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ABSTRACT

This manual is designed to help state and local administrators, school board members, and other education advocates understand the complex requirements of the newly reauthorized Individuals with Disabilities Education Act (IDEA). Without legal jargon, this manual provides step-by-step instruction on IDEA's administrative and procedural requirements. It discusses some of the problems with the old act and highlights the nature of and reasons for the changes. The manual identifies new questions arising from the reauthorized IDEA and discusses potential outcomes under the new statue. It offers insight into the interpretations likely to follow in regulations or the courts and provides practical guidance for understanding IDEA. The manual focuses primarily on the requirements of Part B, the state grant program which provides financial assistance for educating children with disabilities. Individual chapters discuss the changes to: (1) state and local planning requirements; (2) identification, evaluation, and placement of children with disabilities; (3) the Individualized Education Program process; (4) discipline; (5) procedural safeguards; (6) fiscal and administrative provisions; and (7) early childhood programs. The manual also gives an overview of the program that provides assistance for infants and toddlers with disabilities, known as Part C of the Act. An appendix includes a copy of the Act itself. (CR)

Opportunities & Challenges

An Administrator's Guide to the New IDEA

American Association of School Administrators

Opportunities & Challenges: An Administrator's Guide to the New IDEA

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Chapter 1

Introduction

On June 4, 1997, President Clinton signed the Individuals with Disabilities Education Act Amendments of 1997 – marking the first major overhaul of the Individuals with Disabilities Education Act (IDEA) since its enactment in 1975.[1] The new law reauthorizes IDEA with significant changes.

The "Old" IDEA

For more than 20 years, IDEA has governed the provision of special education and related services to children with disabilities. It has transformed a public education system formerly unresponsive to the needs of disabled children into a system where children with disabilities have a guaranteed right to a free appropriate public education (FAPE), safeguards that ensure those rights, and greater access to regular classes and schools.

Even though the old IDEA was premised on the worthy goal of mandated improvement in education for the disabled, its implementation has not been simple. Litigation has increased dramatically as parents have sued states and school districts to enforce IDEA. The act's emphasis on instruction in the least restrictive environment (LRE) has resulted in new and often difficult challenges for teachers attempting to instruct disabled students along with nondisabled students in integrated settings. Furthermore, school personnel have faced uncertainty about how to discipline disabled students under IDEA. Shrinking budgets and personnel shortages have left state and local educational agencies (SEAs and LEAs) struggling to meet the law's requirement to provide a FAPE to children with disabilities.

[1] The IDEA originally was enacted as the Education for All Handicapped Children Act of 1975. Pub. L. No. 94-142, 89 Stat. 975. In 1990, it was renamed the Individuals with Disabilities Education Act. Pub. L. No. 101-476, 104 Stat. 1103.

The old IDEA and its regulations provided little guidance on how to respond to these and other problems. Consequently, SEAs and LEAs began to devise their own strategies. For instance, many SEAs created voluntary mediation procedures in an attempt to settle IDEA disputes and to reduce litigation. To alleviate financial difficulties, LEAs looked to other public agencies for reimbursement of costs for IDEA-related medical services for students. In addition, many SEAs granted temporary waivers of licensing and certification requirements so that schools could secure needed staff when faced with personnel shortages.

Because parents often challenged these and other temporary solutions at the administrative level or in state and federal courts, SEAs and LEAs were uncertain about how they could meet IDEA's requirements without violating the rights of children with disabilities. In response, Congress decided to amend the IDEA. Congress did not intend to alter the basic rights of children with disabilities, as outlined in the old IDEA, but, instead, sought to improve and to clarify the statute's provisions.

During reauthorization, Congress heard the concerns of children with disabilities, their parents, school administrators, teachers, and other interested parties. Beyond issues of cost and compliance, Congress identified other needed reforms. A major criticism was that IDEA's requirements often led to unnecessary paperwork, which distracted SEA and LEA personnel from educational goals. Congress wanted to change the law's focus from merely providing services to children with disabilities to actively encouraging high expectations for disabled children and their increased participation in the regular education curriculum – a theme consistent with recent education statutes, including the Improving America's Schools Act of 1994 and the Goals 2000: Educate America Act. Proponents of reform believed that strengthening the role of parents, discouraging incentives to label children by disability category, and decreasing overidentification of the nondisabled all were necessary to improve educational outcomes.

Although the three-year reauthorization process often was characterized by disagreements, members of Congress reached consensus and ultimately joined forces with disability groups and education groups to develop a compromise on desperately needed reforms. The result was an IDEA that brings many new changes to special education.

The "New" IDEA

The reauthorized IDEA focuses upon improving results for special education students by increasing economic efficiency and reducing administrative burdens. For example, the act provides SEAs and LEAs greater flexibility to discipline children with disabilities, while also ensuring their right to continued services. It addresses rising costs by granting LEAs broader discretion to use Part B funds; requires non-educational agencies to share costs for certain services; and makes changes to reduce the amount of IDEA-related litigation, such as limits on the award of attorneys' fees in certain circumstances. The new IDEA also allows for greater parental involvement in decision making so that parents may work with schools to ensure that their child receives an appropriate education.
In addition, the new IDEA:

- ✓ eliminates state and local planning requirements and allows SEAs and LEAs to demonstrate eligibility through previous submissions;
- ✓ permits schools to use appropriately trained paraprofessionals and assistants and to hire the most qualified individuals available, as long as those individuals obtain the required training within three years;

- ✓ requires participation of children with disabilities in state and districtwide assessments;
- ✓ mandates parental participation in decisions concerning their child's eligibility, the contents of his or her individualized education program (IEP), and placement;
- ✓ allows parents greater access to their child's records;
- ✓ provides for the participation of a regular education teacher on the IEP Team;
- ✓ changes the method used to calculate state funding allocations to one based, in part, on census and poverty data once federal funding reaches a certain level;
- ✓ allows LEAs to reduce allocations from the previous year once federal funding reaches a certain level and to use IDEA funds for schoolwide improvement planning;
- ✓ requires interagency coordination and cost sharing among agencies that provide services to children with disabilities;
- ✓ places limits on reimbursement for unilateral parental placements;
- ✓ gives states more flexibility in providing special education and related services to juveniles in adult prisons;
- ✓ allows schools to discipline disabled students in the same manner as other students if the improper behavior is not a manifestation of the disability, provided no cessation of services occurs;
- ✓ expands the circumstances in which a hearing officer and/or school personnel may assign students with disabilities to alternative placements for up to 45 days;
- ✓ reduces or eliminates attorneys' fees in certain circumstances and requires all states to offer voluntary mediation; and
- ✓ directs LEAs to identify significant disproportions in the number of minority children identified for services.

The Purpose of This Manual

Nearly all requirements of the new IDEA became effective with its enactment, making an understanding of its changes critical. *Opportunities & Challenges: An Administrator's Guide to the New IDEA* helps state and local administrators, school board members, principals, teachers, parents, and other education advocates understand the complex requirements of the new IDEA. Without legal jargon, this manual provides step-by-step instruction on IDEA's administrative and procedural requirements. It discusses some of the problems with the old act and highlights the nature of and reasons for the changes.

While the new IDEA settles many issues arising under the old act, it also raises new questions. This manual identifies these questions and discusses potential outcomes under the new statute. Although it is too early to determine how most questions will be resolved, this manual offers insight on the interpretations likely to follow in regulations or the courts and provides practical guidance for understanding the new IDEA.

The manual focuses primarily on the requirements of Part B, the state grant program that provides financial assistance for educating children with disabilities. It discusses the changes to state and local planning requirements; identification, evaluation, and placement of children with disabilities; the IEP process; discipline; procedural safeguards; fiscal obligations; and other issues. The manual also gives an overview of the program that provides assistance for infants and toddlers with disabilities, known as Part C of the act (formerly Part H).

EFFECTIVE DATES FOR THE NEW IDEA

Most IDEA Part B requirements went into effect on June 4, 1997. The following requirements become effective on July 1, 1998:

- Comprehensive System of Professional Development
- Performance Goals and Indicators
- Individualized Education Programs
- Data Reporting
- Part C Program

The fiscal requirements for Part B grants, including preschool grants, take effect with funds appropriated for fiscal year 1998.

Chapter 2

State and Local Planning Requirements

I. Introduction

A primary goal of the reauthorization was to improve the administration of IDEA. IDEA's state and local planning requirements had changed very little since 1975. Part B always had placed sole responsibility for educating children with disabilities on SEAs and LEAs. Every three years, SEAs and LEAs applying for Part B assistance had to develop lengthy state and local plans to demonstrate compliance with federal eligibility requirements.

During reauthorization, Congress sought to: (1) reduce the amount of unnecessary paperwork; (2) improve interagency coordination in providing special education and related services; (3) permit greater flexibility for complying with requirements; and (4) improve educational results for children with disabilities. The new IDEA accomplishes these objectives. It maintains emphasis on state and local planning and on implementation of policies and procedures to promote IDEA's goals while easing administrative burdens on SEAs and LEAs. This chapter discusses the changes to existing state and local planning requirements as well as new prerequisites for Part B eligibility.

II. State Planning

A. State Conditions for Eligibility

To qualify for Part B funding under the new law, a state must demonstrate that it has certain policies and procedures in effect that comply with the 22 statutory conditions outlined in the table below. Congress maintained some of the old law's conditions for eligibility but made

changes to many others. In keeping with its focus on improved results, the new law also adds a number of conditions to the list. The following table summarizes requirements for Part B eligibility and lists the chapter of this manual in which each is discussed.

STATE CONDITIONS FOR ELIGIBILITY

CONDITIONS FOR ELIGIBILITY	Unchanged	Changed	New	Chapter
Free Appropriate Public Education		X		2
Full Educational Opportunity Goal		X		2
Child Find		X		3
Individualized Education Program (IEP)		X		3
Least Restrictive Environment (LRE)	X			3
Procedural Safeguards		X		4
Evaluation		X		3
Confidentiality	X			2
Transition		X		3
Children in Private Schools		X		3, 6
SEA Responsibility for General Supervision		X		2
Interagency Coordination		X		2
Procedural Requirements Relating to LEA Eligibility	X			2
Comprehensive System of Personnel Development		X		2
Personnel Standards		X		2
Performance Goals and Indicators			X	2
Participation in Assessments			X	2
Supplementation of State, Local, and Other Federal Funds		X		6
Maintenance of State Financial Support		X		6
Public Participation	X			2, 6
State Advisory Panel		X		2
Suspension and Expulsion Rates			X	2

B. State Applications

The old IDEA required states to submit a plan to the Secretary of Education every three years. This requirement was quite burdensome because each state had to prove its eligibility for Part B assistance by submitting copies of relevant policies, procedures, or other documents, even if it had offered identical documentation in prior years.

The new IDEA streamlines this process. Once a state submits an application to the Secretary, it remains in effect until changes are submitted. The application must include copies of relevant policies, procedures, or other documents that demonstrate compliance with the new law's eligibility requirements. If the state already has such policies and procedures on file with the Secretary (including those filed under the old IDEA), it does not need to submit duplicate copies of those documents. Instead, the Secretary must consider the state as having met the respective eligibility requirements.

Under certain circumstances, the Secretary may require a state to submit a modified application and copies of new supporting documents. Such a situation arises when information on file with the Secretary becomes outdated because of: (1) changes to the statute or its regulations; (2) a new interpretation of the statute by a federal court or a state's highest court; or (3) an official finding by the Secretary that the state has not complied with federal law or regulations.

C. Free Appropriate Public Education

The new IDEA maintains its core requirement on FAPE. It directs each state to make a FAPE available to all children with disabilities, ages 3 through 21, who reside in the state. Children with disabilities, ages 3 through 5 and ages 18 through 21, are exempt from the requirement if serving them would conflict with a state's law or practice or with a court order.

The new law makes two significant changes. It specifically applies FAPE to children with disabilities who have been suspended or expelled from school. As a result, states may not discontinue services to disabled students even when their misconduct is unrelated to their disability, a practice formerly permitted by some courts. (Chapter 5 discusses the contentious new provisions concerning discipline in greater detail.)

The new act also limits the obligation to serve disabled inmates in adult prisons. This provision was debated heavily during reauthorization. Congress considered a proposal to cease special education and related services to these youths based on concerns that serving them might unnecessarily divert funds from schools and children who need them. Opponents to the proposal feared that withholding services might increase the probability of repeat offenses.[1] The new law attempts a compromise by reducing the state's obligation to educate these youths. A state must provide services only to disabled inmates, ages 18 through 21, who have a previously identified need for special education and related services or who have an IEP prior to incarceration in an adult prison. (Chapter 6 examines the fiscal implications of changes pertaining to inmates in adult prisons.)

[1] *Education Daily,* Feb. 11, 1997, pages 3-4.

D. Full Educational Opportunity Goal

A state still must have an established goal of providing full educational opportunity to all children with disabilities in the state and a detailed timetable for accomplishing that objective. As part of the effort to streamline state applications, states no longer are required to describe the kind and number of facilities, personnel, and services necessary to meet the full educational opportunity goal.

E. Confidentiality

IDEA's confidentiality requirements remain unchanged. A state still must protect the confidentiality of any personally identifiable information collected or maintained by the Secretary, the SEA, and LEAs for IDEA purposes.

F. SEA Responsibility for General Supervision

An SEA still has overall responsibility for ensuring a state's Part B compliance. As such, it must generally supervise all public agencies in the state that provide special education and related services to children with disabilities, such as the state Medicaid agency and/or the state corrections agency. The SEA ultimately is responsible for ensuring that:

- ✓ Part B's requirements are met;
- ✓ the state's Director of Special Education or equivalent state officer oversees all educational programs for children with disabilities in the state; and
- ✓ all educational programs for disabled children in the state meet the SEA's educational standards, regardless of who provides the services.

Congress added this provision to create a central oversight mechanism for ensuring Part B compliance and to increase consistency in services provided to children with disabilities. Although the SEA has general supervisory authority, non-educational state agencies still must provide and/or pay their share of costs for providing a FAPE to children with disabilities.

As mentioned, the provision of special education and related services to disabled inmates was a great concern to many during reauthorization. Because some state laws place responsibility for all in-prison programs with the state corrections agency, SEAs in those states have faced difficulties providing and overseeing in-prison education programs.[2] The new law allows a state's governor to assign responsibilities for serving disabled youths who are convicted as adults and incarcerated in adult prisons. In such a situation, the state corrections agency may be assigned responsibility for Part B compliance with respect to disabled inmates.

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[2] *Education Daily*, Jan. 24, 1997, pages 3-4.

G. Interagency Coordination

The old IDEA placed responsibility for planning, delivering, and financing special education and related services largely on SEAs and LEAs, even though some services were chargeable to other state and local agencies. States had to establish policies and procedures on interagency agreements, but they had no legal obligation to enter into such agreements.

As a result, many LEAs carried a disproportionate burden of costs and responsibility for providing a FAPE to children with disabilities. In the late 1980s, Congress required Medicaid to finance some related medical services, but recent changes in the program have renewed concerns that costs may shift back to school districts.[3]

Reauthorization seeks to improve interagency coordination. The new act mandates involvement of other state and local agencies by requiring each state's governor to oversee and to ensure interagency coordination in the provision of special education and related services, or to designate an individual to assume this responsibility.

Interagency coordination may be achieved by: (1) a state law or regulation; (2) an agreement, signed by agency officials, clearly identifying the responsibility of each agency for providing services; or (3) some other written method determined appropriate by the governor or the governor's designee. The method of interagency coordination must include:

- ✓ a statement of each agency's financial responsibility for services necessary to provide a FAPE;
- ✓ a declaration that the financial responsibility of certain non-educational public agencies (including the state Medicaid agency and other public insurers of children with disabilities) supercedes that of the LEA (or the state agency responsible for developing the child's IEP);
- ✓ the conditions, terms, and procedures under which the non-educational public agency will reimburse the LEA;
- ✓ the procedures for resolving interagency disputes, including those in which reimbursement or implementation of the agreement's provisions is at issue; and
- ✓ policies and procedures for determining the responsibilities of each agency to promote coordination and to deliver services in a timely and appropriate manner.

The new IDEA requires the non-educational public agency to provide or to finance services it is obligated to provide under federal or state law even though the services are part of a child's educational program. The agency must fulfill this obligation directly, through a contract or some other arrangement. Although these new requirements cover any state or local agency responsible for providing services necessary for a FAPE, they are directed toward state Medicaid agencies.[4] Congress intended to ensure that state Medicaid agencies pay their fair

[3] *Education Daily,* July 3, 1996, pages 1-2.

[4] U.S. House of Representatives, Committee on Education and the Workforce, Committee Report, page 92 (May 13, 1997).

share of health services costs and to prevent states from denying Medicaid reimbursement for services provided in a school context.

Even though the IDEA places emphasis on the proper allocation of expenses, its first priority is, of course, the welfare of the disabled child. To ensure that the child continues to receive services, the LEA (or the state agency responsible for developing a child's IEP, such as the state corrections agency) must assume responsibility for services if the non-educational public agency fails to provide or pay for them.[5] However, it may seek reimbursement from the agency.

H. Procedural Requirements Relating to LEA Eligibility

The new law retains the procedural requirements applicable to determinations of LEA ineligibility. When providing a Part B grant to an LEA, an SEA cannot make a final determination of ineligibility without first providing the LEA reasonable notice and an opportunity for a hearing.

I. Personnel Development

Reauthorization continues to emphasize the state's responsibility for promoting teacher professional development. As of July 1, 1998, states must have a comprehensive system of personnel development (CSPD) designed to ensure an adequate supply of qualified special education, regular education, and related-services personnel for serving children with disabilities in the state. If a state has a state improvement plan (necessary for a State Program Improvement Grant under Part D of IDEA),[6] it must coordinate the CSPD requirements with the plan's personnel provisions.

The meaning of an "adequate supply" differs based on state and local needs for professional development. The determination considers:

- ✓ the number of personnel providing special education and related services;
- ✓ current and anticipated personnel vacancies and shortages (including the number of individuals with temporary certification);
- ✓ the extent of certification or retraining needed to eliminate shortages, based on an assessment of existing needs; and
- ✓ the state's method for addressing identified inservice and preservice preparation needs to ensure that all personnel (including professionals and paraprofessionals providing special education, general education, related services, or early intervention services) have the skills and knowledge necessary to meet the needs of children with disabilities.

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5 *Id.*

6 IDEA Part D, Subpart 1 establishes the State Improvement Grants Program to assist SEAs and their partners in reforming and improving systems, including professional development systems, that support the education of children with disabilities.

J. Professional Standards and Personnel Shortages

Reauthorization addresses IDEA's professional standards requirements, which, over the years, have created difficulties for SEAs and LEAs. Particularly in rural and urban areas, LEAs have faced shortages of qualified teachers and related services personnel. SEAs have tried to assist them by granting provisional certifications and waiving professional licensing requirements temporarily, thereby allowing LEAs to hire paraprofessionals, teacher aides, and non-certified or non-licensed teachers to serve disabled students. The old IDEA was unclear as to whether SEAs and LEAs that engaged in such practices were still in compliance with IDEA's personnel standards, and lawsuits challenging such efforts to alleviate personnel shortages arose.

