilities, States must involve local educational
2 agencies, parents, individuals with disabilities and
3 their families, teachers and other service providers,
4 and other interested individuals and organizations in
5 carrying out comprehensive strategies to improve
6 educational results for children with disabilities.

7 “(3) Targeted Federal financial resources are
8 needed to assist States, working in partnership with
9 others, to identify and make needed changes to ad-
10 dress the needs of children with disabilities into the
11 next century.

12 “(4) State educational agencies, in partnership
13 with local educational agencies and other individuals
14 and organizations, are in the best position to iden-
15 tify and design ways to meet emerging and expand-
16 ing demands to improve education for children with
17 disabilities and to address their special needs.

18 “(5) Research, demonstration, and practice over
19 the past 20 years in special education and related
20 disciplines have built a foundation of knowledge on
21 which State and local systemic-change activities can
22 now be based.

23 “(6) Such research, demonstration, and practice
24 in special education and related disciplines have

1 demonstrated that an effective educational system
2 now and in the future must—

3 “(A) maintain high academic standards
4 and clear performance goals for children with
5 disabilities, consistent with the standards and
6 expectations for all students in the educational
7 system, and provide for appropriate and effec-
8 tive strategies and methods to ensure that stu-
9 dents who are children with disabilities have
10 maximum opportunities to achieve those stand-
11 ards and goals;

12 “(B) create a system that fully addresses
13 the needs of all students, including children
14 with disabilities, by addressing the needs of
15 children with disabilities in carrying out edu-
16 cational reform activities;

17 “(C) clearly define, in measurable terms,
18 the school and post-school results that children
19 with disabilities are expected to achieve;

20 “(D) promote service integration, and the
21 coordination of State and local education, so-
22 cial, health, mental health, and other services,
23 in addressing the full range of student needs,
24 particularly the needs of children with disabil-
25 ities who require significant levels of support to

1 maximize their participation and learning in
2 school and the community;

3 “(E) ensure that children with disabilities
4 are provided assistance and support in making
5 transitions as described in section 674(b)(3)(C);

6 “(F) promote comprehensive programs of
7 professional development to ensure that the per-
8 sons responsible for the education or a transi-
9 tion of children with disabilities possess the
10 skills and knowledge necessary to address the
11 educational and related needs of those children;

12 “(G) disseminate to teachers and other
13 personnel serving children with disabilities re-
14 search-based knowledge about successful teach-
15 ing practices and models and provide technical
16 assistance to local educational agencies and
17 schools on how to improve results for children
18 with disabilities;

19 “(H) create school-based disciplinary strat-
20 egies that will be used to reduce or eliminate
21 the need to use suspension and expulsion as
22 disciplinary options for children with disabil-
23 ities;

1 “(I) establish placement-neutral funding
2 formulas and cost-effective strategies for meet-
3 ing the needs of children with disabilities; and

4 “(J) involve individuals with disabilities
5 and parents of children with disabilities in plan-
6 ning, implementing, and evaluating systemic-
7 change activities and educational reforms.

8 “(b) PURPOSE.—The purpose of this subpart is to
9 assist State educational agencies, and their partners re-
10 ferred to in section 652(b), in reforming and improving
11 their systems for providing educational, early intervention,
12 and transitional services, including their systems for pro-
13 fessional development, technical assistance, and dissemi-
14 nation of knowledge about best practices, to improve re-
15 sults for children with disabilities.

16 **“SEC. 652. ELIGIBILITY AND COLLABORATIVE PROCESS.**

17 “(a) ELIGIBLE APPLICANTS.—A State educational
18 agency may apply for a grant under this subpart for a
19 grant period of not less than 1 year and not more than
20 5 years.

21 “(b) PARTNERS.—

22 “(1) REQUIRED PARTNERS.—

23 “(A) CONTRACTUAL PARTNERS.—In order
24 to be considered for a grant under this subpart,
25 a State educational agency shall establish a

1 partnership with local educational agencies and
2 other State agencies involved in, or concerned
3 with, the education of children with disabilities.

4 “(B) OTHER PARTNERS.—In order to be
5 considered for a grant under this subpart, a
6 State educational agency shall work in partner-
7 ship with other persons and organizations in-
8 volved in, and concerned with, the education of
9 children with disabilities, including—

10 “(i) the Governor;

11 “(ii) parents of children with disabili-
12 ties;

13 “(iii) parents of nondisabled children;

14 “(iv) individuals with disabilities;

15 “(v) organizations representing indi-
16 viduals with disabilities and their parents,
17 such as parent training and information
18 centers;

19 “(vi) community-based and other non-
20 profit organizations involved in the edu-
21 cation and employment of individuals with
22 disabilities;

23 “(vii) the lead State agency for part
24 C;

1 “(viii) general and special education
2 teachers, and early intervention personnel;

3 “(ix) the State advisory panel estab-
4 lished under part C;

5 “(x) the State interagency coordinat-
6 ing council established under part C; and

7 “(xi) institutions of higher education
8 within the State.

9 “(2) OPTIONAL PARTNERS.—A partnership
10 under subparagraph (A) or (B) of paragraph (1)
11 may also include—

12 “(A) individuals knowledgeable about voca-
13 tional education;

14 “(B) the State agency for higher edu-
15 cation;

16 “(C) the State vocational rehabilitation
17 agency;

18 “(D) public agencies with jurisdiction in
19 the areas of health, mental health, social serv-
20 ices, and juvenile justice; and

21 “(E) other individuals.

22 **“SEC. 653. APPLICATIONS.**

23 “(a) IN GENERAL.—

24 “(1) SUBMISSION.—A State educational agency
25 that desires to receive a grant under this subpart

1 shall submit to the Secretary an application at such
2 time, in such manner, and including such informa-
3 tion as the Secretary may require.

4 “(2) STATE IMPROVEMENT PLAN.—The appli-
5 cation shall include a State improvement plan that—

6 “(A) is integrated, to the maximum extent
7 possible, with State plans under the Elementary
8 and Secondary Education Act of 1965 and the
9 Rehabilitation Act of 1973, as appropriate; and

10 “(B) meets the requirements of this sec-
11 tion.

12 “(b) DETERMINING CHILD AND PROGRAM NEEDS.—

13 “(1) IN GENERAL.—Each State improvement
14 plan shall identify those critical aspects of early
15 intervention, general education, and special edu-
16 cation programs (including professional development,
17 based on an assessment of State and local needs)
18 that must be improved to enable children with dis-
19 abilities to meet the goals established by the State
20 under section 612(a)(16).

21 “(2) REQUIRED ANALYSES.—To meet the re-
22 quirement of paragraph (1), the State improvement
23 plan shall include at least—

24 “(A) an analysis of all information, reason-
25 ably available to the State educational agency,

1 on the performance of children with disabilities
2 in the State, including—

3 “(i) their performance on State as-
4 sssments and other performance indica-
5 tors established for all children, including
6 drop-out rates and graduation rates;

7 “(ii) their participation in postsecond-
8 ary education and employment; and

9 “(iii) how their performance on the
10 assessments and indicators described in
11 clause (i) compares to that of non-disabled
12 children;

13 “(B) an analysis of State and local needs
14 for professional development for personnel to
15 serve children with disabilities that includes, at
16 a minimum—

17 “(i) the number of personnel provid-
18 ing special education and related services;
19 and

20 “(ii) relevant information on current
21 and anticipated personnel vacancies and
22 shortages (including the number of individ-
23 uals described in clause (i) with temporary
24 certification), and on the extent of certifi-
25 cation or retraining necessary to eliminate

1 such shortages, that is based, to the maxi-
2 mum extent possible, on existing assess-
3 ments of personnel needs;

4 “(C) an analysis of the major findings of
5 the Secretary’s most recent reviews of State
6 compliance, as they relate to improving results
7 for children with disabilities; and

8 “(D) an analysis of other information, rea-
9 sonably available to the State, on the effective-
10 ness of the State’s systems of early interven-
11 tion, special education, and general education in
12 meeting the needs of children with disabilities.

13 “(c) IMPROVEMENT STRATEGIES.—Each State im-
14 provement plan shall—

15 “(1) describe a partnership agreement that—

16 “(A) specifies—

17 “(i) the nature and extent of the part-
18 nership among the State educational agen-
19 cy, local educational agencies, and other
20 State agencies involved in, or concerned
21 with, the education of children with disabil-
22 ities, and the respective roles of each mem-
23 ber of the partnership; and

24 “(ii) how such agencies will work in
25 partnership with other persons and organi-

1 zations involved in, and concerned with,
2 the education of children with disabilities,
3 including the respective roles of each of
4 these persons and organizations; and

5 “(B) is in effect for the period of the
6 grant;

7 “(2) describe how grant funds will be used in
8 undertaking the systemic-change activities, and the
9 amount and nature of funds from any other sources,
10 including part B funds retained for use at the State
11 level under sections 611(f) and 619(d), that will be
12 committed to the systemic-change activities;

13 “(3) describe the strategies the State will use to
14 address the needs identified under subsection (b), in-
15 cluding—

16 “(A) how the State will change State poli-
17 cies and procedures to address systemic barriers
18 to improving results for children with disabil-
19 ities;

20 “(B) how the State will hold local edu-
21 cational agencies and schools accountable for
22 educational progress of children with disabil-
23 ities;

24 “(C) how the State will provide technical
25 assistance to local educational agencies and

1 schools to improve results for children with dis-
2 abilities;

3 “(D) how the State will address the identi-
4 fied needs for in-service and pre-service prepa-
5 ration to ensure that all personnel who work
6 with children with disabilities (including both
7 professional and paraprofessional personnel who
8 provide special education, general education, re-
9 lated services, or early intervention services)
10 have the skills and knowledge necessary to meet
11 the needs of children with disabilities, including
12 a description of how—

13 “(i) the State will prepare general and
14 special education personnel with the con-
15 tent knowledge and collaborative skills
16 needed to meet the needs of children with
17 disabilities, including how the State will
18 work with other States on common certifi-
19 cation criteria;

20 “(ii) the State will prepare profes-
21 sionals and paraprofessionals in the area of
22 early intervention with the content knowl-
23 edge and collaborative skills needed to
24 meet the needs of infants and toddlers
25 with disabilities;

1 “(iii) the State will work with institu-
2 tions of higher education and other entities
3 that (on both a pre-service and an in-serv-
4 ice basis) prepare personnel who work with
5 children with disabilities to ensure that
6 those institutions and entities develop the
7 capacity to support quality professional de-
8 velopment programs that meet State and
9 local needs;

10 “(iv) the State will work to develop
11 collaborative agreements with other States
12 for the joint support and development of
13 programs to prepare personnel for which
14 there is not sufficient demand within a sin-
15 gle State to justify support or development
16 of such a program of preparation;

17 “(v) the State will work in collabora-
18 tion with other States, particularly neigh-
19 boring States, to address the lack of uni-
20 formity and reciprocity in the credentialing
21 of teachers and other personnel;