The new IDEA still emphasizes the need for trained staff. An SEA must establish and maintain professional standards to ensure that all personnel necessary to carry out Part B are appropriately and adequately trained. These standards must conform to recognized certification, licensing, or registration requirements that apply to the professional disciplines of teachers and related services personnel. Because the SEA decides the certification or licensing requirements for teachers, its professional standards for teachers are the state-approved teacher requirements, and conformity is not an issue. Conformity becomes an issue with the SEA's standards for related services personnel who are licensed by agencies other than the SEA (i.e., nurses and other health professionals). If the SEA's standards are not as stringent as the requirements for the professional discipline, the SEA must require the retraining of personnel or the hiring of persons who meet the professional discipline requirements.

To alleviate past problems with IDEA, SEAs and LEAs now have more flexibility to deal with shortages of trained personnel. States must allow the use of paraprofessionals and assistants to aid in the provision of special education and related services, as long as they are appropriately trained and supervised in accordance with state law, regulations, or written policy. In addition, states may permit an LEA facing a personnel shortage to hire the most qualified people available, even if they have not yet completed state certification or licensing requirements, but two conditions apply: (1) these individuals must continue to work toward meeting state requirements and complete the training necessary to obtain the proper credentials within three years; and (2) the LEA must make ongoing efforts to recruit and to hire appropriately trained staff.

K. Performance Goals and Indicators

A main goal during reauthorization was to improve the educational performance of children with disabilities—a focus of the Improving America's Schools Act of 1994 and Goals 2000, as well. Congress found that low expectations for disabled children had impeded the children's performance and that their educational achievement, though improving, was still less than satisfactory.[7] To address this critical issue, Congress added provisions to encourage high expectations of children with disabilities and to track their educational performance.[8]

Beginning on July 1, 1998, states must establish performance goals for children with disabilities and develop indicators to judge their progress. The goals must promote the purposes of

[7] *Id.*, pages 3, 83.
[8] *Id.*

IDEA and be consistent, to the extent appropriate, with the state's other goals and standards for students. At a minimum, the indicators must address performance on assessments, dropout rates, and graduation rates. States must report biannually to the Secretary and to the public on progress toward the established goals, although the act does not specify the format for reporting this information. A state with a state improvement plan (necessary for a State Program Improvement Grant under Part D) must revise it as necessary, based on information obtained from progress assessments.

L. Participation in Assessments

Congress recognized that excluding disabled children from state and districtwide assessments of achievement has limited or prevented them from continuing on to postsecondary education.[9] In 1994, it required participation of disabled students in yearly student assessments used for the Title I program – the federal education program assisting educationally disadvantaged children. Consistent with that change, the reauthorized IDEA requires that children with disabilities participate in state and districtwide assessments of student progress, although it does not require participation by disabled inmates in adult prisons.

The IDEA requirement aims to ensure that disabled children fully participate in all educational programs and to further the goal of improved educational results. In addition, it gives parents of disabled children the same opportunity as parents of nondisabled children to determine their child's level of performance.[10]

IDEA requires that disabled children receive appropriate accommodations for participation in testing. For children who cannot, even with accommodations, participate in traditional assessments, SEAs and LEAs must develop guidelines on their participation in alternative assessments, devise alternative assessments, and beginning no later than July 1, 2000, conduct such assessments. Devising testing accommodations and creating alternative assessments have not been easy tasks. SEAs and LEAs already have had to grapple with such requirements in the Title I program. Incidentally, in June 1997, the U. S. Department of Education (the Department) provided informal guidance on these issues for Title I,[11] which may prove useful for IDEA.

The SEA must report to the public on the assessment of children with disabilities in the same manner that it publicizes data on nondisabled children. This report must include the number of disabled children participating in regular and alternative assessments. Beginning no later than July 1, 1998, the report must contain performance data for children with disabilities participating in regular assessments and, beginning no later than July 1, 2000, it must include such data for children participating in alternative assessments. The state must report only data that are statistically sound, and it may not disclose the individual performance results for each child.

States now must report assessment data for nondisabled and disabled children separately, but IDEA has established a grace period for compliance with this requirement. If a state already

[9] *Id.*, page 101.

[10] *Id.*

[11] This guidance is available through the U.S. Department of Education's Office of Elementary and Secondary Education.

is required to separate data in this manner, it must report them this way. Otherwise, the requirement to separate assessment data will apply only for assessments conducted after July 1, 1998.

M. Public Participation

The new law retains the requirement for public participation in a state's policymaking and rulemaking processes. Before adopting policies and procedures necessary for compliance, a state must ensure that public hearings take place and that the general public receives adequate notice of them and an opportunity to comment.

N. State Advisory Panel

States must create advisory panels whose members collectively provide policy guidance on special education and related services for children with disabilities in the state. The governor, or another official authorized by state law to make such appointments, must choose the panel members, the majority of whom must be individuals with disabilities or parents of children with disabilities. The panel must consist of individuals representative of the state population who are involved in, or concerned with, the education of children with disabilities, including:

- ✓ individuals with disabilities;
- ✓ parents of children with disabilities;
- ✓ teachers;
- ✓ representatives of colleges and universities that prepare special education and related services personnel;
- ✓ state and local education officials; and
- ✓ administrators of programs for children with disabilities.

In recognition of the various service providers for children with disabilities, the new IDEA expands the panel's membership to encompass:

- ✓ representatives of state agencies involved in paying for or providing related services to children with disabilities (i.e., state Medicaid agencies);
- ✓ representatives of private and public charter schools;
- ✓ at least one representative of a vocational, community, or business organization concerned with providing transition services to children with disabilities; and
- ✓ representatives from the state's juvenile and adult corrections agencies.

New detail on the panel's duties appears in the statute. As before, the panel must advise the SEA of the unmet educational needs of children with disabilities within the state, comment publicly on any proposed rules or regulations at the state level affecting the education of children with disabilities, and assist the SEA in developing evaluations and reporting data to the Secretary. Under the new law, the panel also must advise the SEA on the development of corrective action plans to address findings identified in federal monitoring reports and the creation and implementation of policies to coordinate services for children with disabilities.

O. Suspension and Expulsion Rates

To protect children with disabilities from unwarranted disciplinary measures, the new IDEA requires SEAs to track suspension and expulsion rates and to identify any significant differences among the state's LEAs or between disabled and nondisabled children within LEAs. If the SEA finds significant differences in the rates, it must review and, if appropriate, revise any policies, procedures, and practices on IEPs, behavioral interventions, and procedural safeguards that are inconsistent with the IDEA, or it must require the affected LEA to do so.

P. Data Reporting Requirements

States still must report data annually to the Department, but the new IDEA streamlines the requirements. It eliminates the collection and reporting of data on services needed for children with disabilities who have left the educational system, on the number and type of personnel employed, and on current and projected personnel needs. In addition, it grants the Secretary discretion to accept data collected through sampling.[12]

Specifically, the new IDEA requires states, effective July 1, 1998, to report the number of children with disabilities:

- ✓ who receive a FAPE;
- ✓ who receive early intervention services;
- ✓ who participate in regular education;
- ✓ who are in separate classes, separate schools or facilities, or public or private residential facilities;
- ✓ who are between the ages of 14 to 21 and stopped receiving special education and related services because of program completion or for other reasons, as well as the reasons why those children stopped receiving special education and related services;
- ✓ who, from birth through age two, stopped receiving early intervention services because of program completion or for other reasons;
- ✓ who were removed to an interim alternative educational setting for an offense involving weapons, illegal drugs, or controlled substances at school, or for other disciplinary reasons, as well as a description of the acts or items precipitating those removals;
- ✓ who are subject to long-term suspensions or expulsions; and
- ✓ who are infants and toddlers at risk of having substantial developmental delays and receive early intervention services under Part C.

[12] *Id.*, page 114.

All statistics must be categorized according to race, ethnicity, and disability, with the exception of information pertaining to infants and toddlers, which need not be classified according to disability. States also must report other information as requested by the Secretary.

During reauthorization, Congress felt that overidentification of minority children was a continuing problem and subsequently added a new data requirement.[13] As of July 1, 1998, states must collect and examine data to determine if significant disproportionality exists based on race with respect to identification for particular disabilities or placement in educational settings.

III. Local Planning

A. Definitions

The new IDEA defines the term "local educational agency" consistent with the definition used in the Improving America's Schools Act, and clarifies that educational service agencies are LEAs for the purposes of IDEA. "Educational service agency" replaces the term "intermediate educational unit," used in the old law, to reflect a more contemporary understanding of the broad and varied functions of such agencies.[14]

B. LEA Conditions for Eligibility

Like an SEA, an LEA also must meet certain conditions to qualify for a subgrant of Part B funds from the state. Specifically, it must demonstrate to the state that it meets seven conditions.

1. **Consistency with State Policies** – An LEA, in providing for the education of children with disabilities in its jurisdiction, must have policies, procedures, and programs in effect that are consistent with state policies and procedures established for IDEA compliance.

2. **Required Use of Funds** – IDEA requires an LEA to follow certain conditions when spending Part B funds. (Requirements relating to an LEA's use of Part B funds are discussed in Chapter 6's in-depth discussion of fiscal requirements.)

3. **Personnel Development** – An LEA must ensure that all personnel necessary for providing special education and related services to children with disabilities (including paraprofessionals and assistants) are appropriately and adequately prepared. The LEA also must appropriately contribute to and use the state's CSPD. If state standards permit, the LEA may use paraprofessionals and assistants for serving children with disabilities, and it may hire non-certified and non-licensed personnel, provided they complete needed training within three years and that the LEA continues to make good-faith efforts to recruit and hire appropriately trained staff.

[13] *Id.*, page 115.
[14] *Id.*, page 86.

4. **Permissive Use of Funds** – IDEA permits an LEA to use Part B funds for specific activities. (These provisions, which are considerably different under the new law, are covered in Chapter 6.)

5. **Treatment of Charter Schools and Their Students** – An LEA must serve all children with disabilities, including those enrolled at charter schools, in the same manner. (Chapter 6 details funding requirements for LEAs with respect to charter schools.)

6. **Information for the State Educational Agency** – An LEA must provide the SEA with information necessary to allow the SEA to collect, monitor, assess, and report required information. This requirement includes information the state will need to meet its statutory responsibilities, such as monitoring performance goals and indicators and analyzing suspension and expulsion rates.

7. **Public Information** – An LEA must make documents relating to its Part B eligibility available to parents of children with disabilities and to the general public.

C. LEA Applications

Consistent with changes made to application requirements for SEAs, the new law also streamlines application procedures for LEAs and eliminates unnecessary paperwork. An LEA (or a state agency applying to the SEA for funds) no longer must submit an application every three years. Instead, it only must submit one application to the SEA showing that it meets the seven conditions for eligibility, until changes become necessary. If the LEA already has policies and procedures on file with the SEA (including those submitted under the old IDEA) that demonstrate compliance with the new IDEA's eligibility requirements, the SEA can use that information to determine the LEA's eligibility; the LEA will not need to file duplicate copies of the documents.

An LEA may need to submit a modified application and copies of new supporting documents if information on file with the SEA becomes outdated. The new IDEA requires an LEA to update its application and supporting documents if changes to the new IDEA or the new IDEA regulations are made, if a federal or state court issues a new interpretation of the new IDEA, or if there is an official finding that the LEA has not complied with federal or state law or regulations. Under such circumstances, the LEA need only modify pertinent parts of its application and submit new supporting documents to replace the outdated information.

D. Joint Eligibility

Under the new IDEA, an SEA may require two or more LEAs to establish joint Part B eligibility if it determines that an individual LEA would not otherwise qualify because it cannot serve disabled children effectively as a single entity. The total amount of Part B funds available to LEAs that establish joint eligibility equals the total amount that each LEA would have received independently. An SEA, however, may not require a charter school that falls within the definition of an LEA to establish joint eligibility unless the state's charter school statute explicitly permits the school to do so. Furthermore, the new IDEA does not automatically require LEAs eligible for less than $7,500 to establish joint eligibility with another LEA.

LEAs establishing joint eligibility must adopt policies and procedures consistent with the state's policies and procedures governing IDEA eligibility. In addition, they are jointly responsible for implementing programs for which they receive Part B assistance.

The rules are somewhat different when an educational service agency is involved. If state law requires an educational service agency to provide programs for children with disabilities, the educational service agency has sole responsibility for administering and disbursing payments that it receives and for implementing programs funded under Part B, and the LEA will not be jointly responsible.

E. Notification of Ineligibility and Findings of Noncompliance

An SEA must notify an LEA (or a state agency applying for Part B assistance) if it determines that the agency is not eligible for Part B funds. The agency is entitled to reasonable notice and to an opportunity for a hearing on the SEA's determination. If an SEA decides that an LEA is eligible but later finds that the LEA is out of compliance, it must reduce or stop payment of the funds to the LEA (or the state agency). The LEA (or state agency) is entitled to due process in this instance as well. If a reduction or suspension of payments occurs, such action must continue until the SEA is satisfied that the LEA (or state agency) is in compliance. An LEA (or state agency) receiving notice of a reduction or suspension of payments must notify the public within its jurisdiction that the SEA is taking this action. In carrying out these actions, the SEA must consider relevant decisions made against the LEA (or state agency) that stem from due process hearings concerning the rights of children with disabilities and their parents.

F. Disciplinary Information

The new IDEA allows states to require LEAs to include disciplinary information in the records of children with disabilities and to transmit this information to the same extent that the LEA includes and transmits disciplinary information about nondisabled children. Disciplinary information can include descriptions of behaviors that required disciplinary action and of the action taken, as well as any other information relevant to the safety of the child and individuals involved with the child.

If a state adopts such a policy when a child with a disability transfers from one school to another, the transmission of the child's records must include the current IEP and all disciplinary information. (Further requirements concerning the transmission of disciplinary information are discussed in Chapter 5.)

Chapter 3

Identification, Evaluation, IEPs, and Placement

I. Introduction

The new IDEA makes several changes to requirements concerning the identification, evaluation, and placement of children with disabilities and the development of IEPs. Some provisions appear in the act for the first time while some are incorporated from the current regulations. The reauthorized IDEA:

- ✓ expands parental rights by providing for increased parental involvement and decision making in all phases of a child's educational experience;
- ✓ places more emphasis on the participation of disabled children in the regular education curriculum;
- ✓ adds provisions to address behavioral factors and to encourage remediation of problem behaviors;
- ✓ makes some changes in requirements pertaining to the IEP in light of Congress' focus on improved educational results and transition planning;
- ✓ streamlines many of the old requirements to reduce paperwork burdens and to encourage the development and implementation of more meaningful IEPs; and
- ✓ clarifies some issues upon which courts have differed in IDEA-related litigation.

This chapter explains the new requirements related to identifying, evaluating, and placing children with disabilities in educational settings and developing IEPs. It also covers existing provisions that help clarify the recent changes.

NEW REQUIREMENTS RELATED TO PARENTS

Parent Participation: Parents must be—

- included on the team that determines the child's eligibility for Part B services;
- part of the "IEP Team" that develops, reviews, and revises the IEP; and
- included in the group that makes decisions about the educational placement of their child.

Access to Information: Parents are entitled to—

- a copy of the evaluation report and documentation of the eligibility determination;
- notice of the determination that there was no need for additional data to determine the child's initial or continued eligibility and the reasons for it; and
- notice of their right to request an eligibility assessment.

The new IDEA still requires notice to parents before an agency proposes or refuses to initiate or change a child's identification, evaluation, or placement, or the provision of a FAPE to the child. This requirement is discussed in Chapter 4.

II. Identification

A. Child Find

For the most part, the "child find" requirement remains unchanged, except that the new law clarifies its application with respect to private school children. States still must identify, locate, and evaluate all children with disabilities residing in the state who are in need of special education and related services. They also must develop and implement a practical method for determining which disabled children currently are and are not receiving needed special education and related services.

The new IDEA clarifies the fact that child find also applies to children with disabilities attending private schools. States, therefore, are responsible for identifying, locating, and evaluating children with disabilities even if they will not be attending public schools. Part C also imposes a child find requirement on states accepting grants to provide early intervention services to disabled infants and toddlers. (Chapter 7 covers Part C, including this requirement, in greater detail.)

B. Defining "Child with a Disability"

Once children are identified as potentially eligible for Part B services, an LEA must determine whether each child is, in fact, eligible. Eligibility for special education and related services depends on whether the child fits within the IDEA's definition of a "child with a disability." An LEA must conduct an initial evaluation of the child to make this determination. Requirements for the initial evaluation are discussed in Section III. A. of this chapter.

To qualify as a "child with a disability," a child must have at least one of the following:

- ✓ mental retardation,
- ✓ hearing impairments (including deafness),
- ✓ speech or language impairments,
- ✓ visual impairments (including blindness),
- ✓ serious emotional disturbance,
- ✓ orthopedic impairments,
- ✓ autism,
- ✓ traumatic brain injury,
- ✓ other health impairments, and/or
- ✓ specific learning disabilities.

In addition, the child must have a need for special education and related services because of the disability. The new law makes no changes to this definition or to the listed disability categories.[1]

Many concerns have been raised about the use of disability categories to determine eligibility. The practice encouraged some LEAs and school personnel to rely solely on a child's label when developing the IEP and when making placement decisions. It also tended to "lock" some children into inappropriate or incorrect disability categories during their early years of eligibility when the precise nature of their disabilities were not yet known.[2]

In response, Congress made two changes to IDEA. First, it clarified that nothing in the act requires an LEA to classify a child according to his or her disability for the purpose of providing services. Second, Congress expanded the age range during which children with developmental delays may receive special education and related services. States and LEAs still have discretion to include children who need special education and related services because they are experiencing developmental delays in one or more of five areas (physical development, cognitive development, communication development, social or emotional development, or adaptive development) in the definition of "child with a disability," and the new act lengthens the age range for these children from ages three through five to ages three through nine so that they can receive needed special education and related services even if the exact nature of their disabilities is not yet known.[3]

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1 The definition for "child with a disability" indicates that other references in the act to serious emotional disturbance use the term "emotional disturbance." According to the act's legislative history, the change is intended to have no substantive or legal significance and is meant only to eliminate the "pejorative connotation of the term 'serious.'" U.S. House of Representatives, Committee on Education and the Workforce, Committee Report, pages 86-87 (May 13, 1997).

2 *Id.*, page 86.

3 *Id.*

III. Evaluations

A. Initial Evaluations

The new IDEA's preplacement evaluation requirements are taken from current IDEA regulations. As such, the act now requires an SEA, other state agency, or LEA to conduct a full, individual evaluation of a child with a disability before providing special education and related services. This initial evaluation serves to determine if a child is eligible for Part B services because he or she is a "child with a disability" and, if so, his or her specific educational needs. The first aspect is commonly referred to as the "eligibility determination." Information gathered during the educational needs assessment largely determines the contents of the child's IEP. The IDEA's specific procedures for conducting the initial evaluation are as follows.

1. Eligibility Determinations

a. Parental Consent

Before conducting an initial evaluation to make an eligibility determination, the agency must obtain informed parental consent from the child's parents. Parental consent for evaluation is separate from the requirement for parental consent to the child's placement.

If the parent refuses consent for the child's initial evaluation, the new act permits the agency to pursue the matter through mediation or a due process hearing, unless state law prohibits the agency from doing so. If state law requires parental consent before an agency may conduct an initial evaluation, state law and procedures will determine whether and how the agency may override a parent's refusal to give consent.

b. Parental Involvement

To expand parental involvement in the initial evaluation process, the new law mandates that a "team of qualified professionals" and the child's parents make the eligibility determination together. In addition, the parents must receive a copy of the evaluation report, as well as documentation of the eligibility determination. Neither the act nor the legislative history indicates whether parents must receive a copy of the evaluation report before participating in the eligibility determination. Parents are likely to advocate for this interpretation because it would facilitate their informed participation in the eligibility determination.

c. Prevention of Misidentifications

One concern addressed during reauthorization was the misidentification of children as disabled. Congress recognized that many children who have not received proper academic support are incorrectly labeled as disabled. They often are identified as learning disabled due to their lack of appropriate or effective instruction in a core skill, such as reading, or because of limited English proficiency.[4]

[4] *Id.*, page 98.

To address this problem, the new IDEA prohibits classification of a child as a "child with a disability" if the determinant factor is a lack of instruction in reading or math or limited English proficiency. This requirement is intended to ensure that professionals involved in a child's evaluation seriously consider factors other than a disability that might affect a child's performance.

2. Needs Assessment

The new IDEA requires an "IEP Team" to review evaluation data to determine the child's educational needs and the IEP content. "IEP Team" is now a formal term included in the act. At a minimum, the IEP Team must consist of a special education teacher, a regular education teacher, and the child's parents. With the exception of the child's parents, the participants on the IEP Team and the team making eligibility determinations need not be the same. Specific requirements relating to the IEP Team are discussed in Section IV.A. of this chapter.

B. Reevaluations

The new IDEA enacts the reevaluation requirement found in current IDEA regulations. Basically, an LEA must reevaluate each child with a disability at least once every three years. If the child's parent or teacher requests a reevaluation, or if conditions warrant, the LEA must conduct a reevaluation in the interim. An LEA also must reevaluate a disabled child before determining that the child no longer qualifies for special education and related services. The LEA must obtain informed parental consent before conducting a reevaluation, unless the LEA can demonstrate that it took reasonable steps to obtain parental consent and the child's parents failed to respond.

Because the old IDEA did not distinguish between initial evaluations and reevaluations, it was unclear whether a full evaluation was necessary in both instances. The new law clarifies that the IEP Team determines the extent of a reevaluation. The reevaluation must follow IDEA's procedures for initial evaluation, but the reevaluation's scope may vary from a limited to a full evaluation.

C. Evaluation Procedures

The new IDEA retains many of the old law's evaluation requirements, which appeared as a condition for state eligibility. As such, states addressed them in plans submitted annually to the Department, but, under the new law, evaluation requirements are directly applicable to LEAs. In addition, provisions increasing parental involvement in the process and decreasing administrative burdens now are part of the act.

1. Review of Existing Evaluation Data

Congress was aware that the three-year reevaluation requirement had become "a highly paperwork-intensive process... driven as much by concern for compliance with the letter

of the law, as by the need for additional evaluation information about a child."[5] Proponents for change complained that the focus on compliance subjected children to unnecessary tests and assessments, even when the child's disability remained the same during the three-year time period, thus "saddling" LEAs with unnecessary costs.[6]

The new law streamlines the evaluation process and reduces documentation. To ensure collection of only necessary evaluation data, IDEA requires the IEP Team and other qualified professionals, as appropriate, to look at a child's existing evaluation data before the LEA gathers more. Existing evaluation data include evaluations and information from the child's parents, current classroom-based assessments and observations, and observations of teachers and related-services providers. The new act adds parent-provided evaluations and information to this list, giving parents greater input in decisions affecting their child.

The requirement applies to both reevaluations, which largely were the basis for the change, and the initial evaluation. Consequently, existing evaluation data may include evaluations and information arising prior to the child's identification and referral for an initial evaluation, such as data maintained while the child received services as an infant or toddler under the Part C (the old Part H) program.

Based on a review of the evaluation data and parental input, the IEP Team and other qualified professionals must identify what additional data, if any, are needed to determine:

- ✓ the child's initial or continued eligibility;
- ✓ the child's present performance levels and educational needs;
- ✓ the child's initial or continued need for special education and related services; and
- ✓ any additions or modifications to the child's current special education and related services necessary to enable the child to meet the IEP's measurable annual goals and to participate, as appropriate, in the general education curriculum.

Once the need for additional data has been identified, the LEA must administer tests and locate other necessary evaluation materials. The legislative history suggests that additional evaluation activities should focus on collecting information to determine how to teach and assist the child, if continued eligibility is not in question.[7] If the IEP Team and other qualified professionals find no need to collect additional information about a child's initial or continued eligibility, the LEA must notify the parents of that determination. The notice should include the reasons supporting the determination and should inform parents that they still may request an evaluation to assess the child's eligibility.

The LEA is required to conduct further evaluations if requested to do so by the parents. Under the old IDEA, regulations gave parents the right to obtain an independent educational evaluation of their child, subject to certain requirements,[8] and the provision is likely to

[5] *Id.*, page 99.

[6] *Id.*

[7] *Id.*

[8] Code of Federal Regulations, Title 34, section 300.503 (1996).

remain in new regulations issued by the Department. The new law requires LEAs to provide notice about independent educational evaluations. (Further discussion on the notice requirement appears in Chapter 4.)

2. Gathering Additional Evaluation Data

Before gathering additional evaluation data, the LEA must notify the child's parents that it plans to do so and describe its proposed evaluation procedures. An LEA must comply with seven statutory requirements when conducting evaluation procedures, and they are discussed below.

IN CONDUCTING THE EVALUATION, AN LEA MUST:

- ✓ use a variety of assessment tools and strategies to gather relevant functional and developmental information, including information provided by the parent;
- ✓ not use any single procedure as the sole criterion for determining the child's eligibility or the child's appropriate educational program;
- ✓ use technically sound instruments to assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors;
- ✓ ensure that tests and other evaluation materials are selected and administered so as not to be discriminatory on a racial or cultural basis and that they are provided in the child's native language or mode of communication, unless clearly not feasible to do so;
- ✓ ensure that standardized tests given to the child have been validated for the specific purpose used, administered by trained and knowledgeable personnel, and administered following the instructions provided by the producer of the test;
- ✓ ensure that the child is assessed in all areas of suspected disability; and
- ✓ ensure provision of assessment tools and strategies yielding relevant information that directly assists persons in determining the child's educational needs.

a. Variety of Assessment Tools and Strategies

An LEA must use a variety of assessment tools and strategies to gather relevant functional and developmental information that may assist it in determining whether the child is eligible for Part B services, and, if so, the content of the child's IEP. The new IDEA adds two provisions. First, when gathering relevant information, the LEA must consider information provided by the child's parents. Second, the LEA must collect information that might facilitate the child's involvement and progress in the general curriculum. If the child is of preschool age, the LEA must gather information about the child's participation in appropriate activities.

b. Prohibition of Single Procedure as Sole Determining Criterion

An LEA may not use any single procedure as the sole criterion for determining the child's eligibility for services or the child's educational needs.

c. Assessment of Cognitive and Behavioral Factors

As part of the new law's emphasis on addressing behavior, an LEA must now use technically sound instruments to assess the relative contribution of cognitive and behavioral factors, in addition to physical and developmental factors, to the child's eligibility and educational needs.

d. Selection and Administration of Evaluation Materials and Procedures

An LEA must ensure that it does not select and administer testing and evaluation materials and procedures in a racially or culturally discriminatory manner. The materials and procedures must be provided and administered in the child's native language or mode of communication, unless it is not feasible to do so. The act provides no guidance on how that determination is made.

e. Standardized Tests

If the LEA uses a standardized test to obtain information about the child, the test must be:

1. validated for the specific purpose for which it is used,
2. administered by trained and knowledgeable personnel, and
3. administered in accordance with any instructions provided by the test's producer.

f. Assessment in All Areas of Disability

An LEA must ensure that the child is assessed in all areas of suspected disability.

g. Information Relevant to Determining Educational Needs

An LEA must ensure that assessment tools and strategies provide relevant information that directly assists in the determination of the child's educational needs.

IV. Individualized Education Programs

The new IDEA makes several changes to IEP requirements. The new provisions, which cover development, content, review, and revision of IEPs, as well as composition of IEP Teams, go into effect on July 1, 1998, but already are in effect for disabled inmates in adult prisons.

At the beginning of each school year, an LEA, SEA, or other state agency educating children with disabilities must have an IEP for each disabled child in its jurisdiction. The IEP Team is responsible for developing the IEPs.

For children ages three through five, an individualized family service plan, developed during participation in an IDEA-Part C early intervention program for infants and toddlers (see Chapter 7), can serve as the child's IEP if consistent with state policy and agreed to by the agency and the child's parents. In addition, an SEA has discretion to use an individualized family service plan as the IEP for a disabled child who will turn three during the school year.

A. The IEP Team

The old IDEA required that certain individuals (the child's teacher, the child's parents, a representative of the public agency, and, if appropriate, the child and other individuals) to develop, review, and revise a child's IEP. Although parents attended these IEP meetings, they were not always part of the team that made decisions about their child or the IEP's contents.

Reauthorization of IDEA eliminated the requirement for a meeting to develop the IEP,[9] although LEAs may continue to hold such meetings if they choose. The act now includes parents on the IEP Team that develops, reviews, and revises the IEP. By definition, the Team is composed of mandatory and discretionary participants.

1. Mandatory Participants

At a minimum, the IEP Team must be composed of:

- ✓ the child's parents;
- ✓ at least one of the child's regular education teachers, if the child is or may be participating in the regular educational environment;
- ✓ at least one special education teacher (or, when appropriate, a special education provider);
- ✓ an LEA representative qualified to provide (or supervise the provision of) specially designed instruction to meet the unique needs of children with disabilities and knowledgeable about the general curriculum and the LEA's resources; and
- ✓ an individual who can interpret the instructional implications of evaluation results, such as the regular education teacher or the LEA representative serving on the IEP Team.

2. The Role of the Regular Education Teacher

The new IDEA recognizes that regular education teachers often play a central role in the education of children with disabilities. Therefore, the act requires that at least one of the child's regular education teachers serve on the IEP Team. The act and legislative history

[9] The law's procedural safeguard and discipline provisions reference and/or require an IEP meeting under certain circumstances. See discussions in Chapters 4 and 5.

do not clarify who will fulfill this role when a child attends a self-contained residential school (i.e., a school for deaf or blind students). One possibility is that a regular education teacher from the child's local school district may serve on the Team.[10]

As a member of the IEP Team, the regular education teacher must participate in the development, review, and revision of the child's IEP. This responsibility includes determining appropriate positive behavioral interventions and strategies for the child, as well as deciding which supplementary aids and services, program modifications, and support for school personnel to include in the IEP. Congress was aware that requiring regular education teachers' participation in the IEP process might create an obligation for the teachers to participate in all aspects of the IEP Team's work. Because it did not intend for regular education teachers to do so, Congress expressly limited their participation by stating that they need only participate in the development, review, and revision of an IEP "to the extent appropriate."[11] The act provides no guidance on what that extent is.

3. Discretionary Participants

At the parents' or agency's discretion, the IEP Team may include other individuals, such as related services personnel, who have knowledge or special expertise regarding the child. The IEP Team also must include the child whenever appropriate. The act does not explain when a child's participation would be appropriate. Under the old IDEA, the Department interpreted it to mean that the parents decide when participation is appropriate, after discussing, when possible, the appropriateness of the child's participation with the LEA. The Department also thought that participation of older children with disabilities (particularly those at the secondary school level) should be encouraged.[12]

Congress recommends the type of related services personnel who should serve on the IEP Team, as reflected in IDEA's legislative history. For instance, personnel who are knowledgeable about services other than strictly special education services, such as specialists in curriculum content areas (e.g., reading), may be invited to participate.[13] Congress also recognizes that some situations might warrant the presence of a licensed registered school nurse on the IEP Team and, therefore, encourages the participation of such a professional to the greatest extent practicable and when appropriate.[14] The nurse could help define the child's educationally related health needs and determine how the LEA should address them.[15]

B. Considerations in Developing the IEP

The reauthorized IDEA includes several factors the IEP Team must consider when developing an IEP to ensure that it "tailor[s] the education to the child; not [ ] the child to the education."

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10 *The Special Educator,* June 6, 1997, page 2.

11 U.S. House of Representatives, Committee on Education and the Workforce, Committee Report, page 103 (May 13, 1997).

12 Code of Federal Regulations, Title 34, Appendix C to Part 300, Question and Answer No. 21 (1996).

13 *Id.*

14 *Id.*

15 *Id.*

Consideration of these factors will help ensure that the IEP is, in fact, individualized.[16]

Generally, the IEP Team must consider:

1. the child's strengths and the parents' concerns for enhancing their child's education,
2. the results of the child's initial or most recent evaluation,
3. the child's communication needs, and
4. the child's needs for assistive technology devices and services.

The IEP Team also must take into account other factors that affect the child's educational needs:

- ✓ **Behavior** – If a child's behavior impedes learning for the child or others, the IEP Team must consider, when appropriate, strategies to address the behavior, including positive behavioral interventions, strategies, and supports.
- ✓ **Limited English Proficiency** – If a child has limited proficiency in English, the IEP Team must consider the child's language needs.
- ✓ **Blindness or Visual Impairment** – If a child is blind or visually impaired, the IEP Team must provide for instruction in Braille and the child's use of Braille, unless the IEP Team determines that either one is inappropriate for the child. The IEP Team may make such a determination, but only after evaluating the child's reading and writing skills and needs, including the child's future needs for Braille instruction or the use of Braille as well as appropriate reading and writing media.
- ✓ **Deafness or Hearing Impairment** – If the child is deaf or hearing impaired, the IEP Team must consider the child's: (1) language and communication needs, (2) opportunities for direct communication with peers and professional personnel in the child's language and communication mode, (3) academic level, and (4) full range of needs, including opportunities for direct instruction in the child's language and communication mode. Congress intended this provision to be consistent with the Department's 1992 policy guidance entitled "Deaf Students Education Services," published in the October 30, 1992, *Federal Register*, page 49,274.[17]

C. Contents of the IEP

An IEP must be in writing and include the eight components discussed in this section. To avoid unnecessary repetition and paperwork, the new act clarifies that the IEP Team need not include information under one component if it already appears in another component of the IEP.

Although most of the components are unchanged from the old act, Congress added a few requirements to address certain issues. For example, under the old act, LEAs sometimes used "boilerplate" or generic IEPs, which were not necessarily tailored to the child's particular needs.[18] Congress added new requirements to ensure that IEPs are individualized and

[16] *Id.*, page 104.
[17] *Id.*, pages 104-05.
[18] *The Special Educator*, Sept. 1, 1995, pages 1, 4.

meaningful. Recognizing that most eligible children are capable of participating in the general education curriculum with some adaptation and modification, Congress mandated that IEPs focus on educational results and access to the general education curriculum.

1. Present Educational Performance

The IEP must contain a statement of the child's present level of educational performance. This statement must address how the child's disability affects involvement and progress in the general curriculum. For preschool children, it must discuss how the disability affects the child's participation in appropriate activities.

2. Measurable Annual Goals

The IEP still must contain a statement of the child's annual goals, but it must now link the child's need for special education and related services to opportunities for inclusion in general education.[19] Consequently, the statement of annual goals must relate to meeting the child's needs, which result from the disability, in order to facilitate the child's involvement and progress in the general curriculum. In addition, the statement must address how the child's other educational needs resulting from the disability, which have no relation to opportunities for inclusion, will be met.

While annual goals now focus on increasing the child's inclusion in general education, administrators should not assume the child's starting point is outside the regular classroom. Rather, the annual goals should emphasize ever-increasing inclusion and successful participation in general curriculum, regardless of where the child begins on the spectrum of involvement.[20]

One intent of the IEP changes was to assist parents and educators in determining whether a child's annual goals could reasonably be met during the year. Thus, the IEP must contain a statement of *measurable* annual goals and benchmarks or short-term objectives for meeting those goals. This component allows parents to monitor their child's progress in light of the written benchmarks/objectives[21] but does not guarantee that the child will meet the projected goals and objectives. Therefore, as long as all services identified in the IEP are provided, the LEA, teacher, or other service provider cannot be held personally accountable if the child does not achieve the levels of growth projected in the annual goals and objectives.[22]

3. Special Education, Aids and Services, and Program Modifications and Supports

The IEP must contain a statement of the special education and related services, supplementary aids and services, and program modifications or supports for school personnel that the LEA will provide to assist the child in:

19 *Id.*, pages 99-100.
20 *Id.*
21 *Id.*, page 100.
22 *Id.*, page 101.

- ✓ advancing appropriately toward achieving annual goals;
- ✓ becoming involved and progressing in the general curriculum and participating in extracurricular and other nonacademic activities; and
- ✓ learning and participating with disabled and nondisabled children in extracurricular and nonacademic activities.

The law now includes orientation and mobility services as further examples of related services. While teaching and related services methodologies are an appropriate topic for discussion and consideration by the IEP Team when developing, reviewing, or revising the IEP, they need not appear in the IEP.[23]

4. Degree of LRE

The IEP must explain the extent, if any, to which the child will not participate with nondisabled children in the regular classroom and in extracurricular and nonacademic activities.

5. Modifications to State or Districtwide Assessments

Children with disabilities must participate in state and districtwide assessments of student progress, with individual modifications and accommodations as needed.[24] (See Chapter 2.) As a result, the IEP must contain a statement of any individual modifications needed to administer state or districtwide assessments of student achievement.

The new law recognizes that, in some cases, a disabled child will be unable to participate in state and districtwide assessments, even with individual modifications. Therefore, if the IEP Team determines that the child will not participate in part or all of a state or districtwide assessment, the IEP must state why that assessment is not appropriate and how the child will be assessed.

This provision does not apply to disabled inmates in adult prisons. For children in this situation, the IEP need not address modifications for assessments.