22 “(vi) the State will enhance the ability
23 of teachers and others to use strategies,
24 such as behavioral interventions, to ad-
25 dress the conduct of children with disabil-

1 ities that impedes the learning of children
2 with disabilities and others;

3 “(vii) the State will acquire and dis-
4 seminate, to teachers, administrators,
5 school board members, and related services
6 personnel, significant knowledge derived
7 from educational research and other
8 sources, and how the State will, when ap-
9 propriate, adopt promising practices, mate-
10 rials, and technology;

11 “(viii) the State will recruit, prepare,
12 and retain qualified personnel, including
13 personnel with disabilities and personnel
14 from groups that are underrepresented in
15 the fields of regular education, special edu-
16 cation, and related services;

17 “(ix) the plan is integrated, to the
18 maximum extent possible, with other pro-
19 fessional development plans and activities,
20 including plans and activities developed
21 and carried out under other Federal and
22 State laws that address personnel recruit-
23 ment and training; and

24 “(x) the State will provide for the
25 joint training of parents and special edu-

1 cation, related services, and general edu-
2 cation personnel;

3 “(E) strategies that will address systemic
4 problems identified in Federal compliance re-
5 views, including shortages of qualified person-
6 nel;

7 “(F) how the State will disseminate results
8 of the local capacity-building and improvement
9 projects funded under section 611(f)(4);

10 “(G) how the State will address improving
11 results for children with disabilities in the geo-
12 graphic areas of greatest need; and

13 “(H) how the State will assess, on a regu-
14 lar basis, the extent to which the strategies im-
15 plemented under this subpart have been effec-
16 tive; and

17 “(4) describe how the improvement strategies
18 described in paragraph (3) will be coordinated with
19 public and private sector resources.

20 “(d) COMPETITIVE AWARDS.—

21 “(1) IN GENERAL.—The Secretary shall make
22 grants under this subpart on a competitive basis.

23 “(2) PRIORITY.—The Secretary may give prior-
24 ity to applications on the basis of need, as indicated

1 by such information as the findings of Federal com-
2 pliance reviews.

3 “(e) PEER REVIEW.—

4 “(1) IN GENERAL.—The Secretary shall use a
5 panel of experts who are competent, by virtue of
6 their training, expertise, or experience, to evaluate
7 applications under this subpart.

8 “(2) COMPOSITION OF PANEL.—A majority of a
9 panel described in paragraph (1) shall be composed
10 of individuals who are not employees of the Federal
11 Government.

12 “(3) PAYMENT OF FEES AND EXPENSES OF
13 CERTAIN MEMBERS.—The Secretary may use avail-
14 able funds appropriated to carry out this subpart to
15 pay the expenses and fees of panel members who are
16 not employees of the Federal Government.

17 “(f) REPORTING PROCEDURES.—Each State edu-
18 cational agency that receives a grant under this subpart
19 shall submit performance reports to the Secretary pursu-
20 ant to a schedule to be determined by the Secretary, but
21 not more frequently than annually. The reports shall de-
22 scribe the progress of the State in meeting the perform-
23 ance goals established under section 612(a)(16), analyze
24 the effectiveness of the State’s strategies in meeting those

1 goals, and identify any changes in the strategies needed
2 to improve its performance.

3 **“SEC. 654. USE OF FUNDS.**

4 “(a) IN GENERAL.—

5 “(1) ACTIVITIES.—A State educational agency
6 that receives a grant under this subpart may use the
7 grant to carry out any activities that are described
8 in the State’s application and that are consistent
9 with the purpose of this subpart.

10 “(2) CONTRACTS AND SUBGRANTS.—Each such
11 State educational agency—

12 “(A) shall, consistent with its partnership
13 agreement under section 652(b), award con-
14 tracts or subgrants to local educational agen-
15 cies, institutions of higher education, and par-
16 ent training and information centers, as appro-
17 priate, to carry out its State improvement plan
18 under this subpart; and

19 “(B) may award contracts and subgrants
20 to other public and private entities, including
21 the lead agency under part C, to carry out such
22 plan.

23 “(b) USE OF FUNDS FOR PROFESSIONAL DEVELOP-
24 MENT.—A State educational agency that receives a grant
25 under this subpart—

1 “(1) shall use not less than 75 percent of the
2 funds it receives under the grant for any fiscal
3 year—

4 “(A) to ensure that there are sufficient
5 regular education, special education, and relat-
6 ed services personnel who have the skills and
7 knowledge necessary to meet the needs of chil-
8 dren with disabilities and developmental goals
9 of young children; or

10 “(B) to work with other States on common
11 certification criteria; or

12 “(2) shall use not less than 50 percent of such
13 funds for such purposes, if the State demonstrates
14 to the Secretary’s satisfaction that it has the person-
15 nel described in paragraph (1)(A).

16 “(c) GRANTS TO OUTLYING AREAS.—Public Law 95–
17 134, permitting the consolidation of grants to the outlying
18 areas, shall not apply to funds received under this subpart.

19 **“SEC. 655. MINIMUM STATE GRANT AMOUNTS.**

20 “(a) IN GENERAL.—The Secretary shall make a
21 grant to each State educational agency whose application
22 the Secretary has selected for funding under this subpart
23 in an amount for each fiscal year that is—

24 “(1) not less than \$500,000, nor more than
25 \$2,000,000, in the case of the 50 States, the Dis-

1 trict of Columbia, and the Commonwealth of Puerto
2 Rico; and

3 “(2) not less than \$80,000, in the case of an
4 outlying area.

5 “(b) INFLATION ADJUSTMENT.—Beginning with fis-
6 cal year 1999, the Secretary may increase the maximum
7 amount described in subsection (a)(1) to account for infla-
8 tion.

9 “(c) FACTORS.—The Secretary shall set the amount
10 of each grant under subsection (a) after considering—

11 “(1) the amount of funds available for making
12 the grants;

13 “(2) the relative population of the State or out-
14 lying area; and

15 “(3) the types of activities proposed by the
16 State or outlying area.

17 **“SEC. 656. AUTHORIZATION OF APPROPRIATIONS.**

18 “There are authorized to be appropriated to carry out
19 this subpart such sums as may be necessary for each of
20 the fiscal years 1998 through 2002.

21 **“Subpart 2—Coordinated Research, Personnel Prepa-
22 ration, Technical Assistance, Support, and Dis-
23 semination of Information**

24 **“SEC. 661. ADMINISTRATIVE PROVISIONS.**

25 “(a) COMPREHENSIVE PLAN.—

1 “(1) IN GENERAL.—The Secretary shall develop
2 and implement a comprehensive plan for activities
3 carried out under this subpart in order to enhance
4 the provision of educational, related services, transi-
5 tional, and early intervention services to children
6 with disabilities under parts B and C. The plan shall
7 include mechanisms to address educational, related
8 services, transitional, and early intervention needs
9 identified by State educational agencies in applica-
10 tions submitted for State program improvement
11 grants under subpart 1.

12 “(2) PARTICIPANTS IN PLAN DEVELOPMENT.—
13 In developing the plan described in paragraph (1),
14 the Secretary shall consult with—

15 “(A) individuals with disabilities;

16 “(B) parents of children with disabilities;

17 “(C) appropriate professionals; and

18 “(D) representatives of State and local
19 educational agencies, private schools, institu-
20 tions of higher education, other Federal agen-
21 cies, the National Council on Disability, and na-
22 tional organizations with an interest in, and ex-
23 pertise in, providing services to children with
24 disabilities and their families.

1 “(3) PUBLIC COMMENT.—The Secretary shall
2 take public comment on the plan.

3 “(4) DISTRIBUTION OF FUNDS.—In implement-
4 ing the plan, the Secretary shall, to the extent ap-
5 propriate, ensure that funds are awarded to recipi-
6 ents under this subpart to carry out activities that
7 benefit, directly or indirectly, children with disabil-
8 ities of all ages.

9 “(5) REPORTS TO CONGRESS.—The Secretary
10 shall periodically report to the Congress on the Sec-
11 retary’s activities under this subsection, including an
12 initial report not later than the date that is 18
13 months after the date of the enactment of the Indi-
14 viduals with Disabilities Act Amendments of 1997.

15 “(b) ELIGIBLE APPLICANTS.—

16 “(1) IN GENERAL.—Except as otherwise pro-
17 vided in this subpart, the following entities are eligi-
18 ble to apply for a grant, contract, or cooperative
19 agreement under this subpart:

20 “(A) A State educational agency.

21 “(B) A local educational agency.

22 “(C) An institution of higher education.

23 “(D) Any other public agency.

24 “(E) A private nonprofit organization.

25 “(F) An outlying area.

1 “(G) An Indian tribe or a tribal organiza-
2 tion (as defined under section 4 of the Indian
3 Self-Determination and Education Assistance
4 Act).

5 “(H) A for-profit organization, if the Sec-
6 retary finds it appropriate in light of the pur-
7 poses of a particular competition for a grant,
8 contract, or cooperative agreement under this
9 subpart.

10 “(2) SPECIAL RULE.—The Secretary may limit
11 the entities eligible for an award of a grant, con-
12 tract, or cooperative agreement to one or more cat-
13 egories of eligible entities described in paragraph
14 (1).

15 “(c) USE OF FUNDS BY SECRETARY.—Notwithstand-
16 ing any other provision of law, and in addition to any au-
17 thority granted the Secretary under chapter 1 or chapter
18 2, the Secretary may use up to 20 percent of the funds
19 available under either chapter 1 or chapter 2 for any fiscal
20 year to carry out any activity, or combination of activities,
21 subject to such conditions as the Secretary determines are
22 appropriate effectively to carry out the purposes of such
23 chapters, that—

24 “(A) is consistent with the purposes of
25 chapter 1, chapter 2, or both; and

- 1 “(B) involves—
- 2 “(i) research;
- 3 “(ii) personnel preparation;
- 4 “(iii) parent training and information;
- 5 “(iv) technical assistance and dissemi-
- 6 nation;
- 7 “(v) technology development, dem-
- 8 onstration, and utilization; or
- 9 “(vi) media services.

10 “(d) SPECIAL POPULATIONS.—

11 “(1) APPLICATION REQUIREMENT.—In making

12 an award of a grant, contract, or cooperative agree-

13 ment under this subpart, the Secretary shall, as ap-

14 propriate, require an applicant to demonstrate how

15 the applicant will address the needs of children with

16 disabilities from minority backgrounds.

17 “(2) OUTREACH AND TECHNICAL ASSIST-

18 ANCE.—

19 “(A) REQUIREMENT.—Notwithstanding

20 any other provision of this Act, the Secretary

21 shall ensure that at least one percent of the

22 total amount of funds appropriated to carry out

23 this subpart is used for either or both of the

24 following activities:

1 “(i) To provide outreach and technical
2 assistance to Historically Black Colleges
3 and Universities, and to institutions of
4 higher education with minority enrollments
5 of at least 25 percent, to promote the par-
6 ticipation of such colleges, universities, and
7 institutions in activities under this subpart.