6. Commencement, Frequency, Location, and Duration of Services and Modifications

The IEP must contain a statement of the projected start date for services and modifications and anticipated frequency, location, and duration. Congress added location as an IEP component because the location in which special education and related services are provided often influences decisions on the nature, amount, and duration of the services.[25]

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23 *Id.*
24 *Id.*
25 *Id.*

7. Transition Needs and Services

If the child is age 14 or older, the IEP must contain one or more statements that address the child's needs in transitioning out of secondary education. The new IDEA lowers the age at which schools must begin transition planning for a child with a disability from 16 to 14 to focus attention on how an LEA may use the child's educational program to transition the child successfully to life after secondary school. This new provision emphasizes the child's academic needs, rather than the services themselves, and augments the old transition services requirement.[26] The nature of the information included depends on the age of the child.

a. Ages 14-15

If the child is 14 or 15, the IEP must include a statement of the child's transition service needs under the applicable components of the IEP. The statement must focus on the child's courses of study, such as participation in advanced placement courses or vocational education programs. The statement need not appear in an IEP for a child with a disability who is an inmate in an adult prison and who, before release, will reach the state's cutoff age for eligibility.

b. Ages 16 or Older

If the child is age 16 or older, the IEP must detail needed transition services for the child and include a statement of interagency responsibilities or linkages, when appropriate. The IEP Team must use the child's transition goals to determine what transition services are necessary. For example, a child whose transition goal is obtaining a job may need training in how to get to the job site on public transportation.[27]

This component also may apply to younger children if the IEP Team determines it is appropriate. However, it need not appear in the IEPs of children who are inmates in adult prisons and who will reach the state's cutoff age on eligibility for services before release.

c. One Year Prior to Age of Majority

At least one year before a child reaches the age of majority under state law, the IEP must include a statement that the LEA has informed the child of the rights guaranteed by IDEA, if any, and that the parents' rights will transfer to the child when the age of majority is reached. This provision applies to rights belonging to parents of a disabled child when the child is under the age of majority and clarifies an LEA's responsibility with respect to a child with a disability who reaches the age of majority. (Chapter 4 covers procedural safeguards, including parental rights, in detail.) Under the old IDEA, the LEA's degree of obligation was unclear.[28]

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[26] *Id.*, pages 101-02.
[27] *Id.*, page 102.
[28] *Id.*

8. Progress Measurements and Reports

The IEP must contain a statement of how the LEA will measure a child's progress toward annual goals. It also must include a statement of how it will inform the parents regularly of their child's progress toward the goals, and whether progress is sufficient to enable the child's achievement of the goals by the year's end.

Because the new IDEA requires schools to inform parents of their child's progress as often as the parents of nondisabled children, the act recommends use of periodic report cards. Congress believes this method will reduce the cost of providing notice to parents of children with disabilities and facilitate more useful feedback.[29] In legislative history, Congress suggests that schools could provide an IEP report card with the general report card and that it could feature checkboxes or equivalent options to assist parents and the special educator in reviewing and evaluating the child's performance.[30] The report card could state the IEP's goals or benchmarks, which the parents and special educator could rank on a multi-point continuum.[31]

For example, if the goal was that the child "will demonstrate effective literal comprehension," the IEP report card could include the following ranking options for the use of parents and the special educator: no progress, some progress, good progress, almost complete, completed.[32]

SAMPLE IEP REPORT CARD

GOAL	No Progress	Some Progress	Good Progress	Almost Complete	Completed	Parent and Teacher Comments
1. Student will demonstrate effective literal comprehension.						
a. Parent Rating		X				
b. Teacher Rating			X			

Congress qualifies this example by stating that its inclusion does not mean that using the periodic report card is the only way to comply with the reporting requirement.[33]

29 *Id.*
30 *Id.*
31 *Id.*
32 *Id.*
33 *Id.*

IEP CONTENTS

1. **Present Educational Performance:**
   - ✓ Statement of present levels of educational performance
   - ✓ Statement of the disability's effects on involvement and progress in the general curriculum (For preschool, statement of disability's effects of child's participation in appropriate activities)

2. **Measurable Annual Goals:**
   - ✓ Statement of measurable annual goals
   - ✓ Benchmarks and short-term objectives

3. **Special Education, Aids & Services, and Program Modifications & Supports:**
   - ✓ Statement of the special education, related services, and supplementary aids and services to be provided
   - ✓ Statement of program modifications and supports for school personnel that will be provided

4. **Degree of LRE:**
   - ✓ Explanation of extent to which the child will not participate with nondisabled students in the regular class and in extracurricular and nonacademic activities

5. **Modifications to State and Districtwide Assessments:**
   - ✓ Statement of any individual modification to assessments
   - ✓ If the child will not participate in a state or districtwide assessment, statement of why the assessment is not appropriate and how the child will be assessed

6. **Commencement, Frequency, Location, and Duration of Services and Modifications:**
   - ✓ Statement of the projected date for beginning services and modifications and the anticipated frequency, location, and duration of those services and modifications

7. **Transition Needs and Services:**
   - ✓ Starting at age 14, statement of the transition service needs that focuses on the child's courses of study
   - ✓ Starting at age 16, statement of needed transition services, including statement of interagency responsibilities or any needed linkages
   - ✓ Beginning at least one year before the child reaches the age of majority, statement that child has been informed of rights that will transfer to him or her upon reaching the age of majority, if any

8. **Progress Measurements and Reports:**
   - ✓ Statement of how child's progress toward goals will be measured
   - ✓ Statement of how child's parents will be regularly informed of their child's progress

D. Reviewing and Revising the IEP

The act requires an LEA to ensure that the IEP Team reviews a child's IEP at least once every year to determine whether the child is meeting his or her annual goals. An LEA also must ensure that the IEP Team revises the IEP as appropriate to address:

- ✓ any lack of expected progress toward the annual goals and in the general curriculum, where appropriate;
- ✓ the results of any reevaluation;
- ✓ information about the child provided to, or by, the parents;
- ✓ the child's anticipated needs; or
- ✓ other matters.

If an agency other than the LEA fails to provide the transition services described in the IEP, the LEA must reconvene the IEP Team to identify alternative strategies to meet the IEP's transition objectives.

Specific day-to-day adjustments in instructional methods and approaches made to assist a disabled child in achieving annual goals normally will not require action by the child's IEP Team. However, if changes are proposed in the child's measurable annual goals, benchmarks, or short-term objectives, or in any of the services or program modifications or other components in the child's IEP, the LEA must ensure that the child's IEP Team is reconvened in a timely manner to address the changes.[34]

The new act grants broader discretion to revise the IEPs of inmates. If a disabled child is incarcerated in an adult prison, the IEP Team may modify the child's IEP or placement if the state has demonstrated a "bona fide security or compelling penological interest that cannot otherwise be accommodated," even if the changes do not comply with the requirements concerning IEP contents or placement in the least restrictive environment.

V. Placement

The new IDEA retains two of the old law's placement requirements. First, it continues to mandate placement in the LRE as appropriate to the child's needs. In other words, the IEP Team must strive to keep children with disabilities in the regular educational environment with nondisabled children. The Team may opt for placement outside the regular class or regular school only in rare instances where the nature or severity of the child's disability requires such placement. If the child's disability prevents satisfactory achievement in regular classes, even with the use of supplementary aids and services, removal from the regular educational environment is permissible. Second, the LEA still must notify the child's parents, in writing, when it proposes or refuses to initiate or change the child's placement. (Chapter 4 of this manual provides a detailed discussion of notice requirements.)

[34] *Id.*

The new IDEA adds several new placement requirements as well, and most of them address change of placement when disciplining a child. (These new requirements are covered in Chapter 5.) The new law also clarifies the implications for LEAs when parents place their child in a private school without the LEA's authorization. (Because those provisions primarily relate to an LEA's fiscal obligations, they are discussed in Chapter 6.)

One of the most significant changes in the new law involves placement decision making. Congress expanded parental involvement in the decisions affecting their child's education by including parents in any group involved in deciding their disabled child's educational placement.[35] Because the IEP Team, which must include the parents, makes the majority of placement decisions, this requirement may seem duplicative. However, it covers those unique cases in which the IEP Team does not make the placement decision.[36] In some school districts, school personnel have decided the placement setting after the IEP has been devised. IDEA now requires that parents be included in this decision making.

The new IDEA also clarifies that an LEA may provide special education and related services on the premises of private parochial schools "to the extent consistent with law." Congress added this provision to implement the principle underlying a 1993 Supreme Court decision stating that an LEA could provide a sign language interpreter for a deaf student at a parochial school without violating the Establishment Clause of the First Amendment.[37] On June 23, 1997, the Court decided *Agostini v. Felton* and affirmed its prior ruling.[38] Therefore, LEAs may continue to provide IDEA-funded services at parochial schools without violating constitutional principles.

The ruling in *Agostini* broadens the ability to place public employees in parochial schools. It clarifies that an LEA may place teachers and other instructional personnel in such schools, although certain procedural restrictions apply. A discussion on these restrictions is beyond the scope of this book.[39]

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35 *Id.*, page 103.

36 *Id.*

37 Zobrest v. Catalina Foothills School District, 509 U.S. 1, 113 S. Ct. 2462, 125 L.Ed.2d 1 (1993).

38 Agostini v. Felton, 65 U.S.L.W. 4524 (June 23, 1997).

39 The U.S. Department of Education's Office of Elementary and Secondary Education issued formal guidance on *Agostini* in July 1997. This guidance is available through that office and the Department's World Wide Web site (http://www.ed.gov/). 44

Chapter 4

Procedural Safeguards

I. Introduction

To ensure that all children with disabilities receive meaningful access to a FAPE, IDEA has always required agencies receiving assistance under the law to maintain and establish procedural safeguards. The new statute continues to emphasize these protections by clarifying existing provisions and by adding new ones, such as those limiting attorneys' fees and requiring states to adopt mediation procedures.

II. Notice Requirements

A. Notice of Changes in Identification, Evaluation, or Placement, or in the Provision of a FAPE

When an agency proposes or refuses to initiate or change a child's identification, evaluation, or placement, or the provision of a FAPE to the child, it must give the child's parents prior written notice. At a minimum, the notice must include:

- ✓ a description of the action proposed or refused;
- ✓ an explanation of the agency's reasons for proposing or refusing the action;
- ✓ a description of any other options the agency considered and the reasons for rejecting those options;
- ✓ a description of each evaluation procedure, test, record, or report used as a basis for the proposed or refused action;

- ✓ a description of any other factors relevant to the agency's proposal or refusal;
- ✓ a statement that the parents have procedural safeguards, and if the notice is for action other than initial referral for evaluation, an indication of the means for obtaining a description of the safeguards; and
- ✓ sources for parents to contact to obtain assistance in understanding Part B.

Like the notice of procedural safeguards discussed below, this notice also must be given in the parents' native language, unless it is clearly not feasible to do so. This procedural safeguard is especially important because decisions concerning identification, evaluation, or placement often give rise to parental dissatisfaction.

PARENTS RECEIVE NOTICE WHEN AN AGENCY PROPOSES OR REFUSES TO INITIATE OR CHANGE A CHILD'S:

- identification,
- evaluation,
- placement, or
- the provision of a FAPE to the child.

B. Notice of Procedural Safeguards

Policies and procedures on procedural safeguards vary slightly among SEAs, LEAs, and other agencies administering Part B (e.g., state corrections agencies), but IDEA lists certain safeguards that all agencies must address. To make the notice of procedural safeguards more user-friendly and easier to understand, the new law simplifies the process for delivering the notice and requirements for its content.[1]

Parents must receive this notice at least upon a child's initial referral for evaluation and upon reevaluation, upon each notification of an IEP meeting, and upon registration of a complaint. Basically, the notice must explain the procedural safeguards in the parents' native language (unless it is clearly not feasible to do so) and in an easily understandable format. Educational agencies must pay special attention to keep the notice simple, as advocates for children and parents have expressed concern that a long list of procedural safeguards will confuse parents, rather than assist them in understanding their rights.[2] At a minimum, the new IDEA requires educational agencies to notify parents of their rights and the agency's obligations pertaining to:

PARENTS RECEIVE PROCEDURAL SAFEGUARDS NOTICE UPON:

- a child's initial referral for evaluation,
- reevaluation,
- each notification of an IEP meeting, and
- registration of a complaint.

[1] U.S. House of Representatives, Committee on Education and the Workforce, Committee Report, page 105 (May 13, 1997).

[2] *The Special Educator*, May 23, 1997, page 10.

- ✓ independent educational evaluations;
- ✓ prior written notice;
- ✓ parental consent;
- ✓ access to educational records;
- ✓ the opportunity to present complaints;
- ✓ placement during due process proceedings;
- ✓ placement in interim alternative educational settings for disciplinary reasons;
- ✓ unilateral, private school placements by parents at public expense;
- ✓ mediation;
- ✓ due process hearings, including prior disclosure of evaluation results and recommendations;
- ✓ state-level appeals (if applicable);
- ✓ civil actions; and
- ✓ attorneys' fees.

Some procedural safeguards provide general protections to children with disabilities and their parents as well as to disabled children whose parents are unknown or unavailable or who are wards of the state. For instance, agencies must ensure that parents have the opportunity to examine all records relating to their child; to obtain independent educational evaluations; and to participate in meetings about identification, evaluation, educational placement, or the provision of a FAPE to their child. Parents generally have had such rights in the past, but the new law makes two significant changes. First, it gives parents greater access to their child's records because it entitles them to see all records, not just those that are "relevant." Second, schools now must invite parents to more than IEP meetings. The new IDEA also guarantees them the right to participate in other decisions, such as those concerning eligibility determinations and placement.

In addition to these broad guarantees, IDEA also grants many procedural safeguards specific to the complaint process. Agencies must notify parents of changes in their child's educational program and allow them to file a complaint when they disagree with the agency's decision. They also must devise specific procedures for resolving complaints.

III. The Complaint Process

One of reauthorization's main goals was to decrease the amount of IDEA-related litigation and to increase the level of cooperation among parents and school personnel. Few changes were made to provisions concerning the opportunity to use, and the procedures associated with, the conflict resolution process; some significant provisions, such as those limiting attorneys' fees and requiring states to adopt mediation

procedures, were added. Congress hopes that the new IDEA will facilitate conflict resolution and make the process a more useful tool for parents and school personnel.[3]

A. Filing a Complaint

When parents disagree with agency decisions, they may seek recourse by filing an administrative complaint. Although the new IDEA significantly expands parental rights, it also imposes certain obligations during the complaint process. For example, parents, or the attorney representing the child, must comply with the statute's requirements for filing a notice of complaint. The new IDEA specifically states that this notice, which remains confidential, must include:

- ✓ the child's name, address, and school;
- ✓ a description of the nature of the child's problem, including the applicable facts; and
- ✓ a proposed resolution of the problem to the extent possible.

To assist parents in filing complaints, each state must develop a model form for their use. Parents are not required to follow the model, but they may opt to use it as a guide when drafting their own notice.

Requiring parents to articulate this information before filing a complaint may encourage resolution of disputes at an early stage in the process.[4] Parents may realize that a hearing officer does not have the power to give them what they want or that a hearing is not necessary, because they can resolve the complaint by working amicably with the district.[5] Even if parents decide to pursue the complaint, notice will give educational agencies a clear picture of the situation at the outset.[6]

B. Resolving a Complaint at the Administrative Level

The new IDEA expands the options for resolving complaints, including those pertaining to discipline. (Aspects of the conflict resolution process in the context of disciplinary matters are addressed in Chapter 5.) Agencies may benefit from these new alternatives to due process hearings, but only if parents decide to take advantage of them.

1. Alternative Dispute Resolution

The rising cost of IDEA-related litigation was a major concern during reauthorization. After determining that litigation has decreased in states already using mediation, Congress required SEAs and LEAs to establish and to implement mediation procedures.[7] Although

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3 U.S. House of Representatives, Committee on Education and the Workforce, Committee Report, page 105 (May 13, 1997).

4 *The Special Educator*, May 23, 1997, page 10.

5 *Id.*

6 *Id.*

7 U.S. House of Representatives, Committee on Education and the Workforce, Committee Report, page 106 (May 13, 1997).

the majority of states already have done so, IDEA now compels the remaining states to offer mediation as a dispute resolution option. Congress hopes that mediation will become the most common method of settling complaints filed under IDEA.[8]

Educational agencies cannot require parents to attend mediation sessions. Therefore, many critics, especially school law attorneys, consider this provision a useless step toward reducing IDEA-related litigation.[9] Under no circumstances may an educational agency use the mediation process to deny or to delay a parent's right to a due process hearing, or any other right guaranteed under IDEA. Each session must be scheduled in a timely manner and held at a location convenient for both parties, and the state must bear all costs associated with the mediation process. IDEA neither requests nor prohibits the participation of attorneys in mediation because the process has proven effective with and without their involvement.[10]

KEY FEATURES OF THE IDEA's MEDIATION PROVISIONS

- States bear all costs.
- Parental participation is voluntary.
- Educational agencies cannot use mediation to interfere with parental rights.
- Sessions must be held in a timely manner at a location convenient to both parties.
- Qualified, impartial mediators must preside over mediation sessions.
- Agreements must be reduced to writing and must remain confidential.
- Information learned during mediation cannot be used as evidence in subsequent proceedings.
- Attorney participation is not required.

A qualified and impartial person trained in effective mediation techniques (not necessarily an attorney) must preside over all mediation sessions. To qualify as impartial, a mediator should not be an employee of the agency and should not have personal or professional interest in the outcome of the dispute.[11] The state must maintain a list of qualified mediators who are knowledgeable in laws and regulations relating to the provision of special education and related services. The educational agency may not select a mediator from that list unilaterally. Instead, Congress intended that the parents and the educational agency would choose the mediator together.[12]

Agreements reached during mediation must be put in writing and must remain confidential. The parties may choose to sign a confidentiality agreement before the process begins to clarify all parties' rights and obligations in this regard. Congress included a sample

8 *Id.*

9 *Educating for Employment*, May 23, 1997, page 3.

10 U.S. House of Representatives, Committee on Education and the Workforce, Committee Report, page 106 (May 13, 1997).

11 *Id.*, pages 106-07.

12 *Id.*, page 106.

confidentiality agreement in IDEA's legislative history.[13] The confidentiality provision does not negate a parent's rights under the Family Educational Rights and Privacy Act of 1974, nor does it prevent the parties from accessing information otherwise available.[14] If mediation fails and a due process hearing or civil proceeding follows, the parties may not use information obtained during mediation as evidence.

Although parental participation in mediation is voluntary, educational agencies can require parents who do not use mediation to meet with a "disinterested party." Such an individual must be under contract with a parent training and information center, a community parent resource center, or an appropriate alternative dispute resolution entity. At a time and location convenient for the parents, they must meet with this person who will talk with them about the benefits of mediation and encourage them to use it as an alternative to a due process hearing. As with mediation, the state must bear the costs of such meetings.

2. The Impartial Due Process Hearing

Parents who decide not to use mediation or who cannot resolve their differences with the agency through that process can request that an impartial due process hearing be conducted by either the SEA or the LEA. Because the IDEA requires impartiality, an employee of the SEA or LEA involved in the education or care of the child cannot preside over a hearing or an appeal conducted under IDEA.

Parties to due process hearings have certain rights, including:

- ✓ the right to be accompanied and advised by counsel and by individuals with special knowledge of and/or training in the problems that children with disabilities encounter;
- ✓ the right to present evidence;
- ✓ the right to confront, to cross-examine, and to compel the attendance of witnesses; and
- ✓ the right to a written, or, at the parents' option, an electronic reproduction of the hearing officer's findings and decisions (which also must be made available to the public, consistent with confidentiality provisions, and to the state advisory panel).