8 “(ii) To enable Historically Black Col-
9 leges and Universities, and the institutions
10 described in clause (i), to assist other col-
11 leges, universities, institutions, and agen-
12 cies in improving educational and transi-
13 tional results for children with disabilities.

14 “(B) RESERVATION OF FUNDS.—The Sec-
15 retary may reserve funds appropriated under
16 this subpart to satisfy the requirement of sub-
17 paragraph (A).

18 “(e) PRIORITIES.—

19 “(1) IN GENERAL.—Except as otherwise explic-
20 itly authorized in this subpart, the Secretary shall
21 ensure that a grant, contract, or cooperative agree-
22 ment under chapter 1 or 2 is awarded only—

23 “(A) for activities that are designed to
24 benefit children with disabilities, their families,

1 or the personnel employed to work with such
2 children or their families; or

3 “(B) to benefit other individuals with dis-
4 abilities who such chapter is intended to bene-
5 fit.

6 “(2) PRIORITY FOR PARTICULAR ACTIVITIES.—
7 Subject to paragraph (1), the Secretary, in making
8 an award of a grant, contract, or cooperative agree-
9 ment under this subpart, may, without regard to the
10 rule making procedures under section 553 of title 5,
11 United States Code, limit competitions to, or other-
12 wise give priority to—

13 “(A) projects that address one or more—

14 “(i) age ranges;

15 “(ii) disabilities;

16 “(iii) school grades;

17 “(iv) types of educational placements
18 or early intervention environments;

19 “(v) types of services;

20 “(vi) content areas, such as reading;

21 or

22 “(vii) effective strategies for helping
23 children with disabilities learn appropriate
24 behavior in the school and other commu-
25 nity-based educational settings;

1 “(B) projects that address the needs of
2 children based on the severity of their disability;

3 “(C) projects that address the needs of—

4 “(i) low-achieving students;

5 “(ii) underserved populations;

6 “(iii) children from low-income fami-
7 lies;

8 “(iv) children with limited English
9 proficiency;

10 “(v) unserved and underserved areas;

11 “(vi) particular types of geographic
12 areas; or

13 “(vii) children whose behavior inter-
14 feres with their learning and socialization;

15 “(D) projects to reduce inappropriate iden-
16 tification of children as children with disabili-
17 ties, particularly among minority children;

18 “(E) projects that are carried out in par-
19 ticular areas of the country, to ensure broad ge-
20 ographic coverage; and

21 “(F) any activity that is expressly author-
22 ized in chapter 1 or 2.

23 “(f) APPLICANT AND RECIPIENT RESPONSIBIL-
24 ITIES.—

1 “(1) DEVELOPMENT AND ASSESSMENT OF
2 PROJECTS.—The Secretary shall require that an ap-
3 plicant for, and a recipient of, a grant, contract, or
4 cooperative agreement for a project under this sub-
5 part—

6 “(A) involve individuals with disabilities or
7 parents of individuals with disabilities in plan-
8 ning, implementing, and evaluating the project;
9 and

10 “(B) where appropriate, determine whether
11 the project has any potential for replication and
12 adoption by other entities.

13 “(2) ADDITIONAL RESPONSIBILITIES.—The
14 Secretary may require a recipient of a grant, con-
15 tract, or cooperative agreement for a project under
16 this subpart—

17 “(A) to share in the cost of the project;

18 “(B) to prepare the research and evalua-
19 tion findings and products from the project in
20 formats that are useful for specific audiences,
21 including parents, administrators, teachers,
22 early intervention personnel, related services
23 personnel, and individuals with disabilities;

24 “(C) to disseminate such findings and
25 products; and

1 “(D) to collaborate with other such recipi-
2 ents in carrying out subparagraphs (B) and
3 (C).

4 “(g) APPLICATION MANAGEMENT.—

5 “(1) STANDING PANEL.—

6 “(A) IN GENERAL.—The Secretary shall
7 establish and use a standing panel of experts
8 who are competent, by virtue of their training,
9 expertise, or experience, to evaluate applications
10 under this subpart that, individually, request
11 more than \$75,000 per year in Federal finan-
12 cial assistance.

13 “(B) MEMBERSHIP.—The standing panel
14 shall include, at a minimum—

15 “(i) individuals who are representa-
16 tives of institutions of higher education
17 that plan, develop, and carry out programs
18 of personnel preparation;

19 “(ii) individuals who design and carry
20 out programs of research targeted to the
21 improvement of special education programs
22 and services;

23 “(iii) individuals who have recognized
24 experience and knowledge necessary to in-
25 tegrate and apply research findings to im-

1 prove educational and transitional results
2 for children with disabilities;

3 “(iv) individuals who administer pro-
4 grams at the State or local level in which
5 children with disabilities participate;

6 “(v) individuals who prepare parents
7 of children with disabilities to participate
8 in making decisions about the education of
9 their children;

10 “(vi) individuals who establish policies
11 that affect the delivery of services to chil-
12 dren with disabilities;

13 “(vii) individuals who are parents of
14 children with disabilities who are benefit-
15 ing, or have benefited, from coordinated
16 research, personnel preparation, and tech-
17 nical assistance; and

18 “(viii) individuals with disabilities.

19 “(C) TRAINING.—The Secretary shall pro-
20 vide training to the individuals who are selected
21 as members of the standing panel under this
22 paragraph.

23 “(D) TERM.—No individual shall serve on
24 the standing panel for more than 3 consecutive
25 years, unless the Secretary determines that the

1 individual's continued participation is necessary
2 for the sound administration of this subpart.

3 “(2) PEER-REVIEW PANELS FOR PARTICULAR
4 COMPETITIONS.—

5 “(A) COMPOSITION.—The Secretary shall
6 ensure that each sub-panel selected from the
7 standing panel that reviews applications under
8 this subpart includes—

9 “(i) individuals with knowledge and
10 expertise on the issues addressed by the
11 activities authorized by the subpart; and

12 “(ii) to the extent practicable, parents
13 of children with disabilities, individuals
14 with disabilities, and persons from diverse
15 backgrounds.

16 “(B) FEDERAL EMPLOYMENT LIMITA-
17 TION.—A majority of the individuals on each
18 sub-panel that reviews an application under this
19 subpart shall be individuals who are not em-
20 ployees of the Federal Government.

21 “(3) USE OF DISCRETIONARY FUNDS FOR AD-
22 MINISTRATIVE PURPOSES.—

23 “(A) EXPENSES AND FEES OF NON-
24 FEDERAL PANEL MEMBERS.—The Secretary
25 may use funds available under this subpart to

1 pay the expenses and fees of the panel members
2 who are not officers or employees of the Fed-
3 eral Government.

4 “(B) ADMINISTRATIVE SUPPORT.—The
5 Secretary may use not more than 1 percent of
6 the funds appropriated to carry out this sub-
7 part to pay non-Federal entities for administra-
8 tive support related to management of applica-
9 tions submitted under this subpart.

10 “(C) MONITORING.—The Secretary may
11 use funds available under this subpart to pay
12 the expenses of Federal employees to conduct
13 on-site monitoring of projects receiving
14 \$500,000 or more for any fiscal year under this
15 subpart.

16 “(h) PROGRAM EVALUATION.—The Secretary may
17 use funds appropriated to carry out this subpart to evalu-
18 ate activities carried out under the subpart.

19 “(i) MINIMUM FUNDING REQUIRED.—

20 “(1) IN GENERAL.—Subject to paragraph (2),
21 the Secretary shall ensure that, for each fiscal year,
22 at least the following amounts are provided under
23 this subpart to address the following needs:

24 “(A) \$12,832,000 to address the edu-
25 cational, related services, transitional, and early

1 intervention needs of children with deaf-blind-
2 ness.

3 “(B) \$4,000,000 to address the post-
4 secondary, vocational, technical, continuing, and
5 adult education needs of individuals with deaf-
6 ness.

7 “(C) \$4,000,000 to address the edu-
8 cational, related services, and transitional needs
9 of children with an emotional disturbance and
10 those who are at risk of developing an emo-
11 tional disturbance.

12 “(2) RATABLE REDUCTION.—If the total
13 amount appropriated to carry out sections 672, 673,
14 and 685 for any fiscal year is less than
15 \$130,000,000, the amounts listed in (1) shall be rat-
16 ably reduced.

17 “(j) ELIGIBILITY FOR FINANCIAL ASSISTANCE.—Ef-
18 fective for fiscal years for which the Secretary may make
19 grants under section 619(b), no State or local educational
20 agency or educational service agency or other public insti-
21 tution or agency may receive a grant under this part which
22 relates exclusively to programs, projects, and activities
23 pertaining to children aged three to five, inclusive, unless
24 the State is eligible to receive a grant under section
25 619(b).

1 **“CHAPTER 1—IMPROVING EARLY INTER-**
2 **VENTION, EDUCATIONAL, AND TRANSI-**
3 **TIONAL SERVICES AND RESULTS FOR**
4 **CHILDREN WITH DISABILITIES**
5 **THROUGH COORDINATED RESEARCH**
6 **AND PERSONNEL PREPARATION**

7 **“SEC. 671. FINDINGS AND PURPOSE.**

8 “(a) FINDINGS.—The Congress finds the following:

9 “(1) The Federal Government has an ongoing
10 obligation to support programs, projects, and activi-
11 ties that contribute to positive results for children
12 with disabilities, enabling them—

13 “(A) to meet their early intervention, edu-
14 cational, and transitional goals and, to the max-
15 imum extent possible, educational standards
16 that have been established for all children; and

17 “(B) to acquire the skills that will em-
18 power them to lead productive and independent
19 adult lives.

20 “(2)(A) As a result of more than 20 years of
21 Federal support for research, demonstration
22 projects, and personnel preparation, there is an im-
23 portant knowledge base for improving results for
24 children with disabilities.

1 “(B) Such knowledge should be used by States
2 and local educational agencies to design and imple-
3 ment state-of-the-art educational systems that con-
4 sider the needs of, and include, children with disabili-
5 ties, especially in environments in which they can
6 learn along with their peers and achieve results
7 measured by the same standards as the results of
8 their peers.

9 “(3)(A) Continued Federal support is essential
10 for the development and maintenance of a coordi-
11 nated and high-quality program of research, dem-
12 onstration projects, dissemination of information,
13 and personnel preparation.

14 “(B) Such support—

15 “(i) enables State educational agencies and
16 local educational agencies to improve their edu-
17 cational systems and results for children with
18 disabilities;

19 “(ii) enables State and local agencies to
20 improve early intervention services and results
21 for infants and toddlers with disabilities and
22 their families; and

23 “(iii) enhances the opportunities for gen-
24 eral and special education personnel, related
25 services personnel, parents, and paraprofes-

1 sionals to participate in pre-service and in-serv-
2 ice training, to collaborate, and to improve re-
3 sults for children with disabilities and their
4 families.

5 “(4) The Federal Government plays a critical
6 role in facilitating the availability of an adequate
7 number of qualified personnel—

8 “(A) to serve effectively the over 5,000,000
9 children with disabilities;

10 “(B) to assume leadership positions in ad-
11 ministrative and direct-service capacities related
12 to teacher training and research concerning the
13 provision of early intervention services, special
14 education, and related services; and

15 “(C) to work with children with low-inci-
16 dence disabilities and their families.

17 “(5) The Federal Government performs the role
18 described in paragraph (4)—

19 “(A) by supporting models of personnel de-
20 velopment that reflect successful practice, in-
21 cluding strategies for recruiting, preparing, and
22 retaining personnel;

23 “(B) by promoting the coordination and
24 integration of—

1 “(i) personnel-development activities
2 for teachers of children with disabilities;
3 and

4 “(ii) other personnel-development ac-
5 tivities supported under Federal law, in-
6 cluding this chapter;

7 “(C) by supporting the development and
8 dissemination of information about teaching
9 standards; and

10 “(D) by promoting the coordination and
11 integration of personnel-development activities
12 through linkage with systemic-change activities
13 within States and nationally.

14 “(b) PURPOSE.—The purpose of this chapter is to
15 provide Federal funding for coordinated research, dem-
16 onstration projects, outreach, and personnel-preparation
17 activities that—

18 “(1) are described in sections 672 through 674;

19 “(2) are linked with, and promote, systemic
20 change; and

21 “(3) improve early intervention, educational,
22 and transitional results for children with disabilities.

1 **“SEC. 672. RESEARCH AND INNOVATION TO IMPROVE SERV-**
2 **ICES AND RESULTS FOR CHILDREN WITH DIS-**
3 **ABILITIES.**

4 “(a) IN GENERAL.—The Secretary shall make com-
5 petitive grants to, or enter into contracts or cooperative
6 agreements with, eligible entities to produce, and advance
7 the use of, knowledge—

8 “(1) to improve—

9 “(A) services provided under this Act, in-
10 cluding the practices of professionals and others
11 involved in providing such services to children
12 with disabilities; and

13 “(B) educational results for children with
14 disabilities;

15 “(2) to address the special needs of preschool-
16 aged children and infants and toddlers with disabil-
17 ities, including infants and toddlers who would be at
18 risk of having substantial developmental delays if
19 early intervention services were not provided to
20 them;

21 “(3) to address the specific problems of over-
22 identification and under-identification of children
23 with disabilities;

24 “(4) to develop and implement effective strate-
25 gies for addressing inappropriate behavior of stu-
26 dents with disabilities in schools, including strategies

1 to prevent children with emotional and behavioral
2 problems from developing emotional disturbances
3 that require the provision of special education and
4 related services;

5 “(5) to improve secondary and postsecondary
6 education and transitional services for children with
7 disabilities; and

8 “(6) to address the range of special education,
9 related services, and early intervention needs of chil-
10 dren with disabilities who need significant levels of
11 support to maximize their participation and learning
12 in school and in the community.

13 “(b) NEW KNOWLEDGE PRODUCTION; AUTHORIZED
14 ACTIVITIES.—

15 “(1) IN GENERAL.—In carrying out this sec-
16 tion, the Secretary shall support activities, consistent
17 with the objectives described in subsection (a), that
18 lead to the production of new knowledge.

19 “(2) AUTHORIZED ACTIVITIES.—Activities that
20 may be carried out under this subsection include ac-
21 tivities such as the following:

22 “(A) Expanding understanding of the rela-
23 tionships between learning characteristics of
24 children with disabilities and the diverse ethnic,
25 cultural, linguistic, social, and economic back-

1 grounds of children with disabilities and their
2 families.

3 “(B) Developing or identifying innovative,
4 effective, and efficient curricula designs, in-
5 structional approaches, and strategies, and de-
6 veloping or identifying positive academic and
7 social learning opportunities, that—

8 “(i) enable children with disabilities to
9 make effective transitions described in sec-
10 tion 674(b)(3)(C) or transitions between
11 educational settings; and

12 “(ii) improve educational and transi-
13 tional results for children with disabilities
14 at all levels of the educational system in
15 which the activities are carried out and, in
16 particular, that improve the progress of the
17 children, as measured by assessments with-
18 in the general education curriculum in-
19 volved.

20 “(C) Advancing the design of assessment
21 tools and procedures that will accurately and ef-
22 ficiently determine the special instructional,
23 learning, and behavioral needs of children with
24 disabilities, especially within the context of gen-
25 eral education.

1 “(D) Studying and promoting improved
2 alignment and compatibility of general and spe-
3 cial education reforms concerned with curricular
4 and instructional reform, evaluation and ac-
5 countability of such reforms, and administrative
6 procedures.

7 “(E) Advancing the design, development,
8 and integration of technology, assistive tech-
9 nology devices, media, and materials, to im-
10 prove early intervention, educational, and tran-
11 sitional services and results for children with
12 disabilities.

13 “(F) Improving designs, processes, and re-
14 sults of personnel preparation for personnel
15 who provide services to children with disabilities
16 through the acquisition of information on, and
17 implementation of, research-based practices.

18 “(G) Advancing knowledge about the co-
19 ordination of education with health and social
20 services.

21 “(H) Producing information on the long-
22 term impact of early intervention and education
23 on results for individuals with disabilities
24 through large-scale longitudinal studies.

1 “(c) INTEGRATION OF RESEARCH AND PRACTICE;
2 AUTHORIZED ACTIVITIES.—

3 “(1) IN GENERAL.—In carrying out this sec-
4 tion, the Secretary shall support activities, consistent
5 with the objectives described in subsection (a), that
6 integrate research and practice, including activities
7 that support State systemic-change and local capac-
8 ity-building and improvement efforts.

9 “(2) AUTHORIZED ACTIVITIES.—Activities that
10 may be carried out under this subsection include ac-
11 tivities such as the following:

12 “(A) Model demonstration projects to
13 apply and test research findings in typical serv-
14 ice settings to determine the usability, effective-
15 ness, and general applicability of such research
16 findings in such areas as improving instruc-
17 tional methods, curricula, and tools, such as
18 textbooks and media.

19 “(B) Demonstrating and applying re-
20 search-based findings to facilitate systemic
21 changes, related to the provision of services to
22 children with disabilities, in policy, procedure,
23 practice, and the training and use of personnel.

24 “(C) Promoting and demonstrating the co-
25 ordination of early intervention and educational

1 services for children with disabilities with serv-
2 ices provided by health, rehabilitation, and so-
3 cial service agencies.

4 “(D) Identifying and disseminating solu-
5 tions that overcome systemic barriers to the ef-
6 fective and efficient delivery of early interven-
7 tion, educational, and transitional services to
8 children with disabilities.

9 “(d) IMPROVING THE USE OF PROFESSIONAL
10 KNOWLEDGE; AUTHORIZED ACTIVITIES.—

11 “(1) IN GENERAL.—In carrying out this sec-
12 tion, the Secretary shall support activities, consistent
13 with the objectives described in subsection (a), that
14 improve the use of professional knowledge, including
15 activities that support State systemic-change and
16 local capacity-building and improvement efforts.

17 “(2) AUTHORIZED ACTIVITIES.—Activities that
18 may be carried out under this subsection include ac-
19 tivities such as the following:

20 “(A) Synthesizing useful research and
21 other information relating to the provision of
22 services to children with disabilities, including
23 effective practices.

24 “(B) Analyzing professional knowledge
25 bases to advance an understanding of the rela-

1 relationships, and the effectiveness of practices, re-
2 lating to the provision of services to children
3 with disabilities.

4 “(C) Ensuring that research and related
5 products are in appropriate formats for dis-
6 tribution to teachers, parents, and individuals
7 with disabilities.

8 “(D) Enabling professionals, parents of
9 children with disabilities, and other persons, to
10 learn about, and implement, the findings of re-
11 search, and successful practices developed in
12 model demonstration projects, relating to the
13 provision of services to children with disabil-
14 ities.

15 “(E) Conducting outreach, and disseminat-
16 ing information relating to successful ap-
17 proaches to overcoming systemic barriers to the
18 effective and efficient delivery of early interven-
19 tion, educational, and transitional services, to
20 personnel who provide services to children with
21 disabilities.

22 “(e) BALANCE AMONG ACTIVITIES AND AGE
23 RANGES.—In carrying out this section, the Secretary shall
24 ensure that there is an appropriate balance—

1 “(2) to ensure that those personnel have the
2 skills and knowledge, derived from practices that
3 have been determined, through research and experi-
4 ence, to be successful, that are needed to serve those
5 children.

6 “(b) LOW-INCIDENCE DISABILITIES; AUTHORIZED
7 ACTIVITIES.—

8 “(1) IN GENERAL.—In carrying out this sec-
9 tion, the Secretary shall support activities, consistent
10 with the objectives described in subsection (a), that
11 benefit children with low-incidence disabilities.

12 “(2) AUTHORIZED ACTIVITIES.—Activities that
13 may be carried out under this subsection include ac-
14 tivities such as the following:

15 “(A) Preparing persons who—

16 “(i) have prior training in educational
17 and other related service fields; and

18 “(ii) are studying to obtain degrees,
19 certificates, or licensure that will enable
20 them to assist children with disabilities to
21 achieve the objectives set out in their indi-
22 vidualized education programs described in
23 section 614(d), or to assist infants and
24 toddlers with disabilities to achieve the
25 outcomes described in their individualized

1 family service plans described in section
2 636.

3 “(B) Providing personnel from various dis-
4 ciplines with interdisciplinary training that will
5 contribute to improvement in early intervention,
6 educational, and transitional results for children
7 with disabilities.

8 “(C) Preparing personnel in the innovative
9 uses and application of technology to enhance
10 learning by children with disabilities through
11 early intervention, educational, and transitional
12 services.

13 “(D) Preparing personnel who provide
14 services to visually impaired or blind children to
15 teach and use braille in the provision of services
16 to such children.

17 “(E) Preparing personnel to be qualified
18 educational interpreters, to assist children with
19 disabilities, particularly deaf and hard-of-hear-
20 ing children in school and school-related activi-
21 ties and deaf and hard-of-hearing infants and
22 toddlers and preschool children in early inter-
23 vention and preschool programs.

24 “(F) Preparing personnel who provide
25 services to children with significant cognitive

1 disabilities and children with multiple disabil-
2 ities.

3 “(3) DEFINITION.—As used in this section, the
4 term ‘low-incidence disability’ means—

5 “(A) a visual or hearing impairment, or si-
6 multaneous visual and hearing impairments;

7 “(B) a significant cognitive impairment; or

8 “(C) any impairment for which a small
9 number of personnel with highly specialized
10 skills and knowledge are needed in order for
11 children with that impairment to receive early
12 intervention services or a free appropriate pub-
13 lic education.