IDEA always has guaranteed parents these basic rights during a due process proceeding, but the new law makes a significant change. The new IDEA attempts to facilitate the presentation of evidence by requiring each party, at least five business days before the hearing, to disclose all previously completed evaluations and resulting recommendations it intends to use at the hearing. A party that fails to comply with this requirement runs the risk that the hearing officer will bar admission of the evaluations/recommendations, even if the evidence is relevant. However, the opposing party may consent to the admission of evidence not offered within the time limit.

[13] *Id.*, page 107.
[14] *Id.*

Decisions made in impartial due process hearings are final, but any party has the right to appeal. If an LEA held the hearing, a party may appeal the hearing officer's findings and decision to the SEA. The SEA then conducts an impartial review of the LEA's decision and issues an independent, final decision, which is appealable to the courts. If the SEA initially held the hearing, its findings and decision are appealable to the appropriate federal or state court.

IV. Judicial Review and Attorneys' Fees

A party who disagrees with the findings and decision made at a hearing or on appeal to the SEA can bring a civil action in any state court with the power to hear the case or any federal district court, regardless of the amount of money at issue. The court, whether state or federal, receives the record from the due process hearing and, upon a party's request, accepts additional evidence. The court makes a decision based on the "preponderance of the evidence." In other words, it examines all documents and testimony presented and then decides which party the evidence most favors. The court has the power to grant "appropriate" relief, including, but not limited to, changes in placement, additional related services, and reimbursement for expenses.

The new IDEA makes significant changes to the rules regarding attorneys' fees and related costs. In the past, many courts and hearing officers readily awarded attorneys' fees to parties who prevailed on even the most trivial issue. In an effort to reduce the spiraling costs of IDEA-related litigation, Congress added new restrictions on the recovery of attorneys' fees.

The court still has general discretion to award reasonable attorneys' fees and related costs to the parents of a disabled child, as long as they, collectively, are the "prevailing party." To provide clearer guidelines for the award of attorneys' fees, Congress has adopted language from past Supreme Court decisions defining

COURTS/HEARING OFFICERS MAY REDUCE ATTORNEYS' FEES WHEN:*

- the parents' actions unreasonably lengthen final resolution;
- the amount unreasonably exceeds the prevailing rate for similar services rendered by a comparable attorney;
- the time spent and services furnished were excessive; and/or
- the attorney failed to provided notice of the complaint, as required by IDEA (New Provision).

* *Rules concerning reduction do not apply if the SEA/ LEA unreasonably delayed final resolution.*

the statutory terms "reasonable" and "prevailing party."[15] The Supreme Court has stated that the extent of a plaintiff's success is a crucial factor and that substantial relief on related claims is enough to qualify someone as a prevailing party. Reasonableness must be determined in relation to the results obtained, and, according to the statute, the amount awarded also depends upon the prevailing rates for similar services in the community in which the action or proceeding arose.

The statute always has allowed courts to reduce or to prohibit the award of attorneys' fees in certain circumstances, and the new IDEA retains those provisions. A court may reduce fees when the parents' actions unreasonably lengthen the complaint's final resolution; the amount of attorneys' fees unreasonably exceeds the prevailing rate for similar services rendered by comparable attorneys; or the time spent and services furnished were excessive, considering the circumstances. If the court decides that the SEA or LEA unreasonably delayed the final outcome of the action or proceeding, then rules concerning reduction of fees do not apply.

The statute also retained IDEA's long-standing prohibitions on recovery of attorneys' fees. Parents still cannot recover attorneys' fees and related costs for services performed after the agency extends a written offer of settlement if: (1) that offer complies with applicable time limits and is not accepted within 10 days, and (2) the relief ultimately obtained by the parents is less favorable to them than the settlement offer. If the parents prevail and were justified in rejecting the offer, the court still may award attorneys' fees.

The new IDEA limits recovery of attorneys' fees even further. First, the statute now allows courts and hearing officers to reduce attorneys' fees if the attorney fails to provide the agency proper notice of the complaint. Second, recovery of attorneys' fees is prohibited for representation at IEP meetings, unless such meetings are convened as a result of an administrative proceeding or judicial action. Third, if mediation takes place before the parents file a complaint, the act appears to allow states to decide whether attorneys' fees may be awarded for representation during pre-complaint sessions.

COURTS/HEARING OFFICERS MAY PROHIBIT RECOVERY FOR FEES AND COSTS INCURRED:

- after the agency extends a written offer of settlement, if certain conditions are present;
- in conjunction with IEP meetings, unless convened as a result of administrative or judicial proceedings, (New Provision);
- for pre-complaint mediation sessions at a state's discretion (New Provision).

Congress hopes that these prohibitions will not only curb litigation costs incurred by LEAs and SEAs but also facilitate the early resolution of problems or potential problems without the involvement of attorneys.[16] Furthermore, Congress believes that virtually eliminating fees for attorney participation in IEP meetings will

[15] *Id.*, page 106.
[16] *Id.*, page 105.

ensure that the IEP process is geared toward serving the child's needs and planning for his or her education.[17] Despite Congress' seemingly good intentions, disagreement still exists on this provision in the special education community. While school districts heavily favor this cost-saving measure, advocates for parents and children fear that only those who can afford to pay the fees themselves will receive adequate representation.[18] They also contend that LEAs will continue to seek legal advice during the IEP and/or mediation process but that the statute's limitations on legal fees will prevent parents from doing so.[19]

V. The Stay-Put Provision

The "stay-put" provision mandates that, unless the parents and the educational agency agree otherwise, a disabled child must remain in his or her current placement until the administrative proceeding and/or civil action is resolved. If initial application to a public school is at issue, the child may attend public school until the proceedings come to a close. The stay-put provision is one of the most important procedural safeguards because it prevents an LEA from changing the child's educational program without good cause. IDEA contains only two narrow exceptions to the stay-put provision. They both arise in the context of discipline and are discussed in detail in Chapter 5.

VI. Miscellaneous Provisions

A. Interaction with Other Legal Rights

The law specifically states that IDEA does not restrict or limit the rights, procedures, and remedies available to children with disabilities or their parents under the Constitution, the American with Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973, or other federal laws protecting disabled children. When parents plan to seek relief under IDEA and other statutes in the same suit, they first must file an administrative complaint and follow the procedures outlined above to prevail under IDEA.

B. Transfer of Parental Rights at Age of Majority

A state may adopt certain provisions to protect mentally competent children with disabilities when they reach the age of 18. It may decide: (1) that the educational agency must provide the types of notice discussed in this chapter to both the child and to the parents; (2) that the parents' rights under the IDEA transfer to the child; (3) that the child and the parents must receive notice of this transfer; and/or (4) that all rights accorded to parents transfer to children upon incarceration in an adult or juvenile correctional institution. IDEA also encourages states to protect the interests of mentally competent children who reach the age of majority, but who cannot provide informed consent. States may establish procedures for appointing a parent, or some other individual if a parent is not available, to represent the individual's educational interests throughout his or her period of eligibility.

[17] *Id.*
[18] *The Special Educator*, May 23, 1997, page 10.
[19] *Id.*

Chapter 5

Discipline

I. Introduction

Discipline was perhaps the most contentious issue during reauthorization. The new IDEA seeks a delicate balance between the obligation to provide a safe learning environment and the responsibility to provide all children with disabilities, including those who are disruptive, a FAPE.[1] The law summarizes and clarifies existing federal policy as expressed in the old statute and accompanying regulations, judicial decisions, and informal policy documents. It also adds provisions that seek to increase options for discipline, though it is unclear whether they actually will do so. Additionally, the new IDEA adopts the Department's long-standing policy against the cessation of services to children with disabilities, a practice formerly permitted by some courts under certain circumstances.

II. The Stay-Put Provision

Consistent with IDEA's basic premise, a child with a disability must remain in his or her current educational placement during the pendency of any due process proceeding, unless the child's parents and the educational agency agree otherwise.[2] If the child's initial admission to public school is at issue, the child must attend a public school program until the proceeding's conclusion, as long as the parents consent to such an arrangement.

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1 U.S. House of Representatives, Committee on Education and the Workforce, Committee Report, page 108 (May 13, 1997).

2 Chapter 4 discusses the stay-put provision in the context of procedural safeguards but leaves detailed coverage of its exceptions for this chapter.

STAY-PUT PROVISION

A child with a disability MUST remain in his or her current placement during the pendency of any due process proceeding, UNLESS:

1. *the child's parents and the educational agency* agree otherwise;
2. *school personnel* unilaterally-
   - suspend or place the child in an interim alternative educational setting or another setting for *10 days or less*; or
   - place the child in an interim alternative educational setting for *45 days or less* for an offense involving weapons, illegal drugs, or controlled substances; OR
3. *a hearing officer*, upon the request of school personnel, orders a change in placement to an interim alternative educational setting for *45 days or less* because the child's current placement is substantially likely to result in injury to the child or others.

Informally known as the "stay-put" or "pendency" provision, this rule is one of the procedural safeguards guaranteed under IDEA. (Chapter 4 covers IDEA's procedural safeguards in detail.) It has only two narrow exceptions: suspension and placement in an interim alternative educational setting. In the past, IDEA allowed school personnel to take these actions only under extremely limited circumstances. The reauthorized law expands their unilateral authority to discipline children with disabilities and allows them to place a disabled child who is in danger or who poses a danger to others in an alternative setting, with a hearing officer's permission. When applying these alternatives, school personnel must act consistently with the new law's prohibition on the cessation of special education services because it applies even during suspensions and expulsions.

III. Placement of Children with Disabilities in Alternative Educational Settings

A. Authority of School Personnel to Discipline Children with Disabilities Without a Hearing Officer's Review

1. 10-Day Changes in Placement

In *Honig v. Doe*,[3] the U.S. Supreme Court established the basic rule concerning the authority of school personnel to discipline disabled children without violating the stay-put provision, and Congress adopted it as part of the new IDEA. As always, school personnel may order a change in placement for a child with a disability to an appropriate interim alternative educational setting, another setting, or even a suspension for up to 10 days, but only if the disciplinary action is consistent with those taken against other, nondisabled children. For suspensions or alternative placements lasting more than 10 school days,

[3] 484 U.S. 305, 108 S. Ct. 592 (1988).

school personnel must follow additional procedures, such as those described in Chapter 4 (i.e., notice to the parents, an opportunity for parents to voice their concerns, etc.).

2. 45-day Changes in Placement for Offenses Involving Weapons, Illegal Drugs, or Controlled Substances

School personnel may unilaterally move a student to an alternative placement for longer than 10 days in limited situations. IDEA formerly permitted school personnel to place a child with a disability in an interim alternative educational setting for up to 45 days if that child brought a firearm[4] to school. The new law expands this statutory exception to the stay-put provision. Now, school personnel can place a child in an interim alternative educational setting for up to 45 days if the child:

- ✓ carries a weapon to school or a school function under an SEA's or LEA's jurisdiction; or
- ✓ knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function under an SEA's or LEA's jurisdiction.

The new IDEA expands the authority of school personnel to unilaterally place a disabled child in an interim alternative educational setting for an offense involving *weapons, illegal drugs, or controlled substances*. Before reauthorization, this rule only applied if the incident involved a *firearm*.

In addition to broadening coverage to include illegal drugs and controlled substances, the new IDEA also redefined the term "weapon" to encompass more than just firearms. In the new IDEA, the term "weapon" has the meaning given to the term "dangerous weapon" in another federal statute.[5] As a result, IDEA now authorizes 45-day alternative placements for children with disabilities who bring a "weapon, device, instrument, material or substance, animate or inanimate, that is used for, or readily capable of, causing death or serous bodily injury" but not "a pocket knife with a blade of less than 2 1/2 inches in length."[6]

3. IEP Team Involvement

a. Choosing the Alternative Setting

The new law clarifies that the child's IEP Team must determine the appropriate alternative educational setting when school personnel temporarily change a disabled child's placement for an offense involving drugs, weapons, or controlled substances. At a minimum, the setting must enable the child to participate in the general curriculum, although in another setting, and continue to receive the services and modifications necessary for the child to attain the goals in the IEP as well as those services and modifications designed to prevent the inappropriate behavior from reoccurring.

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4 The statute used the term "weapon" but narrowly defined it as only including a firearm.

5 United States Code, Title 18, section 930, paragraph 2, first subsection (g).

6 *Id.*

At the present time, it is unclear whether a placement for 10 days or less must comply with the requirements for an alternative setting, and, if so, who would determine the appropriate placement in this situation. The new law seems to require the short-term setting (i.e., 10 days or less) to comply with the requirements for longer alternative placements or expulsions (i.e., 45 days or less for offenses involving weapons, drugs, or controlled substances; 45 days or less if a child's current placement is substantially likely to cause injury to the child or others; and suspensions and expulsions for behavior unrelated to the disability) because a FAPE must be available to disabled children who are suspended or expelled. However, an attorney for Congressional Research Service, which conducts impartial research for Congress, has stated that schools are not required to serve students suspended for 10 days or less.[7] The attorney believes that, in keeping with , the Supreme Court's decision that originally created the power to suspend disabled children for 10 days or less, cessation of services during that time does not conflict with the obligation to provide a FAPE because it balances the interests of the child in receiving an education and of the school in preserving safety.[8]

THE IEP TEAM:

1. Chooses an interim alternative educational setting that enables the child to:
   - participate in the general curriculum in another setting;
   - continue toward the goals in his/her IEP; and
   - receive services and modifications designed to prevent the inappropriate behavior from reoccurring.
2. Reviews and modifies the child's existing "behavioral intervention plan" or develops/ implements an "assessment plan" to address the child's behavior no later than *10 days* after school personnel or a hearing officer takes disciplinary action.
3. Conducts a manifestation determination review no later than *10 days* after school personnel or a hearing officer decides to take action.

Some critics vehemently disagree with this position and believe that even short-term suspensions could become a thing of the past under the new law.[9] Many LEAs would have difficulty suspending or expelling students because they cannot afford to provide homebound students with the necessary services and modifications (required in the IEP) or continued participation in the general curriculum. According to some commentators, an LEA could not discipline students consistent with the new IDEA unless they placed them in an alternative school.[10] Furthermore, imposing these

7 *The Special Educator,* June 20, 1997, page 1.
8 *Id.*
9 *The Special Educator*, May 23, 1997, page 1.
10 *Education Daily*, May 28, 1997, page 6.

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conditions could result in costly litigation for LEAs because parents could accuse them of failing to provide a FAPE in an alternative setting.

Others take a more moderate position by arguing that homebound instruction during expulsion or suspension satisfies the IDEA and that courts would consider such alternative placements consistent with Congress' intent in expanding the discipline provisions.[11] The FAPE requirement, not the IEP, dictates placement, so an IEP Team could change the IEP, if necessary, for disciplinary reasons.[12] The Department has not commented on this issue, but might settle the controversy by providing regulatory guidance.[13]

b. Reviewing and Developing Behavioral Intervention and Assessment Plans

Either before or not later than 10 days after school personnel decide to take such disciplinary actions, the IEP Team must review and modify the child's existing "behavioral intervention plan." If the child does not have an existing plan and a functional behavioral assessment was not previously conducted, the LEA must convene an IEP meeting to develop and implement an "assessment plan" to address the student's behavior.

These requirements raise several questions about the new law, which the Department might address in regulations. For example, IDEA uses the terms "behavioral intervention plan," "functional behavioral assessment," and "assessment plan," but it does not define them. The act expressly requires the IEP Team to consider strategies that address a child's behavior, including positive behavioral interventions, when developing an IEP, but does not call for separate behavioral intervention or assessment plans. Although the law implies that an LEA should conduct a functional behavioral assessment before taking disciplinary action, it is not clearly part of the evaluation and IEP procedures. IDEA does require an LEA to use technically sound instruments that may assess contribution of behavioral factors when conducting evaluations, but this requirement is not called a *functional behavioral assessment.*

The requirements for behavioral intervention and assessment plans have met with sharp criticism, especially from school law attorneys claiming that they will cost LEAs a great deal of time and money. These critics do not believe that 10 days is ample time for the IEP Team to review and modify or develop these plans, unless the LEA employs a full-time behavioral specialist.[14] Again, the potential effect of this provision is unclear. Some interpret IDEA as requiring much less than full-scale testing in all instances.[15] Instead, observation and/or interviews may suffice, or an LEA may ask the child's parents for more time to complete the behavioral assessment or plan development.[16]

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11 *The Special Educator*, June 6, 1997, page 4.
12 *The Special Educator,* June 20, 1997, page 7.
13 *Education Daily*, June 13, 1997, page 2.
14 *The Special Educator*, May 23, 1997, page 7.
15 *The Special Educator*, June 6, 1997, page 4.
16 *Id.*

B. The Hearing Officer's Power to Order a Change in Placement

Under the Supreme Court's interpretation of the old IDEA, courts could order a change in placement for a disabled child if the LEA could show that his or her current placement was substantially likely to result in injury to the child or others. An LEA could request an injunction authorizing the change in placement directly from a court, but hearing officers had no authority in this regard.

EXPANDED AUTHORITY OF HEARING OFFICERS

School personnel now may ask a *hearing officer** to order placement in an interim alternative educational setting, if school personnel can prove, *by more than a preponderance of the evidence,* that the child's current placement is substantially likely to result in injury to the child or others.

*The hearing officer chooses the proper interim alternative educational setting, which must enable the child to:

- participate in the general curriculum in another setting;
- continue toward the goals in his/her IEP; and
- receive services and modifications designed to prevent the inappropriate behavior from reoccurring.

The new IDEA incorporates this concept with a significant modification. School personnel now may ask a hearing officer to order a change in placement, not to exceed 45 days, for a child who is in danger or who poses a danger to others. As always, an LEA must show that maintaining the child's current placement is substantially likely to result in injury to the child or others in order to prevail. This must be shown by *more than a preponderance of the evidence*, a relatively high evidentiary threshold to meet. In addition, the LEA must demonstrate that the child's current placement is appropriate; that it took reasonable steps to minimize the risk of harm; and that the interim alternative educational setting will allow the child to participate in the general curriculum, although in another setting, and to continue to receive the services and modifications necessary to attain the goals in the IEP and to prevent the dangerous behavior from reoccurring.

Although supporters of this change contend that school personnel benefit from it, the high evidentiary standard (i.e., more than a preponderance of the evidence) could prevent this new procedure from having much practical impact. The requirement that the LEA must prove that the child's current placement is substantially likely to result in injury to the child or to others by more than a preponderance of the evidence was the subject of much controversy and criticism during reauthorization.[17] The proposals used the term "substantial evidence," but, at the last minute, Congress incorporated the much more difficult standard. This change makes disciplining students who are in danger or who pose a danger to others far more difficult because it

[17] *Special Education Report*, May 14, 1997, pages 1, 3.

requires school officials to offer very persuasive proof.[18] If the child's parents offer equally credible evidence at the due process hearing, school authorities cannot prevail. Indeed, even if the parents' evidence is slightly less credible, school officials will lose under this standard.