14 “(4) SELECTION OF RECIPIENTS.—In selecting
15 recipients under this subsection, the Secretary may
16 give preference to applications that propose to pre-
17 pare personnel in more than one low-incidence dis-
18 ability, such as deafness and blindness.

19 “(5) PREPARATION IN USE OF BRAILLE.—The
20 Secretary shall ensure that all recipients of assist-
21 ance under this subsection who will use that assist-
22 ance to prepare personnel to provide services to vis-
23 ually impaired or blind children that can appro-
24 priately be provided in braille will prepare those indi-
25 viduals to provide those services in braille.

1 “(c) LEADERSHIP PREPARATION; AUTHORIZED AC-
2 TIVITIES.—

3 “(1) IN GENERAL.—In carrying out this sec-
4 tion, the Secretary shall support leadership prepara-
5 tion activities that are consistent with the objectives
6 described in subsection (a).

7 “(2) AUTHORIZED ACTIVITIES.—Activities that
8 may be carried out under this subsection include ac-
9 tivities such as the following:

10 “(A) Preparing personnel at the advanced
11 graduate, doctoral, and postdoctoral levels of
12 training to administer, enhance, or provide
13 services for children with disabilities.

14 “(B) Providing interdisciplinary training
15 for various types of leadership personnel, in-
16 cluding teacher preparation faculty, administra-
17 tors, researchers, supervisors, principals, and
18 other persons whose work affects early interven-
19 tion, educational, and transitional services for
20 children with disabilities.

21 “(d) PROJECTS OF NATIONAL SIGNIFICANCE; AU-
22 THORIZED ACTIVITIES.—

23 “(1) IN GENERAL.—In carrying out this sec-
24 tion, the Secretary shall support activities, consistent
25 with the objectives described in subsection (a), that

1 are of national significance and have broad applica-
2 bility.

3 “(2) AUTHORIZED ACTIVITIES.—Activities that
4 may be carried out under this subsection include ac-
5 tivities such as the following:

6 “(A) Developing and demonstrating effec-
7 tive and efficient practices for preparing per-
8 sonnel to provide services to children with dis-
9 abilities, including practices that address any
10 needs identified in the State’s improvement
11 plan under part C;

12 “(B) Demonstrating the application of sig-
13 nificant knowledge derived from research and
14 other sources in the development of programs
15 to prepare personnel to provide services to chil-
16 dren with disabilities.

17 “(C) Demonstrating models for the prepa-
18 ration of, and interdisciplinary training of, early
19 intervention, special education, and general edu-
20 cation personnel, to enable the personnel—

21 “(i) to acquire the collaboration skills
22 necessary to work within teams to assist
23 children with disabilities; and

1 “(ii) to achieve results that meet chal-
2 lenging standards, particularly within the
3 general education curriculum.

4 “(D) Demonstrating models that reduce
5 shortages of teachers, and personnel from other
6 relevant disciplines, who serve children with dis-
7 abilities, through reciprocity arrangements be-
8 tween States that are related to licensure and
9 certification.

10 “(E) Developing, evaluating, and dissemi-
11 nating model teaching standards for persons
12 working with children with disabilities.

13 “(F) Promoting the transferability, across
14 State and local jurisdictions, of licensure and
15 certification of teachers and administrators
16 working with such children.

17 “(G) Developing and disseminating models
18 that prepare teachers with strategies, including
19 behavioral interventions, for addressing the con-
20 duct of children with disabilities that impedes
21 their learning and that of others in the class-
22 room.

23 “(H) Institutes that provide professional
24 development that addresses the needs of chil-
25 dren with disabilities to teachers or teams of

1 teachers, and where appropriate, to school
2 board members, administrators, principals,
3 pupil-service personnel, and other staff from in-
4 dividual schools.

5 “(I) Projects to improve the ability of gen-
6 eral education teachers, principals, and other
7 administrators to meet the needs of children
8 with disabilities.

9 “(J) Developing, evaluating, and dissemi-
10 nating innovative models for the recruitment,
11 induction, retention, and assessment of new,
12 qualified teachers, especially from groups that
13 are underrepresented in the teaching profession,
14 including individuals with disabilities.

15 “(K) Supporting institutions of higher edu-
16 cation with minority enrollments of at least 25
17 percent for the purpose of preparing personnel
18 to work with children with disabilities.

19 “(e) HIGH-INCIDENCE DISABILITIES; AUTHORIZED
20 ACTIVITIES.—

21 “(1) IN GENERAL.—In carrying out this sec-
22 tion, the Secretary shall support activities, consistent
23 with the objectives described in subsection (a), to
24 benefit children with high-incidence disabilities, such

1 as children with specific learning disabilities, speech
2 or language impairment, or mental retardation.

3 “(2) AUTHORIZED ACTIVITIES.—Activities that
4 may be carried out under this subsection include the
5 following:

6 “(A) Activities undertaken by institutions
7 of higher education, local educational agencies,
8 and other local entities—

9 “(i) to improve and reform their exist-
10 ing programs to prepare teachers and re-
11 lated services personnel—

12 “(I) to meet the diverse needs of
13 children with disabilities for early
14 intervention, educational, and transi-
15 tional services; and

16 “(II) to work collaboratively in
17 regular classroom settings; and

18 “(ii) to incorporate best practices and
19 research-based knowledge about preparing
20 personnel so they will have the knowledge
21 and skills to improve educational results
22 for children with disabilities.

23 “(B) Activities incorporating innovative
24 strategies to recruit and prepare teachers and
25 other personnel to meet the needs of areas in

1 which there are acute and persistent shortages
2 of personnel.

3 “(C) Developing career opportunities for
4 paraprofessionals to receive training as special
5 education teachers, related services personnel,
6 and early intervention personnel, including
7 interdisciplinary training to enable them to im-
8 prove early intervention, educational, and tran-
9 sitional results for children with disabilities.

10 “(f) APPLICATIONS.—

11 “(1) IN GENERAL.—Any eligible entity that
12 wishes to receive a grant, or enter into a contract or
13 cooperative agreement, under this section shall sub-
14 mit an application to the Secretary at such time, in
15 such manner, and containing such information as
16 the Secretary may require.

17 “(2) IDENTIFIED STATE NEEDS.—

18 “(A) REQUIREMENT TO ADDRESS IDENTI-
19 FIED NEEDS.—Any application under sub-
20 section (b), (c), or (e) shall include information
21 demonstrating to the satisfaction of the Sec-
22 retary that the activities described in the appli-
23 cation will address needs identified by the State
24 or States the applicant proposes to serve.

1 “(B) COOPERATION WITH STATE EDU-
2 CATIONAL AGENCIES.—Any applicant that is
3 not a local educational agency or a State edu-
4 cational agency shall include information dem-
5 onstrating to the satisfaction of the Secretary
6 that the applicant and one or more State edu-
7 cational agencies have engaged in a cooperative
8 effort to plan the project to which the applica-
9 tion pertains, and will cooperate in carrying out
10 and monitoring the project.

11 “(3) ACCEPTANCE BY STATES OF PERSONNEL
12 PREPARATION REQUIREMENTS.—The Secretary may
13 require applicants to provide letters from one or
14 more States stating that the States—

15 “(A) intend to accept successful completion
16 of the proposed personnel preparation program
17 as meeting State personnel standards for serv-
18 ing children with disabilities or serving infants
19 and toddlers with disabilities; and

20 “(B) need personnel in the area or areas
21 in which the applicant proposes to provide prep-
22 aration, as identified in the States’ comprehen-
23 sive systems of personnel development under
24 parts B and C.

25 “(g) SELECTION OF RECIPIENTS.—

1 “(1) IMPACT OF PROJECT.—In selecting recipi-
2 ents under this section, the Secretary may consider
3 the impact of the project proposed in the application
4 in meeting the need for personnel identified by the
5 States.

6 “(2) REQUIREMENT ON APPLICANTS TO MEET
7 STATE AND PROFESSIONAL STANDARDS.—The Sec-
8 retary shall make grants under this section only to
9 eligible applicants that meet State and profes-
10 sionally-recognized standards for the preparation of
11 special education and related services personnel, if
12 the purpose of the project is to assist personnel in
13 obtaining degrees.

14 “(3) PREFERENCES.—In selecting recipients
15 under this section, the Secretary may—

16 “(A) give preference to institutions of
17 higher education that are educating regular
18 education personnel to meet the needs of chil-
19 dren with disabilities in integrated settings and
20 educating special education personnel to work
21 in collaboration with regular educators in inte-
22 grated settings; and

23 “(B) give preference to institutions of
24 higher education that are successfully recruiting
25 and preparing individuals with disabilities and

1 individuals from groups that are underrep-
2 resented in the profession for which they are
3 preparing individuals.

4 “(h) SERVICE OBLIGATION.—

5 “(1) IN GENERAL.—Each application for funds
6 under subsections (b) and (e), and to the extent ap-
7 propriate subsection (d), shall include an assurance
8 that the applicant will ensure that individuals who
9 receive a scholarship under the proposed project will
10 subsequently provide special education and related
11 services to children with disabilities for a period of
12 2 years for every year for which assistance was re-
13 ceived or repay all or part of the cost of that assist-
14 ance, in accordance with regulations issued by the
15 Secretary.

16 “(2) LEADERSHIP PREPARATION.—Each appli-
17 cation for funds under subsection (c) shall include
18 an assurance that the applicant will ensure that in-
19 dividuals who receive a scholarship under the pro-
20 posed project will subsequently perform work related
21 to their preparation for a period of 2 years for every
22 year for which assistance was received or repay all
23 or part of such costs, in accordance with regulations
24 issued by the Secretary.

1 “(i) SCHOLARSHIPS.—The Secretary may include
2 funds for scholarships, with necessary stipends and allow-
3 ances, in awards under subsections (b), (c), (d), and (e).

4 “(j) AUTHORIZATION OF APPROPRIATIONS.—There
5 are authorized to be appropriated to carry out this section
6 such sums as may be necessary for each of the fiscal years
7 1998 through 2002.

8 **“SEC. 674. STUDIES AND EVALUATIONS.**

9 “(a) STUDIES AND EVALUATIONS.—

10 “(1) IN GENERAL.—The Secretary shall, di-
11 rectly or through grants, contracts, or cooperative
12 agreements, assess the progress in the implementa-
13 tion of this Act, including the effectiveness of State
14 and local efforts to provide—

15 “(A) a free appropriate public education to
16 children with disabilities; and

17 “(B) early intervention services to infants
18 and toddlers with disabilities and infants and
19 toddlers who would be at risk of having sub-
20 stantial developmental delays if early interven-
21 tion services were not provided to them.

22 “(2) AUTHORIZED ACTIVITIES.—In carrying
23 out this subsection, the Secretary may support stud-
24 ies, evaluations, and assessments, including studies
25 that—

1 “(A) analyze measurable impact, outcomes,
2 and results achieved by State educational agen-
3 cies and local educational agencies through
4 their activities to reform policies, procedures,
5 and practices designed to improve educational
6 and transitional services and results for chil-
7 dren with disabilities;

8 “(B) analyze State and local needs for pro-
9 fessional development, parent training, and
10 other appropriate activities that can reduce the
11 need for disciplinary actions involving children
12 with disabilities;

13 “(C) assess educational and transitional
14 services and results for children with disabilities
15 from minority backgrounds, including—

16 “(i) data on—

17 “(I) the number of minority chil-
18 dren who are referred for special edu-
19 cation evaluation;

20 “(II) the number of minority
21 children who are receiving special edu-
22 cation and related services and their
23 educational or other service place-
24 ment; and

1 “(III) the number of minority
2 children who graduated from second-
3 ary and postsecondary education pro-
4 grams; and

5 “(ii) the performance of children with
6 disabilities from minority backgrounds on
7 State assessments and other performance
8 indicators established for all students;

9 “(D) measure educational and transitional
10 services and results of children with disabilities
11 under this Act, including longitudinal studies
12 that—

13 “(i) examine educational and transi-
14 tional services and results for children with
15 disabilities who are 3 through 17 years of
16 age and are receiving special education and
17 related services under this Act, using a na-
18 tional, representative sample of distinct
19 age cohorts and disability categories; and

20 “(ii) examine educational results,
21 postsecondary placement, and employment
22 status of individuals with disabilities, 18
23 through 21 years of age, who are receiving
24 or have received special education and re-
25 lated services under this Act; and

1 “(E) identify and report on the placement
2 of children with disabilities by disability cat-
3 egory.

4 “(b) NATIONAL ASSESSMENT.—

5 “(1) IN GENERAL.—The Secretary shall carry
6 out a national assessment of activities carried out
7 with Federal funds under this Act in order—

8 “(A) to determine the effectiveness of this
9 Act in achieving its purposes;

10 “(B) to provide information to the Presi-
11 dent, the Congress, the States, local educational
12 agencies, and the public on how to implement
13 the Act more effectively; and

14 “(C) to provide the President and the Con-
15 gress with information that will be useful in de-
16 veloping legislation to achieve the purposes of
17 this Act more effectively.

18 “(2) CONSULTATION.—The Secretary shall
19 plan, review, and conduct the national assessment
20 under this subsection in consultation with research-
21 ers, State practitioners, local practitioners, parents
22 of children with disabilities, individuals with disabili-
23 ties, and other appropriate individuals.

24 “(3) SCOPE OF ASSESSMENT.—The national as-
25 sessment shall examine how well schools, local edu-

1 cational agencies, States, other recipients of assist-
2 ance under this Act, and the Secretary are achieving
3 the purposes of this Act, including—

4 “(A) improving the performance of chil-
5 dren with disabilities in general scholastic ac-
6 tivities and assessments as compared to non-
7 disabled children;

8 “(B) providing for the participation of chil-
9 dren with disabilities in the general curriculum;

10 “(C) helping children with disabilities
11 make successful transitions from—

12 “(i) early intervention services to pre-
13 school education;

14 “(ii) preschool education to elemen-
15 tary school; and

16 “(iii) secondary school to adult life;

17 “(D) placing and serving children with dis-
18 abilities, including minority children, in the
19 least restrictive environment appropriate;

20 “(E) preventing children with disabilities,
21 especially children with emotional disturbances
22 and specific learning disabilities, from dropping
23 out of school;

1 “(F) addressing behavioral problems of
2 children with disabilities as compared to non-
3 disabled children;

4 “(G) coordinating services provided under
5 this Act with each other, with other educational
6 and pupil services (including preschool serv-
7 ices), and with health and social services funded
8 from other sources;

9 “(H) providing for the participation of par-
10 ents of children with disabilities in the edu-
11 cation of their children; and

12 “(I) resolving disagreements between edu-
13 cation personnel and parents through activities
14 such as mediation.

15 “(4) INTERIM AND FINAL REPORTS.—The Sec-
16 retary shall submit to the President and the Con-
17 gress—

18 “(A) an interim report that summarizes
19 the preliminary findings of the assessment not
20 later than October 1, 1999; and

21 “(B) a final report of the findings of the
22 assessment not later than October 1, 2001.

23 “(c) ANNUAL REPORT.—The Secretary shall report
24 annually to the Congress on—

1 “(1) an analysis and summary of the data re-
2 ported by the States and the Secretary of the Inte-
3 rior under section 618;

4 “(2) the results of activities conducted under
5 subsection (a);

6 “(3) the findings and determinations resulting
7 from reviews of State implementation of this Act.

8 “(d) TECHNICAL ASSISTANCE TO LEAS.—The Sec-
9 retary shall provide directly, or through grants, contracts,
10 or cooperative agreements, technical assistance to local
11 educational agencies to assist them in carrying out local
12 capacity-building and improvement projects under section
13 611(f)(4) and other LEA systemic improvement activities
14 under this Act.

15 “(e) RESERVATION FOR STUDIES AND TECHNICAL
16 ASSISTANCE.—

17 “(1) IN GENERAL.—Except as provided in para-
18 graph (2) and notwithstanding any other provision
19 of this Act, the Secretary may reserve up to one-half
20 of one percent of the amount appropriated under
21 parts B and C for each fiscal year to carry out this
22 section.

23 “(2) MAXIMUM AMOUNT.—For the first fiscal
24 year in which the amount described in paragraph (1)
25 is at least \$20,000,000, the maximum amount the

1 Secretary may reserve under paragraph (1) is
 2 \$20,000,000. For each subsequent fiscal year, the
 3 maximum amount the Secretary may reserve under
 4 paragraph (1) is \$20,000,000, increased by the cu-
 5 mulative rate of inflation since the fiscal year de-
 6 scribed in the previous sentence.

7 “(3) USE OF MAXIMUM AMOUNT.—In any fiscal
 8 year described in paragraph (2) for which the Sec-
 9 retary reserves the maximum amount described in
 10 that paragraph, the Secretary shall use at least half
 11 of the reserved amount for activities under sub-
 12 section (d).

13 **“CHAPTER 2—IMPROVING EARLY INTER-**
 14 **VENTION, EDUCATIONAL, AND TRANSI-**
 15 **TIONAL SERVICES AND RESULTS FOR**
 16 **CHILDREN WITH DISABILITIES**
 17 **THROUGH COORDINATED TECHNICAL**
 18 **ASSISTANCE, SUPPORT, AND DISSEMI-**
 19 **NATION OF INFORMATION**

20 **“SEC. 681. FINDINGS AND PURPOSES.**

21 “(a) IN GENERAL.—The Congress finds as follows:

22 “(1) National technical assistance, support, and
 23 dissemination activities are necessary to ensure that
 24 parts B and C are fully implemented and achieve
 25 quality early intervention, educational, and transi-

1 tional results for children with disabilities and their
2 families.

3 “(2) Parents, teachers, administrators, and re-
4 lated services personnel need technical assistance
5 and information in a timely, coordinated, and acces-
6 sible manner in order to improve early intervention,
7 educational, and transitional services and results at
8 the State and local levels for children with disabil-
9 ities and their families.

10 “(3) Parent training and information activities
11 have taken on increased importance in efforts to as-
12 sist parents of a child with a disability in dealing
13 with the multiple pressures of rearing such a child
14 and are of particular importance in—

15 “(A) ensuring the involvement of such par-
16 ents in planning and decisionmaking with re-
17 spect to early intervention, educational, and
18 transitional services;

19 “(B) achieving quality early intervention,
20 educational, and transitional results for children
21 with disabilities;

22 “(C) providing such parents information
23 on their rights and protections under this Act
24 to ensure improved early intervention, edu-

1 cational, and transitional results for children
2 with disabilities;

3 “(D) assisting such parents in the develop-
4 ment of skills to participate effectively in the
5 education and development of their children and
6 in the transitions described in section
7 674(b)(3)(C); and

8 “(E) supporting the roles of such parents
9 as participants within partnerships seeking to
10 improve early intervention, educational, and
11 transitional services and results for children
12 with disabilities and their families.

13 “(4) Providers of parent training and informa-
14 tion activities need to ensure that such parents who
15 have limited access to services and supports, due to
16 economic, cultural, or linguistic barriers, are pro-
17 vided with access to appropriate parent training and
18 information activities.

19 “(5) Parents of children with disabilities need
20 information that helps the parents to understand the
21 rights and responsibilities of their children under
22 part B.

23 “(6) The provision of coordinated technical as-
24 sistance and dissemination of information to State
25 and local agencies, institutions of higher education,

1 and other providers of services to children with dis-
2 abilities is essential in—

3 “(A) supporting the process of achieving
4 systemic change;

5 “(B) supporting actions in areas of priority
6 specific to the improvement of early interven-
7 tion, educational, and transitional results for
8 children with disabilities;

9 “(C) conveying information and assistance
10 that are—

11 “(i) based on current research (as of
12 the date the information and assistance
13 are conveyed);

14 “(ii) accessible and meaningful for use
15 in supporting systemic-change activities of
16 State and local partnerships; and

17 “(iii) linked directly to improving
18 early intervention, educational, and transi-
19 tional services and results for children with
20 disabilities and their families; and

21 “(D) organizing systems and information
22 networks for such information, based on mod-
23 ern technology related to—

24 “(i) storing and gaining access to in-
25 formation; and

1 “(ii) distributing information in a sys-
2 tematic manner to parents, students, pro-
3 fessionals, and policymakers.

4 “(7) Federal support for carrying out tech-
5 nology research, technology development, and edu-
6 cational media services and activities has resulted in
7 major innovations that have significantly improved
8 early intervention, educational, and transitional serv-
9 ices and results for children with disabilities and
10 their families.

11 “(8) Such Federal support is needed—

12 “(A) to stimulate the development of soft-
13 ware, interactive learning tools, and devices to
14 address early intervention, educational, and
15 transitional needs of children with disabilities
16 who have certain disabilities;

17 “(B) to make information available on
18 technology research, technology development,
19 and educational media services and activities to
20 individuals involved in the provision of early
21 intervention, educational, and transitional serv-
22 ices to children with disabilities;

23 “(C) to promote the integration of tech-
24 nology into curricula to improve early interven-

1 tion, educational, and transitional results for
2 children with disabilities;

3 “(D) to provide incentives for the develop-
4 ment of technology and media devices and tools
5 that are not readily found or available because
6 of the small size of potential markets;

7 “(E) to make resources available to pay for
8 such devices and tools and educational media
9 services and activities;

10 “(F) to promote the training of person-
11 nel—

12 “(i) to provide such devices, tools,
13 services, and activities in a competent
14 manner; and

15 “(ii) to assist children with disabilities
16 and their families in using such devices,
17 tools, services, and activities; and

18 “(G) to coordinate the provision of such
19 devices, tools, services, and activities—

20 “(i) among State human services pro-
21 grams; and

22 “(ii) between such programs and pri-
23 vate agencies.