C. Manifestation Determination Reviews

Certain procedural rules apply when school personnel seek to change a child's placement unilaterally, as permitted by the statute, for 10 days or less; for 45 days or less when the offense involves weapons, drugs, or controlled substances; or for more than 10 days for violating a general disciplinary rule applicable to all children. School personnel also must adhere to these requirements after a hearing officer uses statutory authority to order a temporary change in placement for 45 days or less because a child is in danger or poses a danger to others.

First, the child's parents must receive notice of the decision to take disciplinary action against their child and of all procedural safeguards available to them on or before the date on which school personnel decide to take action. In addition, the LEA must ensure that the IEP Team conducts a "manifestation determination" review as soon as possible, but no later than 10 school days after the date on which the disciplinary decision was made. In the manifestation determination, the IEP Team and other qualified personnel must determine the relationship between the child's disability and the behavior resulting in disciplinary action. If a child's behavior is unrelated to his or her disability, school personnel may discipline the student in a manner consistent with nondisabled students upon the alternative placement's expiration, as long as the student still receives a FAPE. On the other hand, school personnel may *not* impose further disciplinary action if the behavior was related to his or her disability.
Certain rules apply to manifestation determinations. The IEP Team first must consider all relevant information, including evaluation and diagnostic results, from the parents and other sources; observations of the child; and the child's IEP and placement. The IEP Team must use this information to answer the following questions:

EFFECT OF THE MANIFESTATION DETERMINATION

If the child's behavior is RELATED to his or her disability, school personnel may NOT impose further disciplinary action.

If the child's behavior is UNRELATED to his or her disability, school personnel may discipline the child according to general disciplinary procedures, as long as:

- the child continues to receive a FAPE, and
- the final decision makers receive the child's special education and disciplinary records.

[18] *Education Week*, June 4, 1997, page 17.

- ✓ In the context of the behavior at issue, did the LEA provide the child with an appropriate IEP and placement?
- ✓ Did the LEA provide special education services, supplementary aids and services, and behavior intervention strategies consistent with the IEP and placement?
- ✓ Did the child's disability impair his or her capacity to control the behavior at issue or to understand its impact and consequences?

If the IEP Team concludes that the answer to the first question is "no," then it *must* decide that the behavior was a manifestation of the child's disability because the LEA did not fulfill its obligation to the child. If the answer to the first question is "yes," then the IEP Team must consider the remaining two questions. The IEP Team may determine that the child's behavior was unrelated to the disability only if the LEA developed and implemented a proper IEP and placement and if the child understood and could have controlled his or her behavior.

If a child's behavior is not a manifestation of his or her disability and school personnel decide to discipline the child according to general disciplinary procedures, they must do so consistent with IDEA's new prohibition on the cessation of services. In addition, the LEA must ensure that the final decision makers, such as the school principal or the dean of students, receive the child's special education and disciplinary records before imposing any disciplinary action.

IV. Parent Appeals

Parents may object to proposed disciplinary actions, manifestation determinations, and changes in placement. They may file an appeal and, at their option, receive an expedited hearing. (General rules applicable to the administrative appeal process are covered in Chapter 4.)

A. Manifestation Determination Appeals

At the appeal, the hearing officer applies the same factors used by the IEP Team to make the manifestation determination. The hearing officer must decide whether the public agency, usually an LEA, has shown that the behavior was unrelated to the child's disability by considering: (1) the appropriateness of the child's IEP and placement; (2) whether the LEA implemented special education services, supplementary aids and services, and behavior intervention strategies consistent with the IEP and placement, in the context of the behavior at issue; and (3) the child's capacity to understand his or her behavior and to control it.

B. Appeals Concerning Placement in Interim Alternative Educational Settings

Parents also may appeal a child's placement in an alternative setting for commission of an offense involving weapons, illegal drugs, or controlled substances. The hearing officer must apply the standards used to determine whether school personnel may place a disabled child who is in danger or who poses a danger to others in an interim alternative educational setting. To sustain its disciplinary action, the agency must show, by more than a preponderance of the evidence, that maintaining the child's current placement is substantially likely to result in injury

to the child or others. It also must demonstrate that the child's current placement is appropriate and that it made reasonable efforts to minimize the risk of harm.

An additional showing is necessary if the IEP Team has determined that the behavior is unrelated to the child's disability and school personnel want to discipline the child pursuant to the school's general rules by continuing the child's interim alternative educational setting beyond the 45-day statutory maximum. In this case, the agency must demonstrate the alternative placement's validity by showing that it allows the child's continued participation in the general curriculum as well as the receipt of services and modifications necessary to attain the goals in the IEP and to address the misbehavior.

C. Placement During Appeals

Unless the parents and the agency agree otherwise, the stay-put provision applies during appeals. However, a child must remain in the interim alternative educational setting chosen by school personnel or a hearing officer, pursuant to their statutory authority, until the appeal's conclusion or the applicable time period's expiration (a 45-day maximum), whichever occurs first. Even if school personnel propose to change the child's current placement (that which applied before the alternative placement was imposed) upon the alternative placement's expiration, the child must return to the current placement.

However, the LEA is not left without recourse if it believes the child is in danger or poses a danger to others. It may request an expedited hearing if returning the child to the current placement during the pendency of the appeal proceedings would pose a danger to the child or others. In this case, the hearing officer must apply the same factors used to determine whether school personnel may place a child with a disability in an interim alternative placement because the child's current placement is substantially likely to result in injury to child or to others.

Disagreement exists about the stay-put provision's applicability during disciplinary appeals. Some observers believe that, under the new statute, the stay-put provision has only a few narrow exceptions: the 10-day alternative placement/suspension; the 45-day alternative placement for offenses involving weapons, illegal drugs, or controlled substances; and the 45-day alternative placement authorized by a hearing officer.[19] They believe that, unless one of these statutory exceptions applies, a child with a disability must stay in his or her current placement (the child's placement before discipline was imposed) during the pendency of an appeal. Others have a more limited view of the stay-put provision's applicability and believe that it is never triggered during a disciplinary appeal where misconduct unrelated to the child's disability is at issue.[20] Consistent with this position, at least one federal appeals court has ruled that IDEA does not protect disabled children from disciplinary actions when the LEA has determined that the misconduct was not a manifestation of the child's disability.[21] Even though the court issued its decision before reauthorization, many believe this principle still stands under the new law. If the Department does not clarify the stay-put provision's applicability under the new law, the courts ultimately will decide the matter.

[19] *Education Daily*, June 5, 1997, page 3.
[20] *Id.*
[21] *Id.*

V. Protections for Children not yet Eligible for Special Education Services

The new law offers some protection to students not yet eligible for special education services when they are subject to disciplinary action. If the LEA knew of the child's disability before the behavior at issue occurred, the child may seek protection under IDEA. An LEA is deemed to have "knowledge" of the disability if: (1) the child's parents previously expressed concern, in writing, to appropriate personnel that the child needs special education and related services (unless the parents are illiterate or have a disability that prevents them from doing so); (2) the child's behavior or performance indicated that he or she needed such services; (3) the child's parents previously filed a proper request for an evaluation; or (4) the child's teacher, or other LEA personnel, expressed concern about the child's behavior or performance to the director of special education or to other LEA personnel.

Under the old law, litigation often arose when parents claimed, for the first time, that their child had a disability after the school imposed disciplinary action. This change is an attempt to address that problem. Even so, the provision's broad language has met with sharp criticism because it could cover almost any student seeking protection from disciplinary rules.[22] Critics fear that requests for evaluations and parent appeals will increase and, ultimately, that overidentification will result.[23] However, it does limit parents to some degree by including a notice requirement. Furthermore, claiming knowledge is not enough to trigger protection from the IDEA because the child still must meet disability eligibility criteria and exhibit the requisite types of behavior.[24]

If the LEA can demonstrate that it did not or could not reasonably have known of the child's disability before taking the disciplinary action at issue, two conditions apply. First, the LEA may subject that student to the same disciplinary measures it would use to discipline other students engaged in similar behaviors. Second, if the child's parents request an evaluation during the time that the child is subject to disciplinary action, the LEA must conduct the evaluation in an expedited manner. Until the evaluation is completed, the child must remain in his or her current placement, which, most likely, is the regular classroom because the child will not yet have a "placement" under IDEA. If the evaluation's results and information from the parents show that the child does indeed have a disability, the LEA must provide special education and related services as required by Part B. (Chapter 3 covers the evaluation and IEP process.)

VI. Referral to and Action by Law Enforcement and Judicial Authorities

Advocates for administrators and teachers have praised the IDEA's new provision overruling a court decision that equated a juvenile court petition to a change in placement. School personnel now have clear authority to report crimes committed by disabled children to the appropriate authorities without fearing that parents may file a complaint alleging a change in placement. The LEA must ensure that the authorities to

[22] *The Special Educator*, May 23, 1997, page 7.
[23] *The Special Educator*, June 6, 1997, page 4.
[24] *Id.*

whom the crime is reported receive copies of the child's disciplinary and special education records,[25] but the new law states that nothing in Part B should prevent state law enforcement and judicial authorities from exercising their legal responsibilities if a child with a disability has committed a crime.

[25] *Federal Register*, Vol. 61, No. 226, pages 59292-98 (Nov. 21, 1996); *Education Daily*, Nov. 22, 1996, pages 1, 3. Department regulations permit an LEA to share disciplinary and educational records with law enforcement and juvenile authorities in certain situations, without violating FERPA.

Chapter 6

Fiscal and Administrative Provisions

I. Introduction

Modifications in fiscal and administrative provisions will have far-reaching effects on SEAs as well as LEAs. Most importantly, the new IDEA changes the funding formulas for Part B grants to states and for subgrants to LEAs and emphasizes increased flexibility for LEAs. This chapter provides an overview of these revisions so that teachers and administrators can understand the new law's impact, especially on levels of funding. It does not analyze the details of the funding formula, which are complex and beyond the scope of this manual.

	OLD FORMULA	NEW FORMULA
GRANTS TO STATES	based on child counts	Child-count formula still applies until Part B federal funding reaches approximately $4.9 billion. Once it does so, states will receive: (1) the same amount as in the previous year; AND (2) a proportionate amount of the increase in federal funds, determined according to- - census data (85%) and - poverty rates (15%)
SUBGRANTS TO LEAs	based on child counts; no subgrants for less than $7,500	altered in keeping with changes made to formula for grants to states; no minimum for subgrants applies

II. Part B Grants to States

A. Formula

Since Congress first passed special education legislation in 1975, states have received federal funds according to their respective number of identified children with disabilities. At that time, numerous disabled children did not receive proper educational and related services.[1] By using a child-count formula to distribute federal funds for special education, Congress sought to motivate states to identify and serve these children and to compensate those who met their obligation to do so.[2]

Five and a half million children now receive services under IDEA, establishing that states have made vast improvements in their identification and service delivery systems for children with disabilities.[3] Congress now believes that overidentification, especially with respect to minority children, has become the greater problem[4] and seeks to address it by minimizing the incentive to make new referrals and the disincentive to move children out of special education.[5] According to the act's legislative history, in-state funding formulas based on child counts also encourage LEAs to overidentify children to increase the amount of state funds received.[6]

This issue received a great deal of attention during reauthorization, and, as a result, Congress changed the formula used to distribute special education funds to states. To protect the interests of all states, Congress also took steps to prevent significant losses or gains under the new formula. Basically, until Part B appropriations reach approximately $4.9 billion, states will continue to receive federal funds according to the current child-count formula. Once federal funding rises to that level, yearly child counts will no longer determine allotments made to states. Instead, each state will receive the same amount as in the year just before federal funding reached the threshold amount (the "base year") and a proportionate share of the increase in federal funds. Eighty-five percent of that proportionate amount will be allocated according to the state's census data on the total school-age population, and 15 percent will be based upon the state's poverty rate. A complex set of caps and floors apply to state allocations, but, generally, no state will receive less than the amount it received in the prior year. Because Congress has not appropriated Part B funds as of this writing, it is impossible to predict when federal funding levels will trigger this new formula.

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1 U.S. House of Representatives, Committee on Education and the Workforce, Committee Report, page 89 (May 13, 1997).

2 *Id.*

3 *Id.*

4 *Id.* The report also recognizes that underidentification is still a concern in some areas.

5 *Id.*

6 *Id.*

B. State Set-Aside

Against the wishes of state-level administrators, the new IDEA caps the state set-asides for administration and other state-level activities.[7] Beginning in fiscal year 1998, IDEA limits the state set-aside to 25 percent of the state's total Part B grant for fiscal year 1997, with future increases based on the inflation rate or on a percentage equal to the state's increase in federal funding, whichever is less. State-level administrators adamantly oppose this change because they fear that new requirements, such as developing performance goals and indicators, may result in new and additional costs.[8]

USE OF PART B FUNDS AT STATE LEVEL

✓ STATE SET-ASIDE CAPPED IN FUTURE YEARS: limited to 25 percent of Part B funds for fiscal year 1997, with future increases based on the lesser of the inflation rate or a percentage equal to the state's increase in federal funding.

- RULES ON STATE ADMINISTRATION UNCHANGED: states may retain 20 percent of the total set-aside (equal to 5 percent of total Part B funds received);
- STATES STILL DECIDE AMOUNT RETAINED FOR OTHER STATE-LEVEL ACTIVITIES: states have discretion to decide how much of the set-aside they will retain for state-level activities, other than administration. States may pass on the remaining amount to LEAs.

1. State Administration

States still may retain 5 percent of total Part B funds received (equal to 20 percent of the total state set-aside) for Part B administration. If the SEA serves as the lead agency for Part C early intervention programs, it may use the funds set aside for Part B administration for Part C programs as well.

2. Other State-Level Activities

Of the remaining funds, each state can determine how much money it will retain for state-level activities, other than administration, and how much, if any, it will pass on to LEAs. This rule existed under the old statute, and states always have differed in how they treat this portion of the state set-aside. States still may use these funds to provide support and direct services, including technical assistance and personnel development and training, and to cover the costs of monitoring and complaint investigation. The new IDEA expands the list of allowable activities even further to include costs incurred in: (1) establishing and implementing the mediation process (including costs for mediators and support personnel); (2) assisting LEAs faced with personnel shortages; (3) developing and implementing a State Improvement Plan, in accordance with Part D of IDEA; and (4) meeting performance

[7] *Special Education Report*, May 14, 1997, page 6.
[8] *Id.*

goals at the state and local levels. States also may allocate up to 1 percent of the total amount received to supplement other funds used to develop and implement a statewide coordinated services system, in conjunction with a coordinated services system developed under Part C of IDEA.

C. Subgrants to LEAs

States must continue to distribute at least 75 percent of federal funds received among all eligible LEAs within their respective boundaries. Like the federal formula, the state formula for subgrants to LEAs, previously based upon child counts, also will change when federal funding reaches approximately $4.9 billion to consider census and poverty data. Incidentally, IDEA no longer prohibits states from distributing less than $7,500 to any LEA.

The overwhelming majority of special education money comes from state and local sources. Each state has its own formula for allocating funds to LEAs, but, for the first time, IDEA places conditions upon these formulas by instructing states to revise funding mechanisms that are inconsistent with IDEA's long-standing LRE requirement. Some analysts believe that implementing this mandate could become difficult if the Department strictly applies it to cover state funding for individual services.[9] For instance, the Department may find that a state's funding mechanism is illegal because it pays 100 percent of the cost of transporting a student placed in a restricted setting but fails to pay 10 percent of the cost of inclusion.[10]

III. Limitations on State and Local Use of Funds

A. LEAs

The use of IDEA funds essentially is unchanged. LEAs receiving federal funds still must use them only for the excess costs of providing special education and related services. Both commingling federal and state funds and supplanting state, local, and other federal funds with federal IDEA funds are prohibited practices.

The statute codifies the maintenance of effort requirement currently contained in the regulations, except that LEAs now must consider only local funds, instead of funds from all sources, when making this calculation. To increase local flexibility, the new law adds a few exceptions— an LEA may reduce its level of expenditures below the preceding year's level if:

- ✓ special education personnel voluntarily resign, by retirement or otherwise, or depart for just cause;
- ✓ the enrollment of children with disabilities decreases;
- ✓ the LEA's obligation to provide an exceptionally costly program to a child with a disability ends, and the SEA determines that the child left the LEA's jurisdiction, reached the age at which the LEA's obligation ended, or no longer needed the program; or
- ✓ the need for costly expenditures for long-term purchases ends.

[9] *Special Education Report*, May 28, 1997, page 7.
[10] *Id.*

IDEA'S LIMITATIONS ON USE OF FUNDS

	COMMINGLING	SUPPLANTING	MAINTENANCE OF EFFORT
STATES	prohibited, but not with respect to funds retained for state-level activities	prohibited, but waivers from the Secretary are available	cannot reduce funding below the preceding fiscal year's level of local funding, but waivers are available from the Secretary for exceptional/ uncontrollable circumstances
LEAs	prohibited	prohibited	cannot reduce funding below the preceding fiscal year's level of local funding EXCEPTIONS: new IDEA allows LEAs to reduce fiscal effort in certain circumstances

In addition, if federal funding exceeds $4.1 billion in any fiscal year, and, as a result, an LEA receives more funding, it may use up to 20 percent of that increase to reduce its level of state and local fiscal effort for the previous year. A state, however, may prevent an LEA from reducing local spending in this manner if the SEA previously has cited it for noncompliance. In fiscal year 1997, federal IDEA funds totaled just over $3 billion, so it is unclear when an increase might trigger this provision. Regulations previously allowed LEAs to reduce spending only if the number of special education students declined or if expenses for long-term, costly projects decreased.

NEW FLEXIBILITY FOR LEAS

If federal funding exceeds $4.1 billion in any fiscal year, and, as a result, an LEA receives more funding, it may use up to 20 percent of that increase to reduce its level of state and local fiscal effort for the previous year, unless previously cited for noncompliance.

B. States

Except for funds retained for state-level activities, states may not commingle federal IDEA funds with state funds, nor may they use them to supplant federal, state, and local funds used to support special education. However, if a state provides clear and convincing evidence that a FAPE is available to all children with disabilities, the Secretary may waive this supplanting requirement in whole or in part. The new law gives the Secretary one year to issue final regulations establishing procedures for making waiver determinations.

IDEA now contains a maintenance of effort requirement for states. A state may not reduce state funding for special education and related services below the preceding fiscal year's level. If the state fails to comply, the Secretary will reduce its allocation for the following fiscal year.

The Secretary may waive this requirement as well, for a period of one fiscal year, because of exceptional or uncontrollable circumstances, such as a natural disaster, or if the state qualifies for a waiver of the supplanting prohibition.

IV. Funding for Children in Private Schools

While Chapter 3 of this manual discusses the degree of obligation to identify, evaluate, and provide services to private school students, this chapter covers the differing degrees of financial responsibility to private school students placed there by the state, the LEA, or their parents. The reauthorized IDEA contains new provisions and clarifies old ones with respect to the allocation of funding for services to private school students.

When a state or an LEA places a child in a private educational setting, it must do so at no cost to the child's parents. Confusion has arisen, however, when parents unilaterally enroll their child in private school without informing the LEA of their decision to do so. Legal disputes often have followed such action because the old law was not clear.