24 “(b) PURPOSES.—The purposes of this chapter are
25 to ensure that—

1 “(1) children with disabilities, and their par-
2 ents, receive training and information on their rights
3 and protections under this Act, in order to develop
4 the skills necessary to effectively participate in plan-
5 ning and decisionmaking relating to early interven-
6 tion, educational, and transitional services and in
7 systemic-change activities;

8 “(2) parents, teachers, administrators, early
9 intervention personnel, related services personnel,
10 and transition personnel receive coordinated and ac-
11 cessible technical assistance and information to as-
12 sist such persons, through systemic-change activities
13 and other efforts, to improve early intervention, edu-
14 cational, and transitional services and results for
15 children with disabilities and their families;

16 “(3) appropriate technology and media are re-
17 searched, developed, demonstrated, and made avail-
18 able in timely and accessible formats to parents,
19 teachers, and all types of personnel providing serv-
20 ices to children with disabilities to support their
21 roles as partners in the improvement and implemen-
22 tation of early intervention, educational, and transi-
23 tional services and results for children with disabil-
24 ities and their families;

1 “(4) on reaching the age of majority under
2 State law, children with disabilities understand their
3 rights and responsibilities under part B, if the State
4 provides for the transfer of parental rights under
5 section 615(m); and

6 “(5) the general welfare of deaf and hard-of-
7 hearing individuals is promoted by—

8 “(A) bringing to such individuals under-
9 standing and appreciation of the films and tele-
10 vision programs that play an important part in
11 the general and cultural advancement of hear-
12 ing individuals;

13 “(B) providing, through those films and
14 television programs, enriched educational and
15 cultural experiences through which deaf and
16 hard-of-hearing individuals can better under-
17 stand the realities of their environment; and

18 “(C) providing wholesome and rewarding
19 experiences that deaf and hard-of-hearing indi-
20 viduals may share.

21 **“SEC. 682. PARENT TRAINING AND INFORMATION CENTERS.**

22 “(a) PROGRAM AUTHORIZED.—The Secretary may
23 make grants to, and enter into contracts and cooperative
24 agreements with, parent organizations to support parent

1 training and information centers to carry out activities
2 under this section.

3 “(b) REQUIRED ACTIVITIES.—Each parent training
4 and information center that receives assistance under this
5 section shall—

6 “(1) provide training and information that
7 meets the training and information needs of parents
8 of children with disabilities living in the area served
9 by the center, particularly underserved parents and
10 parents of children who may be inappropriately iden-
11 tified;

12 “(2) assist parents to understand the availabil-
13 ity of, and how to effectively use, procedural safe-
14 guards under this Act, including encouraging the
15 use, and explaining the benefits, of alternative meth-
16 ods of dispute resolution, such as the mediation
17 process described in section 615(e);

18 “(3) serve the parents of infants, toddlers, and
19 children with the full range of disabilities;

20 “(4) assist parents to—

21 “(A) better understand the nature of their
22 children’s disabilities and their educational and
23 developmental needs;

1 “(B) communicate effectively with person-
2 nel responsible for providing special education,
3 early intervention, and related services;

4 “(C) participate in decisionmaking proc-
5 esses and the development of individualized
6 education programs under part B and individ-
7 ualized family service plans under part C;

8 “(D) obtain appropriate information about
9 the range of options, programs, services, and
10 resources available to assist children with dis-
11 abilities and their families;

12 “(E) understand the provisions of this Act
13 for the education of, and the provision of early
14 intervention services to, children with disabil-
15 ities; and

16 “(F) participate in school reform activities;

17 “(5) in States where the State elects to contract
18 with the parent training and information center,
19 contract with State educational agencies to provide,
20 consistent with subparagraphs (B) and (D) of sec-
21 tion 615(e)(2), individuals who meet with parents to
22 explain the mediation process to them;

23 “(6) network with appropriate clearinghouses,
24 including organizations conducting national dissemi-
25 nation activities under section 685(d), and with

1 other national, State, and local organizations and
2 agencies, such as protection and advocacy agencies,
3 that serve parents and families of children with the
4 full range of disabilities; and

5 “(7) annually report to the Secretary on—

6 “(A) the number of parents to whom it
7 provided information and training in the most
8 recently concluded fiscal year; and

9 “(B) the effectiveness of strategies used to
10 reach and serve parents, including underserved
11 parents of children with disabilities.

12 “(c) OPTIONAL ACTIVITIES.—A parent training and
13 information center that receives assistance under this sec-
14 tion may—

15 “(1) provide information to teachers and other
16 professionals who provide special education and re-
17 lated services to children with disabilities;

18 “(2) assist students with disabilities to under-
19 stand their rights and responsibilities under section
20 615(m) on reaching the age of majority; and

21 “(3) assist parents of children with disabilities
22 to be informed participants in the development and
23 implementation of the State’s State improvement
24 plan under subpart 1.

1 “(d) APPLICATION REQUIREMENTS.—Each applica-
2 tion for assistance under this section shall identify with
3 specificity the special efforts that the applicant will under-
4 take—

5 “(1) to ensure that the needs for training and
6 information of underserved parents of children with
7 disabilities in the area to be served are effectively
8 met; and

9 “(2) to work with community-based organiza-
10 tions.

11 “(e) DISTRIBUTION OF FUNDS.—

12 “(1) IN GENERAL.—The Secretary shall make
13 at least 1 award to a parent organization in each
14 State, unless the Secretary does not receive an appli-
15 cation from such an organization in each State of
16 sufficient quality to warrant approval.

17 “(2) SELECTION REQUIREMENT.—The Sec-
18 retary shall select among applications submitted by
19 parent organizations in a State in a manner that en-
20 sures the most effective assistance to parents, in-
21 cluding parents in urban and rural areas, in the
22 State.

23 “(f) QUARTERLY REVIEW.—

24 “(1) REQUIREMENTS.—

1 “(A) MEETINGS.—The board of directors
2 or special governing committee of each organi-
3 zation that receives an award under this section
4 shall meet at least once in each calendar quar-
5 ter to review the activities for which the award
6 was made.

7 “(B) ADVISING BOARD.—Each special gov-
8 erning committee shall directly advise the orga-
9 nization’s governing board of its views and rec-
10 ommendations.

11 “(2) CONTINUATION AWARD.—When an organi-
12 zation requests a continuation award under this sec-
13 tion, the board of directors or special governing com-
14 mittee shall submit to the Secretary a written review
15 of the parent training and information program con-
16 ducted by the organization during the preceding fis-
17 cal year.

18 “(g) DEFINITION OF PARENT ORGANIZATION.—As
19 used in this section, the term ‘parent organization’ means
20 a private nonprofit organization (other than an institution
21 of higher education) that—

22 “(1) has a board of directors—

23 “(A) the majority of whom are parents of
24 children with disabilities;

25 “(B) that includes—

1 “(i) individuals working in the fields
2 of special education, related services, and
3 early intervention; and

4 “(ii) individuals with disabilities; and
5 “(C) the parent and professional members
6 of which are broadly representative of the popu-
7 lation to be served; or

8 “(2) has—

9 “(A) a membership that represents the in-
10 terests of individuals with disabilities and has
11 established a special governing committee that
12 meets the requirements of paragraph (1); and

13 “(B) a memorandum of understanding be-
14 tween the special governing committee and the
15 board of directors of the organization that
16 clearly outlines the relationship between the
17 board and the committee and the decisionmak-
18 ing responsibilities and authority of each.

19 **“SEC. 683. COMMUNITY PARENT RESOURCE CENTERS.**

20 “(a) IN GENERAL.—The Secretary may make grants
21 to, and enter into contracts and cooperative agreements
22 with, local parent organizations to support parent training
23 and information centers that will help ensure that under-
24 served parents of children with disabilities, including low-
25 income parents, parents of children with limited English

1 proficiency, and parents with disabilities, have the training
2 and information they need to enable them to participate
3 effectively in helping their children with disabilities—

4 “(1) to meet developmental goals and, to the
5 maximum extent possible, those challenging stand-
6 ards that have been established for all children; and

7 “(2) to be prepared to lead productive inde-
8 pendent adult lives, to the maximum extent possible.

9 “(b) REQUIRED ACTIVITIES.—Each parent training
10 and information center assisted under this section shall—

11 “(1) provide training and information that
12 meets the training and information needs of parents
13 of children with disabilities proposed to be served by
14 the grant, contract, or cooperative agreement;

15 “(2) carry out the activities required of parent
16 training and information centers under paragraphs
17 (2) through (7) of section 682(b);

18 “(3) establish cooperative partnerships with the
19 parent training and information centers funded
20 under section 682; and

21 “(4) be designed to meet the specific needs of
22 families who experience significant isolation from
23 available sources of information and support.

1 “(c) DEFINITION.—As used in this section, the term
2 ‘local parent organization’ means a parent organization,
3 as defined in section 682(g), that either—

4 “(1) has a board of directors the majority of
5 whom are from the community to be served; or

6 “(2) has—

7 “(A) as a part of its mission, serving the
8 interests of individuals with disabilities from
9 such community; and

10 “(B) a special governing committee to ad-
11 minister the grant, contract, or cooperative
12 agreement, a majority of the members of which
13 are individuals from such community.

14 **“SEC. 684. TECHNICAL ASSISTANCE FOR PARENT TRAINING**
15 **AND INFORMATION CENTERS.**

16 “(a) IN GENERAL.—The Secretary may, directly or
17 through awards to eligible entities, provide technical as-
18 sistance for developing, assisting, and coordinating parent
19 training and information programs carried out by parent
20 training and information centers receiving assistance
21 under sections 682 and 683.

22 “(b) AUTHORIZED ACTIVITIES.—The Secretary may
23 provide technical assistance to a parent training and infor-
24 mation center under this section in areas such as—

1 programs that support States and local entities in building
2 capacity, to improve early intervention, educational, and
3 transitional services and results for children with disabili-
4 ties and their families, and address systemic-change goals
5 and priorities.

6 “(b) SYSTEMIC TECHNICAL ASSISTANCE; AUTHOR-
7 IZED ACTIVITIES.—

8 “(1) IN GENERAL.—In carrying out this sec-
9 tion, the Secretary shall carry out or support tech-
10 nical assistance activities, consistent with the objec-
11 tives described in subsection (a), relating to systemic
12 change.

13 “(2) AUTHORIZED ACTIVITIES.—Activities that
14 may be carried out under this subsection include ac-
15 tivities such as the following:

16 “(A) Assisting States, local educational
17 agencies, and other participants in partnerships
18 established under subpart 1 with the process of
19 planning systemic changes that will promote
20 improved early intervention, educational, and
21 transitional results for children with disabilities.

22 “(B) Promoting change through a
23 multistate or regional framework that benefits
24 States, local educational agencies, and other

1 participants in partnerships that are in the
2 process of achieving systemic-change outcomes.

3 “(C) Increasing the depth and utility of in-
4 formation in ongoing and emerging areas of pri-
5 ority need identified by States, local educational
6 agencies, and other participants in partnerships
7 that are in the process of achieving systemic-
8 change outcomes.