Lawsuits concerning unilateral private school placements by parents have involved two types of issues: whether the LEA must reimburse parents for the cost of sending their child to private school and whether the LEA must provide special education and related services to a student enrolled in private school. The new law attempts to clarify these issues.

A. Reimbursement to Parents for Unilateral Private School Placements

The new IDEA unequivocally states that an LEA is not required to pay for the cost of a private education, including the cost of special education and related services, for a child with a disability if the LEA made a FAPE available and the parents still placed the child in private school. Under the old law, parents often placed their child in a private school without the LEA's knowledge and then filed a due process complaint asking the LEA to pay for the cost of that enrollment.

To curb such litigation, the new IDEA places limits on when parents may receive reimbursement in this type of situation. A court or a hearing officer may require the LEA to reimburse parents for the cost of private school enrollment only if the LEA failed to make a FAPE available in a timely manner to a disabled child to whom it provided special education and related services prior to the child's placement in private school. In other words, the parents of a child who never attended public school cannot allege that the LEA was unable to provide a FAPE to the child and, therefore, cannot win reimbursement. The act does not address whether parents may recover costs if the LEA refused to provide Part B services to an eligible child.

REIMBURSEMENT FOR PRIVATE SCHOOL COSTS

The new IDEA states that an LEA is NOT required to pay for the cost of a private education if the LEA made a FAPE available and the parents still placed the child in private school. Parents now must comply with certain notice requirements before seeking reimbursement for a unilateral, private placement.

Parents must comply with certain obligations before they can sue for reimbursement. The presiding official has discretion to reduce or to deny reimbursement to parents who fail to:

- ✓ inform the IEP Team at the most recent IEP meeting at which they were present of their rejection of the child's then-current placement, including their concerns and their intent to place the child in private school at public expense;
- ✓ notify the school in writing of their concerns and intentions no later than 10 business days prior to removal; or
- ✓ make their child available for evaluation after receiving formal notice from the LEA of its intent to evaluate the child.

In addition, a judge or hearing officer may reduce or deny reimbursement upon a finding of unreasonableness on the part of the parents. A failure to give notice cannot affect recovery if:

- ✓ the parents are illiterate and cannot write in English;
- ✓ providing notice would result in physical or serious emotional harm to the child;
- ✓ the school prevented the parents from giving notice; or
- ✓ the LEA failed to inform the parents of the notice requirement.

The notice requirement will not only prevent parents from seeking reimbursement after-the-fact but will also give the LEA an opportunity to address parental concerns and possibly to convince them not to move the child. Even though 10 days is not a great deal of time, an LEA should make every effort to meet with the parents right away to discuss how the LEA might serve the child's needs in public school.[11]

B. Special Education Services for Children Enrolled in Private Schools

Prior to the new law, IDEA broadly stated that an LEA must provide for the participation of private school students, but failed to specify to what degree. The old law did not address whether the state had an obligation to finance special education services for students unilaterally placed in private school by their parents. The Department's informal policy was that LEAs must provide services to these students, but it gave states discretion to determine how they must do so and to what extent. Over the past few years, at least five federal appeals courts have disagreed on this issue. These cases reached the Supreme Court, but it recently sent them back to the courts from which they came so that they may issue decisions consistent with the new IDEA.[12]

In an attempt to settle this controversy, Congress has added a provision to the new IDEA addressing unilaterally enrolled private school students with disabilities. The new law clarifies that the amount spent by LEAs on services for these students is limited to a "proportionate amount of federal funds" based on the number and location of unilaterally placed private

[11] *The Special Educator*, May 23, 1997, page 4.
[12] *Education Daily*, June 10, 1997, page 4.

school students with disabilities in the state. Incidentally, such funds now may go toward services provided on the premises of private, parochial schools to the extent that such action is consistent with recent Supreme Court decisions allowing schools to do so.[13] As long as the agency makes a FAPE available to unilaterally placed private school children, the law does not require it to spend state or local funds on services for them. One federal appeals court already has ruled that, under the new law, an LEA need not provide a sign language interpreter to a deaf child voluntarily enrolled in a parochial school because it had offered the child a FAPE.[14]

LEA RESPONSIBILITY FOR SERVICES TO PRIVATE SCHOOL STUDENTS

The new IDEA states that the amount spent by LEAs on services is limited to a "proportionate amount" of federal funds.

Even though the new law took a giant step toward settling the issue, questions concerning the use of federal funds set aside for private school students still remain. For instance, many SEAs and LEAs are unsure whether they will have discretion to choose who will receive what services, how the funds will be distributed, and whether each child in a unilateral private placement is entitled to a set amount of the LEA's funds. Unfortunately, the answers to these and other questions must wait until the Department issues regulations or an official policy statement.

V. Charter Schools

The new IDEA addresses grants to charter schools. As the number of charter schools continues to increase, concerns are surfacing about the quality and degree of services provided to disabled children in these schools, and whether charter schools are serving them at all.[15] The results of a Department study on charter schools found no evidence of discrimination against children with disabilities, but the Department plans to conduct a more specialized study on disabled students and charter schools in the near future.[16] To address these growing concerns and to ensure that charter schools receive proportionate IDEA funds, the law provides that an LEA must fund charter schools operating under its jurisdiction consistently with other schools. (Chapter 2 of this manual addresses other provisions concerning charter schools as they relate to state and local eligibility.)

VI. Inmates

As explained in Chapters 2 and 3 of this manual, states may limit services provided to children with disabilities convicted as adults and sent to adult institutions. Even though the SEA technically has responsibility for administering IDEA, the new law permits a governor, consistent with state law, to assign another state agency, such as the state corrections agency, the obligation to carry out Part B's requirements with respect to disabled children convicted as adults under state law and incarcerated in adult prisons. Although the old statute did not explicitly require states to serve inmates, the Department had instructed a number of states to provide services to disabled children in adult prisons and even threatened the State of

[13] U.S. House of Representatives, Committee on Education and the Workforce, Committee Report, pages 92-93 (May 13, 1997).

[14] *Education Daily*, July 8, 1997, pages 1-2.

[15] *The Special Educator*, Apr. 25, 1997, page 7.

[16] *Education Daily*, May 29, 1997, page 3.

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California's entire $300 million grant if it failed to comply with that mandate.[17] The intent of the new law is to clarify as well as to limit existing obligations while providing some flexibility in the provision of services to inmates.

A state willing to accept a proportionate cut in federal funding may refuse to provide services to inmates. Such a decision would not jeopardize the state's entire Part B grant because any action by the Secretary for noncompliance in this area would result in a reduction proportionate to the number of individuals who should receive services in prison.

VII. LEA Permissive Use of Funds

Without regard to funding limitations, such as commingling and supplanting, LEAs may finance certain activities at their discretion. Under the new law, an LEA may use Part B funds to carry out a child's IEP in the regular classroom or other setting, even if one or more nondisabled children benefit from such services. An LEA also may increase its flexibility by using Part B funds to carry out:

- ✓ ***schoolwide programs under ESEA's Title I,*** except that funding is limited to the number of disabled children in the school multiplied by the per-child allotment;
- ✓ ***a school-based improvement plan*** designed to improve educational and transitional results for nondisabled and disabled children and consistent with the State Program Improvement Grant Program under Part D; or
- ✓ ***an integrated and coordinated services system*** to improve results for disabled and nondisabled children and their families (limited to 5 percent of total federal funds received).

Incidentally, if the LEA integrates the coordinated services system with a coordinated services project offered under Title XI of the Improving America's Schools Act, it must use the IDEA program funds consistently with Title XI's requirements.

LEA USE OF FUNDS FOR SCHOOLWIDE PROGRAMS

The new IDEA allows an LEA to use Part B funds for schoolwide programs, pursuant to ESEA's Title I. These funds are combined with other federal, state, and local funds and, thus, can no longer be tracked to special education and related services. However, *IDEA's statutory and regulatory provisions still apply.* Funding for this purpose is limited to the number of disabled children in the school multiplied by the per-child allotment.

[17] *Education Daily*, Apr. 28, 1997, page 3.

VIII. Withholding and Judicial Review

This provision does not differ significantly from the old law. Even so, educational agencies should pay special attention as the most significant change may come in the form of increased enforcement. During reauthorization, Congress encouraged the Secretary to use the broad enforcement powers granted under IDEA to ensure compliance with and implementation of Part B.

Under this provision, the Secretary may withhold all or part of an SEA's funding for noncompliance with Part B, but only after the state has received prior notice and an opportunity for a hearing. Actions also may include requiring a state to submit a detailed compliance plan; imposing special considerations on a state's Part B grant; and referring the matter to other agencies for enforcement. IDEA expressly mentions only one agency, the U.S. Department of Justice, to clarify, rather than to expand, the enforcement authority of other agencies.[18] A state has 60 days to appeal the Secretary's decision in federal court.

IX. Federal Administration and Requirements for Prescribing Regulations

Under IDEA, the Secretary has certain responsibilities, such as providing technical assistance and short-term training opportunities to states; issuing regulations necessary to ensure compliance; protecting confidential information gathered during data collection; and hiring qualified personnel necessary to administer the IDEA. The most significant changes made in this area concern the requirements for issuing regulations.

To simplify the regulatory process for administrators, teachers, and others, IDEA now forbids the Secretary to establish rules for compliance in policy letters and other statements without following the legal requirements applicable to the rulemaking process. On a quarterly basis, a list of all correspondence in which the Department has interpreted IDEA and its accompanying regulations during the previous quarter must appear in the *Federal Register*, and the Secretary also must distribute this list to interested parties in other ways. For each item, the Secretary must state the topic addressed and provide summary information. Further, if a letter to the Secretary concerns an issue of general applicability or national significance, the Secretary must state that fact in any written response and, consistent with confidentiality laws, distribute this response to SEAs, LEAs, parents, advocacy organizations, and other interested parties. The Secretary also must declare that the response constitutes informal guidance and, therefore, is not legally binding, and must limit the interpretation to the situation presented. No later than one year after the date of the response, the Secretary must issue written guidance on the issue using the most appropriate means of communication, such as a policy memorandum, notice of interpretation, or notice of proposed rulemaking.

With these new limitations, Congress did not intend to prevent the Secretary from addressing correspondence.[19] Even though IDEA may have increased the Secretary's burden by requiring more communication with the public, Congress hopes to prevent the misapplication or misinterpretation of correspondence, rather than to limit the Secretary's power to answer inquiries.[20] A 90-day public comment period still must follow the publication of proposed regulations under Parts B and C, and final regulations may not lessen IDEA's substantive and procedural protections guaranteed to children with disabilities.

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[18] U.S. House of Representatives, Committee on Education and the Workforce, Committee Report, page 114 (May 13, 1997).

[19] *Id.*, page 87.

[20] *Id.*

Chapter 7

Early Childhood Programs

I. Introduction

IDEA provides early childhood programs for disabled infants and toddlers up to three years old (Part C of the new IDEA) and disabled children from three to five years old (Part B preschool grants). Congress has recognized that providing services to children at a young age is an effective way to reduce the intensity of services needed when these children are older.[1] In keeping with this philosophy, the new law boosts funding for Part C and preschool programs. This chapter summarizes funding formulas for both programs and gives an overview of Part C, with special attention to changes in the program.

II. State Eligibility for Part C Grants

Infants and toddlers with disabilities receive special services pursuant to Part C of the new law, formerly known as "Part H." Part C grants assist states in implementing and maintaining statewide, comprehensive, coordinated, multidisciplinary interagency systems for providing early intervention services to disabled infants and toddlers and their families.

The old law established a timetable for system development,[2] but IDEA now assists states in maintaining and implementing the service systems. A state must have policies in effect to ensure that appropriate early

[1] U.S. House of Representatives, Committee on Education and the Workforce, Committee Report, page 115 (May 13, 1997).

[2] Under Part H, early intervention programs could be phased in over a five-year period. During the first four years, a state qualified for a federal grant even if its program was only in the planning stages, but a program had to become fully operational by the beginning of the fifth year.

intervention services are available to infants and toddlers who need them. A commitment to abide by a precise timeline is no longer enough to establish eligibility for this grant.

IDEA defines an "infant or toddler with a disability" as an individual under three years of age who needs early intervention services because he or she experiences developmental delays or has a diagnosed physical or mental condition likely to result in developmental delays. Like Part H, Part C permits states to serve infants and toddlers who would be at risk of experiencing substantial developmental delays if they do not receive early intervention services, but the new law encourages states to expand opportunities for at-risk infants and toddlers by allowing them to use Part C funds for this purpose.[3] IDEA continues to allow states considerable leeway in determining eligibility for services as each state creates its own definition for "developmental delay."

"INFANT OR TODDLER WITH A DISABILITY"

Part C defines an "infant or toddler with a disability" as:

✓ under three years of age; AND

✓ in need of early intervention services because he or she-

- experiences developmental delays,* OR
- has a diagnosed physical or mental condition likely to result in developmental delays.

* Each state creates its own definition of "developmental delay."

* States also are encouraged to serve infants and toddlers who are at risk of experiencing substantial developmental delays if they do not receive early intervention services.

The definition of "early intervention services" has not changed. Early intervention services should enhance the physical, cognitive, communicative, social or emotional, and/or adaptive development of disabled infants and toddlers. A few examples of Part C services are family training and counseling, home visits, special instruction, and speech-language pathology and audiology. Early intervention services must be provided by qualified personnel under public supervision. Part C, unlike Part B, allows states to set up a sliding scale system for collecting payments from families for some services.

A. Evaluation and Child Find

Each state has an affirmative obligation to seek out and to evaluate children who need early intervention services. To meet this statutory duty, the state must maintain a child find system, consistent with Part B (see Chapter 2). The child find system must include timelines; a mechanism for referring disabled infants and toddlers and their families to service providers; and procedures to facilitate cooperation with primary referral sources, such as hospitals and physicians.

[3] U.S. House of Representatives, Committee on Education and the Workforce, Committee Report, pages 115-16 (May 13, 1997).

STEPS FOR PROVIDING EARLY INTERVENTION SERVICES

(1) ***Identification***: Each state must have a child find system to identify eligible infants and toddlers.
(2) ***Referral***: Current regulations require that referral take place within two working days of identification.
(3) ***Evaluation***: Current regulations require completion of the evaluation within 45 calendar days of referral. This process must focus on-
- the infant's or toddler's level of functioning;
- the family's resources, priorities, and concerns; and
- the supports and services necessary to increase the family's ability to meet the child's needs.

(4) ***Development of an IFSP***: Current regulations state that a multidisciplinary team must meet to develop the IFSP no more than 45 calendar days after the date of referral.
(5) ***Parental Consent***: The multidisciplinary team must explain the IFSP's contents to the parents. The state may not provide Part C services without written parental consent.
(6) ***Periodic Review of the IFSP***: At six-month intervals, a periodic review of the IFSP must take place. It may occur by a meeting or other acceptable means, to which the parents and other participants agree.
(7) ***Annual IFSP Meeting:*** The multidisciplinary team and the child's parents meet to reevaluate the IFSP and to revise it, if necessary.

To achieve the goal of early identification, each state also must implement a public awareness program. Part C requires states to supply primary referral sources with information on the availability of services to parents. Further, each state must maintain a central directory listing early intervention services, resources, and experts available in the state and detailing all applicable research and demonstration projects currently underway in the state.

Once the state identifies disabled infants and toddlers who might qualify for early intervention services, each of those children is entitled to a timely, comprehensive, multidisciplinary evaluation of his or her unique strengths and needs, and an assessment of the special services necessary to satisfy those needs. In addition to determining each infant's or toddler's level of functioning, the evaluation also must include an assessment of the family's resources, priorities, and concerns and identify the supports and services necessary to increase the family's ability to meet the child's needs. According to current regulations, the referral for evaluation must occur within two working days of the infant's or toddler's identification. Unless exceptional circumstances are present, the state must complete the evaluation process within 45 calendar days of referral.

B. Individualized Family Service Plans

Under the new IDEA, the IFSP must justify a decision not to provide early intervention services in *natural environments.*

Within a reasonable amount of time after the assessments have taken place, a multidisciplinary team, including the parents, must develop a written individualized family service plan (IFSP). The regulations state that no more than 45 days may elapse between the date of referral for evaluation and the meeting to develop the IFSP. The IFSP must contain:

- ✓ a statement of the infant's or toddler's present developmental levels, based on objective criteria;
- ✓ a statement of the family's resources, priorities, and concerns as they relate to the enhancement of the infant's or toddler's development;
- ✓ a statement of the major expected outcomes for the infant or toddler and his or her family as well as the criteria, procedures, and timelines to be used to determine progress toward those outcomes and whether modifications to the IFSP are necessary;
- ✓ a statement of the specific services necessary to meet the needs of the infant or toddler and his or her family, including the frequency, intensity, and method or delivery;
- ✓ a statement of the natural environments in which the infant or toddler will receive services, if any, and a justification if services are not provided in such environments;
- ✓ the projected dates for initiation of services and their expected duration;
- ✓ the identification of the service coordinator responsible for the plan's implementation and coordination with other agencies and persons; and
- ✓ possible steps toward transition (e.g., sending information to the appropriate LEA, with the parent's consent).

In keeping with IDEA's overarching goal of including children with disabilities in the general curriculum and avoiding the use of costly institutional settings when appropriate, Part C places a new emphasis on the provision of services in natural environments. As always, IDEA requires states, to the extent possible, to provide services in natural environments, such as in the home or in community settings, but the IFSP now must justify a decision not to provide services in this manner. All other content requirements come directly from Part H.

Once the multidisciplinary team has created the IFSP, the parents must receive a full explanation of its contents and give written consent before the state may provide services. Parents can accept or reject any or all parts of the plan. The team must meet to reevaluate the IFSP each year and make revisions, if necessary. Periodic review also must take place at six-month intervals, or more frequently when appropriate to meet the infant's or toddler's and the family's needs. If the parents and other participants agree, the review may occur without a meeting, but the parents must receive notice of the results. The yearly IFSP meeting takes the place of the six-month review so that only one separate periodic review occurs each year.

C. Personnel Standards and Professional Development

Like Part B, Part C also requires each state to maintain a comprehensive system of professional development (CSPD) for early intervention service providers. (Chapter 2 of this manual discusses this requirement for state eligibility under Part B.) Each CSPD must include training for paraprofessionals and primary referral sources on the basic components of early intervention services available in their respective states. A state may use its CSPD to implement unique ways to recruit and retain service providers; to encourage the preparation of fully and appropriately qualified service providers; and to train personnel to work in rural and inner-city areas and/or to coordinate appropriate transition services for infants and toddlers. Part H encouraged states to provide special training on working with children in rural areas, but Part C expands this provision to cover inner-city areas as well.

IDEA always has required early intervention service personnel to meet certain qualifications. Each state must have policies and procedures in place to ensure that service personnel are adequately prepared and trained, and standards must conform to a state-sanctioned certification, licensing, registration, or other comparable requirement that applies in the area where personnel provide services. If standards are not based upon the highest requirements established by the state for a specific profession or discipline, the state must detail efforts to retrain or hire personnel with the appropriate credentials.