9 “(D) Promoting communication and infor-
10 mation exchange among States, local edu-
11 cational agencies, and other participants in
12 partnerships, based on the needs and concerns
13 identified by the participants in the partner-
14 ships, rather than on externally imposed criteria
15 or topics, regarding—

16 “(i) the practices, procedures, and
17 policies of the States, local educational
18 agencies, and other participants in part-
19 nerships; and

20 “(ii) accountability of the States, local
21 educational agencies, and other partici-
22 pants in partnerships for improved early
23 intervention, educational, and transitional
24 results for children with disabilities.

1 “(c) SPECIALIZED TECHNICAL ASSISTANCE; AU-
2 THORIZED ACTIVITIES.—

3 “(1) IN GENERAL.—In carrying out this sec-
4 tion, the Secretary shall carry out or support activi-
5 ties, consistent with the objectives described in sub-
6 section (a), relating to areas of priority or specific
7 populations.

8 “(2) AUTHORIZED ACTIVITIES.—Examples of
9 activities that may be carried out under this sub-
10 section include activities that—

11 “(A) focus on specific areas of high-prior-
12 ity need that—

13 “(i) are identified by States, local edu-
14 cational agencies, and other participants in
15 partnerships;

16 “(ii) require the development of new
17 knowledge, or the analysis and synthesis of
18 substantial bodies of information not read-
19 ily available to the States, agencies, and
20 other participants in partnerships; and

21 “(iii) will contribute significantly to
22 the improvement of early intervention, edu-
23 cational, and transitional services and re-
24 sults for children with disabilities and their
25 families;

1 “(B) focus on needs and issues that are
2 specific to a population of children with disabili-
3 ties, such as the provision of single-State and
4 multi-State technical assistance and in-service
5 training—

6 “(i) to schools and agencies serving
7 deaf-blind children and their families; and

8 “(ii) to programs and agencies serving
9 other groups of children with low-incidence
10 disabilities and their families; or

11 “(C) address the postsecondary education
12 needs of individuals who are deaf or hard of
13 hearing.

14 “(d) NATIONAL INFORMATION DISSEMINATION; AU-
15 THORIZED ACTIVITIES.—

16 “(1) IN GENERAL.—In carrying out this sec-
17 tion, the Secretary shall carry out or support infor-
18 mation dissemination activities that are consistent
19 with the objectives described in subsection (a), in-
20 cluding activities that address national needs for the
21 preparation and dissemination of information relat-
22 ing to eliminating barriers to systemic-change and
23 improving early intervention, educational, and tran-
24 sitional results for children with disabilities.

1 “(2) AUTHORIZED ACTIVITIES.—Examples of
2 activities that may be carried out under this sub-
3 section include activities relating to—

4 “(A) infants and toddlers with disabilities
5 and their families, and children with disabilities
6 and their families;

7 “(B) services for populations of children
8 with low-incidence disabilities, including deaf-
9 blind children, and targeted age groupings;

10 “(C) the provision of postsecondary serv-
11 ices to individuals with disabilities;

12 “(D) the need for and use of personnel to
13 provide services to children with disabilities,
14 and personnel recruitment, retention, and prep-
15 aration;

16 “(E) issues that are of critical interest to
17 State educational agencies and local educational
18 agencies, other agency personnel, parents of
19 children with disabilities, and individuals with
20 disabilities;

21 “(F) educational reform and systemic
22 change within States; and

23 “(G) promoting schools that are safe and
24 conducive to learning.

1 “(3) LINKING STATES TO INFORMATION
2 SOURCES.—In carrying out this subsection, the Sec-
3 retary may support projects that link States to tech-
4 nical assistance resources, including special edu-
5 cation and general education resources, and may
6 make research and related products available
7 through libraries, electronic networks, parent train-
8 ing projects, and other information sources.

9 “(e) APPLICATIONS.—An eligible entity that wishes
10 to receive a grant, or enter into a contract or cooperative
11 agreement, under this section shall submit an application
12 to the Secretary at such time, in such manner, and con-
13 taining such information as the Secretary may require.

14 **“SEC. 686. AUTHORIZATION OF APPROPRIATIONS.**

15 “There are authorized to be appropriated to carry out
16 sections 681 through 685 such sums as may be necessary
17 for each of the fiscal years 1998 through 2002.

18 **“SEC. 687. TECHNOLOGY DEVELOPMENT, DEMONSTRATION,**

19 **AND UTILIZATION, AND MEDIA SERVICES.**

20 “(a) IN GENERAL.—The Secretary shall competi-
21 tively make grants to, and enter into contracts and cooper-
22 ative agreements with, eligible entities to support activities
23 described in subsections (b) and (c).

24 “(b) TECHNOLOGY DEVELOPMENT, DEMONSTRA-
25 TION, AND UTILIZATION; AUTHORIZED ACTIVITIES.—

1 “(1) IN GENERAL.—In carrying out this sec-
2 tion, the Secretary shall support activities to pro-
3 mote the development, demonstration, and utiliza-
4 tion of technology.

5 “(2) AUTHORIZED ACTIVITIES.—Activities that
6 may be carried out under this subsection include ac-
7 tivities such as the following:

8 “(A) Conducting research and development
9 activities on the use of innovative and emerging
10 technologies for children with disabilities.

11 “(B) Promoting the demonstration and use
12 of innovative and emerging technologies for
13 children with disabilities by improving and ex-
14 panding the transfer of technology from re-
15 search and development to practice.

16 “(C) Providing technical assistance to re-
17 cipients of other assistance under this section,
18 concerning the development of accessible, effec-
19 tive, and usable products.

20 “(D) Communicating information on avail-
21 able technology and the uses of such technology
22 to assist children with disabilities.

23 “(E) Supporting the implementation of re-
24 search programs on captioning or video descrip-
25 tion.

1 “(F) Supporting research, development,
2 and dissemination of technology with universal-
3 design features, so that the technology is acces-
4 sible to individuals with disabilities without fur-
5 ther modification or adaptation.

6 “(G) Demonstrating the use of publicly-
7 funded telecommunications systems to provide
8 parents and teachers with information and
9 training concerning early diagnosis of, interven-
10 tion for, and effective teaching strategies for
11 young children with reading disabilities.

12 “(c) EDUCATIONAL MEDIA SERVICES; AUTHORIZED
13 ACTIVITIES.—In carrying out this section, the Secretary
14 shall support—

15 “(1) educational media activities that are de-
16 signed to be of educational value to children with
17 disabilities;

18 “(2) providing video description, open caption-
19 ing, or closed captioning of television programs, vid-
20 eos, or educational materials through September 30,
21 2001; and after fiscal year 2001, providing video de-
22 scription, open captioning, or closed captioning of
23 educational, news, and informational television, vid-
24 eos, or materials;

1 “(3) distributing captioned and described videos
2 or educational materials through such mechanisms
3 as a loan service;

4 “(4) providing free educational materials, in-
5 cluding textbooks, in accessible media for visually
6 impaired and print-disabled students in elementary,
7 secondary, postsecondary, and graduate schools;

8 “(5) providing cultural experiences through ap-
9 propriate nonprofit organizations, such as the Na-
10 tional Theater of the Deaf, that—

11 “(A) enrich the lives of deaf and hard-of-
12 hearing children and adults;

13 “(B) increase public awareness and under-
14 standing of deafness and of the artistic and in-
15 tellectual achievements of deaf and hard-of-
16 hearing persons; or

17 “(C) promote the integration of hearing,
18 deaf, and hard-of-hearing persons through
19 shared cultural, educational, and social experi-
20 ences; and

21 “(6) compiling and analyzing appropriate data
22 relating to the activities described in paragraphs (1)
23 through (5).

24 “(d) APPLICATIONS.—Any eligible entity that wishes
25 to receive a grant, or enter into a contract or cooperative

1 agreement, under this section shall submit an application
2 to the Secretary at such time, in such manner, and con-
3 taining such information as the Secretary may require.

4 “(e) AUTHORIZATION OF APPROPRIATIONS.—There
5 are authorized to be appropriated to carry out this section
6 such sums as may be necessary for each of the fiscal years
7 1998 through 2002.”.

8 **TITLE II—MISCELLANEOUS** 9 **PROVISIONS**

10 **SEC. 201. EFFECTIVE DATES.**

11 (a) PARTS A AND B.—

12 (1) IN GENERAL.—Except as provided in para-
13 graph (2), parts A and B of the Individuals with
14 Disabilities Education Act, as amended by title I,
15 shall take effect upon the enactment of this Act.

16 (2) EXCEPTIONS.—

17 (A) IN GENERAL.—Sections 612(a)(4),
18 612(a)(14), 612(a)(16), 614(d) (except for
19 paragraph (6)), and 618 of the Individuals with
20 Disabilities Education Act, as amended by title
21 I, shall take effect on July 1, 1998.

22 (B) SECTION 617.—Section 617 of the In-
23 dividuals with Disabilities Education Act, as
24 amended by title I, shall take effect on October
25 1, 1997.

1 (C) INDIVIDUALIZED EDUCATION PRO-
2 GRAMS AND COMPREHENSIVE SYSTEM OF PER-
3 SONNEL DEVELOPMENT.—Section 618 of the
4 Individuals with Disabilities Education Act, as
5 in effect on the day before the date of the en-
6 actment of this Act, and the provisions of parts
7 A and B of the Individuals with Disabilities
8 Education Act relating to individualized edu-
9 cation programs and the State’s comprehensive
10 system of personnel development, as so in ef-
11 fect, shall remain in effect until July 1, 1998.

12 (b) PART C.—Part C of the Individuals with Disabil-
13 ities Education Act, as amended by title I, shall take effect
14 on July 1, 1998.

15 (c) PART D.—

16 (1) IN GENERAL.—Except as provided in para-
17 graph (2), part D of the Individuals with Disabilities
18 Education Act, as amended by title I, shall take ef-
19 fect on October 1, 1997.

20 (2) EXCEPTION.—Paragraphs (1) and (2) of
21 section 661(g) of the Individuals with Disabilities
22 Education Act, as amended by title I, shall take ef-
23 fect on January 1, 1998.

1 **SEC. 202. TRANSITION.**

2 Notwithstanding any other provision of law, begin-
3 ning on October 1, 1997, the Secretary of Education may
4 use funds appropriated under part D of the Individuals
5 with Disabilities Education Act to make continuation
6 awards for projects that were funded under section 618
7 and parts C through G of such Act (as in effect on Sep-
8 tember 30, 1997).

9 **SEC. 203. REPEALERS.**

10 (a) PART I.—Effective October 1, 1998, part I of the
11 Individuals with Disabilities Education Act is hereby re-
12 pealed.

13 (b) PART H.—Effective July 1, 1998, part H of such
14 Act is hereby repealed.

15 (c) PARTS C, E, F, AND G.—Effective October 1,
16 1997, parts C, E, F, and G of such Act are hereby re-
17 pealed.

○