In recognition that personnel shortages affect some areas, Part C, consistent with Part B, relaxes the rules concerning personnel standards in two ways. First, in accordance with its own laws, regulations, or written policies, a state now may use appropriately trained and supervised paraprofessionals and assistants to aid in the provision of services. Second, a state may comply with Part C's personnel standards by showing that its policies include ongoing good-faith efforts to recruit and hire appropriately and adequately trained personnel and that specific areas facing personnel shortages employ the most qualified individuals available who are making satisfactory progress toward completing the coursework necessary to meet Part C's standards within three years.

The state must establish and maintain policies governing contracting and other business arrangements with service providers. It also must ensure that all applications used and conditions imposed are consistent with Part C.

D. Procedural Safeguards

To qualify for a Part C grant, a state must have policies and procedures to protect the rights of infants and toddlers with disabilities and their families. Procedural safeguards required by Part C closely mirror those provided under Part B, including:

- ✓ timely resolution of administrative complaints and the right to bring a civil action if aggrieved by the outcome (during the pendency of any proceeding, the infant or toddler must "stay put" until the matter is resolved);

- ✓ the right to confidentiality of personally identifiable information, including the right to written notice of and, consistent with federal and state law, written consent to the exchange of such information among agencies;
- ✓ the right of parents to accept or to decline services on behalf of themselves, their infant or toddler, or other family members in most situations;
- ✓ the opportunity for parents to examine records relating to assessment, screening, eligibility determinations, and the IFSP;
- ✓ protection for an infant or toddler whose parents are unknown or unavailable or who is a ward of the state, including the assignment of an individual to stand in for the parents;
- ✓ written prior notice to parents (provided in their native language, unless it is clearly not feasible to do so) whenever the lead agency or service provider proposes or refuses to initiate or to change the identification, evaluation, or placement of the disabled infant or toddler, or the provision of appropriate services to the child;
- ✓ written prior notice to parents (provided in their native language, unless it is clearly not feasible to do so) of the procedural safeguards available to them whenever notice of a change or refusal to make a change is sent; and
- ✓ the right to use mediation procedures in accordance with Part B's mediation provision (the state lead agency, which is not necessarily the SEA, provides for mediation under Part C).

These procedural safeguards were taken from Part H, with two additions. First, Part H prevented an employee of the state agency providing services from acting as a surrogate for absent parents. Part C extends this prohibition to cover any person providing early intervention services and any employee of such a provider. Second, Part C allows parents to use mediation procedures, now required in all states by Part B, to resolve disputes. (Chapter 4 details new requirements with respect to mediation.) Similar to Part B, mediation is only an option for parents, not a requirement.

E. Interagency Coordination

1. Lead Agency Responsibility

Part C differs from programs for school-age and preschool students in that the governor may choose which state agency (usually the state educational or health agency) has sole responsibility for administering the statewide system for early intervention services. When Congress created Part H, it hoped to eliminate the financial and jurisdictional disputes that often occurred under Part B by empowering the lead agency to identify and to coordinate resources from all public and private sources. Part C continues this emphasis on the proper allocation of financial responsibility for early intervention services.

> The SEA does not necessarily administer Part C — the governor may choose which state agency has sole responsibility for overseeing the statewide system for early intervention services.

To ensure that Part C funds are used only as a last resort, the lead agency must assign financial responsibility for services to the appropriate agencies and draft formal interagency agreements defining each agency's financial obligations. The lead agency also must establish procedures for securing timely reimbursement of funds from all sources. If a public or private source other than the lead agency bears financial responsibility for specified services, Part C funds cannot be used to pay for them, except to prevent a delay in service delivery. In such a situation, the lead agency must seek reimbursement from the proper source, according to its established procedures. When disputes among public agencies and service providers are pending, the lead agency must ensure that disabled infants and toddlers and their families continue to receive services in a timely manner.

2. State Interagency Coordinating Council

Part C retains the requirement that each state must establish and maintain a state interagency coordinating council (state council) and now lists it as a prerequisite for an eligible statewide system. Considering Congress' recent tendency toward reducing federal funds, advocates for early childhood programs were pleasantly surprised that Congress renewed its support for the state and federal interagency coordinating councils.[4]

The state council's primary duty is to assist the lead agency in coordinating interagency activity with respect to early intervention services. Specifically, the state council must advise and assist the lead agency in identifying sources of fiscal and other support; assigning financial responsibility to the appropriate entities; promoting interagency agreements; and providing transition services. In addition, the state council must help the lead agency with its original application and subsequent amendments and prepare an annual report concerning the status of early intervention programs in the state. The governor as well as the Secretary must receive a copy of the state council's report.

The state council's authority extends beyond early intervention services for infants and toddlers with disabilities as it also may work with the lead agency and the SEA (if the SEA is not the lead agency) to provide appropriate services to children through age five. Under Part C, state councils have increased authority to assist appropriate agencies with the integration of services for disabled infants and toddlers, at-risk infants and toddlers, and their families.

Interested parties from various sectors serve on the state council. While Part C dictates a state council's general composition, the governor chooses its specific members, and, unlike Part H, Part C does not restrict the state council's size. Part C, however, governs its composition in the following manner:

[4] *The Special Educator,* May 23, 1997, page 11.

- ✓ at least 20 percent of the members must be ***parents*** of disabled infants or toddlers or of disabled children no more than 12 years old (at least 1 parent must have a disabled infant or toddler or a disabled child who is no more than 6 years old), and they must know of, or have experience with, early intervention services;
- ✓ at least 20 percent of the members must represent public or private ***service providers***;
- ✓ at least 1 member must come from the ***state legislature***;
- ✓ at least 1 member must be involved in ***personnel preparation***;
- ✓ each ***agency for early intervention services*** must have representation, and the individual chosen must have the authority to make policy decisions on the agency's behalf;
- ✓ at least 1 member must come from the state educational ***agency for preschool services***;
- ✓ at least 1 member must represent the state's ***agency for health insurance***; and
- ✓ at least 1 member from each of the respective state agencies responsible for ***Head Start*** and ***child care*** must serve on the state council.

The governor also may appoint a representative from the Bureau of Indian Affairs or from the Indian Health Service or the tribe or tribal council. Part C instructs governors to appoint representatives from the agencies that oversee Head Start and child care, and the early childhood community expressed its overwhelming support for this addition.[5] The only other change made to composition requirements was that Part C dropped Part H's requirement that at least one parent from a minority group serve on each state council.

As always, all members, regardless of their affiliation, must remain impartial. They may not cast votes on matters that would provide direct financial benefit to themselves or give the appearance of a conflict of interest as that term is defined by state law.

III. State Application and Assurances

A state seeking a Part C grant must submit an application to the Secretary, unless the Secretary already has information, such as a Part H application, on file demonstrating the state's eligibility for the grant. In keeping with changes made under Part B (see Chapter 2), Part C applications also remain in effect until the state determines that modifications are necessary or the Secretary requires the state to submit changes.

Part C retained most of Part H's application requirements. A state's application must:

- ✓ designate a lead agency and an individual or entity to allocate financial responsibility among agencies;
- ✓ demonstrate eligibility by complying with Part C's requirements for a statewide system;
- ✓ describe how the state will use Part C funds;
- ✓ explain how the state will provide services in all geographic areas;
- ✓ explain policies and procedures used to ensure that the public had ample notice and an opportunity to comment before the state developed its service delivery plan; and
- ✓ describe how it will transition toddlers no longer eligible for Part C services.

[5] *Id.*

Under Part H, a state only needed to maintain and establish policies and procedures for transitioning toddlers who may be eligible for Part B preschool services. Part C, however, requires states to make reasonable efforts to hold a conference among the lead agency, the family, and service providers for children who may *not* be eligible for the preschool program to discuss other appropriate services. Part C also imposes a completely new application requirement, declaring that a state's application must describe services provided to at-risk infants and toddlers, unless it has elected not to serve them.

A state's application must include certain assurances. A state must pledge to spend federal funds properly and to use Part C funds only as a last resort for payment. It also must demonstrate that it has appointed a lead agency to administer the funds and property derived from those funds in a responsible manner. The state must agree not to commingle Part C funds with state funds and assure the Secretary that it will use the Part C grant to supplement, not supplant, state and local funds. Other assurances pertain to a state's obligation to prepare and submit required reports to the Secretary; to make its records available for inspection; and to adopt policies and procedures to ensure meaningful involvement of under-served groups.

IV. Federal Oversight and Involvement

Part B's provisions concerning withholding and judicial review, federal administration, and program information also apply to lead agencies under Part C. (These provisions are detailed in Chapters 2 and 6 of this manual.) Federal involvement comes primarily through the federal interagency coordinating council (federal council) established by the Secretary to minimize duplication in early childhood programs and activities. Part C expands the federal council's duties in this regard by also placing programs for at-risk infants and toddlers within its scope. To this end, the federal council must coordinate early childhood programs at the federal level and the provision of technical assistance to states. It must pay special attention to identifying gaps in federal efforts and barriers to interagency cooperation. Under Part H, the federal council only advised and assisted the Secretary of Education, whereas it now must work with the Secretaries of Health and Human Services, Defense, Interior, and Agriculture, as well as the Commissioner of Social Security.

The Secretary, in consultation with other federal agencies, appoints a federal council chairperson. In addition, the Secretary must choose parents as well as individuals from various federal agencies, departments, and program offices, state lead agencies (educational and non-educational), and other appropriate agencies to serve on the federal council. Part C made only minimal changes to the federal council's composition. It added a representative from the Office of Educational Research and Improvement; expanded the representation of the Administration of Children and Families by specifically including a representative from the Children's Bureau and from the Head Start Bureau; and increased the number of parents on the federal council, in keeping with the new IDEA's focus on parental involvement.

All federal council members, regardless of their affiliation, must have the authority to make policy decisions on behalf of their agencies, departments, or program offices. Like members of the state council, these individuals must refrain from voting on issues that would provide them with direct financial benefit or otherwise give the appearance of a conflict of interest as defined by federal law.

V. Funding Formulas

A. Preschool Grants

To establish eligibility for a preschool grant, a state also must qualify for Part B funding under Section 612 (on state eligibility) and make a FAPE available to disabled children, ages three through five, who reside in the state. At its discretion, a state also may serve two-year-old children with disabilities who will turn three during the school year. Children receiving a FAPE under Part B may not also receive services under Part C.

The new law changes the funding formula for preschool grants, consistent with changes made elsewhere under Part B (see Chapter 6), except that the new formula for preschool grants takes effect in fiscal year 1998. Basically, the new IDEA states that the Department will allocate 85 percent of all funds received above the fiscal year 1997 amount ($360.4 million) according to the state's general population of all children between the ages of three and five and 15 percent according to the state's poverty rate. A complex set of thresholds and caps will apply, and these mechanisms will prevent any state from losing or gaining a significant amount of funds.

Changes pertaining to the state set-aside under the preschool grant also mirror those made in Part B's programs for school-age children (see Chapter 6). A state may not retain more than 25 percent of the total grant for all state-level activities, and only 20 percent of that amount may go toward administration. If the SEA serves as the lead agency for purposes of Part C, it may use preschool grant funds retained for administrative activities to carry out its Part C duties as well. Under the new statute, a state may use remaining funds to provide direct and/or support services; to develop and implement a State Improvement Plan under Part D; to finance activities necessary to meet performance goals; or to supplement other funds used to develop and implement a coordinated services system.

B. Part C Grants

Congress disappointed advocates for early childhood programs by declining to authorize permanent funding for Part C. Even so, advocates were pleased with the boost in funding from $220 million to $400 million and encouraged that Congress committed to funding Part C at least until 2002.[6] The five-year timetable used to allocate funds under Part H no longer applies, and each state will receive Part C funding based upon its infant and toddler population. This formula vastly differs from the new Part B formula (see Chapter 6), which takes poverty rates into account.

[6] *The Special Educator*, IDEA Reauthorization Special Report (Special Supplement), page 2.

Chapter 8

Conclusion

Reauthorization undoubtedly will change the way states and localities provide educational and related services to children with disabilities, and all interested parties must understand the changes made to IDEA at the outset. The new law increases parental involvement in decisions and encourages parents and schools to establish partnerships for ensuring that disabled children receive appropriate services. IDEA's focus on reducing paperwork and unnecessary costs allows SEAs and LEAs to direct their time and energy toward effectively and efficiently serving children with disabilities.

AASA published *Opportunities & Challenges: An Administrator's Guide to the New IDEA* to summarize and explain major changes in IDEA, but, as the law continues to evolve, those involved in administering IDEA must be sure to consider future policy guidance from the U.S. Department of Education, with regard to the statute's provisions. The Secretary most likely will issue regulations interpreting the act within the year, and Dear Colleague letters and other forms of policy guidance are certain to follow. While the statute provides the federal framework for the provision of special education and related services, policy guidance from the Secretary is necessary to fill in the practical details of its implementation. Using this manual in conjunction with the Secretary's subsequent interpretations of IDEA will provide pragmatic, comprehensive guidance on federal special education law and policy for years to come.

APPENDIX:

The Individuals with Disabilities Education Act Amendments of 1997

Public Law 105–17
105th Congress

An Act

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

June 4, 1997
[H.R. 5]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Individuals with Disabilities Education Act Amendments of 1997.
Children, youth and families.
Inter-governmental relations.
20 USC 1400 note.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Individuals with Disabilities Education Act Amendments of 1997".

TITLE I—AMENDMENTS TO THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT

SEC. 101. AMENDMENTS TO THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT.

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

"PART A—GENERAL PROVISIONS

"SEC. 601. SHORT TITLE; TABLE OF CONTENTS; FINDINGS; PURPOSES. 20 USC 1400.

"(a) SHORT TITLE.—This Act may be cited as the 'Individuals with Disabilities Education Act'.

"(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"(10) Minorities and underserved persons are socially disadvantaged because of the lack of opportunities in training and educational programs, undergirded by the practices in the

private sector that impede their full participation in the mainstream of society.

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

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

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

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

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

"(3) to ensure that educators and parents have the necessary tools to improve educational results for children with disabilities by supporting systemic-change activities; coordinated research and personnel preparation; coordinated technical assistance, dissemination, and support; and technology development and media services; and

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

20 USC 1401.

"SEC. 602. DEFINITIONS.

"Except as otherwise provided, as used in this Act:

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

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

"(A) the evaluation of the needs of such child, including a functional evaluation of the child in the child's customary environment;

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

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

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

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

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

"(3) CHILD WITH A DISABILITY.—

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"(A) IN GENERAL.—The term 'child with a disability' means a child—

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

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

"(B) CHILD AGED 3 THROUGH 9.—The term 'child with a disability' for a child aged 3 through 9 may, at the discretion of the State and the local educational agency, include a child—

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

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

"(4) EDUCATIONAL SERVICE AGENCY.—The term 'educational service agency'—

"(A) means a regional public multiservice agency—

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

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

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

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

"(6) EQUIPMENT.—The term 'equipment' includes—

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

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

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

"(A) amounts received—

"(i) under part B of this title;

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

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

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

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

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

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

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

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

"(9) INDIAN.—The term 'Indian' means an individual who is a member of an Indian tribe.

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

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

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

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

"(14) INSTITUTION OF HIGHER EDUCATION.—The term 'institution of higher education'—

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

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

"(15) LOCAL EDUCATIONAL AGENCY.—

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

"(B) The term includes—

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

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

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

"(16) NATIVE LANGUAGE.—The term 'native language', when used with reference to an individual of limited English proficiency, means the language normally used by the individual, or in the case of a child, the language normally used by the parents of the child.

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

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

"(19) PARENT.—The term 'parent'—

"(A) includes a legal guardian; and

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

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

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

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

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

"(24) SECRETARY.—The term 'Secretary' means the Secretary of Education.

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

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

"(B) instruction in physical education.

"(26) SPECIFIC LEARNING DISABILITY.—

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

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

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

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

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

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

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

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

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

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

20 USC 1402.

"SEC. 603. OFFICE OF SPECIAL EDUCATION PROGRAMS.

"(a) ESTABLISHMENT.—There shall be, within the Office of Special Education and Rehabilitative Services in the Department of Education, an Office of Special Education Programs, which shall

be the principal agency in such Department for administering and carrying out this Act and other programs and activities concerning the education of children with disabilities.

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

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

"SEC. 604. ABROGATION OF STATE SOVEREIGN IMMUNITY. 20 USC 1403.

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

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

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

"SEC. 605. ACQUISITION OF EQUIPMENT; CONSTRUCTION OR ALTERATION OF FACILITIES. 20 USC 1404.

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

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

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

"(2) appendix A of part 101-19.6 of title 41, Code of Federal Regulations (commonly known as the 'Uniform Federal Accessibility Standards').

"SEC. 606. EMPLOYMENT OF INDIVIDUALS WITH DISABILITIES. 20 USC 1405.

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

"SEC. 607. REQUIREMENTS FOR PRESCRIBING REGULATIONS. 20 USC 1406.

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

"(b) PROTECTIONS PROVIDED TO CHILDREN.—The Secretary may not implement, or publish in final form, any regulation prescribed pursuant to this Act that would procedurally or substantively lessen the protections provided to children with disabilities under this

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Act, as embodied in regulations in effect on July 20, 1983 (particularly as such protections relate to parental consent to initial evaluation or initial placement in special education, least restrictive environment, related services, timelines, attendance of evaluation personnel at individualized education program meetings, or qualifications of personnel), except to the extent that such regulation reflects the clear and unequivocal intent of the Congress in legislation.

"(c) POLICY LETTERS AND STATEMENTS.—The Secretary may not, through policy letters or other statements, establish a rule that is required for compliance with, and eligibility under, this part without following the requirements of section 553 of title 5, United States Code.

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

Federal Register, publication.

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

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

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

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

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

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

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

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

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

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

"SEC. 611. AUTHORIZATION; ALLOTMENT; USE OF FUNDS; AUTHORIZATION OF APPROPRIATIONS. 20 USC 1411.

"(a) GRANTS TO STATES.—

"(1) PURPOSE OF GRANTS.—The Secretary shall make grants to States and the outlying areas, and provide funds to the Secretary of the Interior, to assist them to provide special education and related services to children with disabilities in accordance with this part.

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

"(A) the number of children with disabilities in the State who are receiving special education and related services—

"(i) aged 3 through 5 if the State is eligible for a grant under section 619; and

"(ii) aged 6 through 21; multiplied by

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

"(b) OUTLYING AREAS AND FREELY ASSOCIATED STATES.—

"(1) FUNDS RESERVED.—From the amount appropriated for any fiscal year under subsection (j), the Secretary shall reserve not more than one percent, which shall be used—

"(A) to provide assistance to the outlying areas in accordance with their respective populations of individuals aged 3 through 21; and

"(B) for fiscal years 1998 through 2001, to carry out the competition described in paragraph (2), except that the amount reserved to carry out that competition shall not exceed the amount reserved for fiscal year 1996 for the competition under part B of this Act described under the heading "SPECIAL EDUCATION" in Public Law 104–134.

"(2) LIMITATION FOR FREELY ASSOCIATED STATES.—

"(A) COMPETITIVE GRANTS.—The Secretary shall use funds described in paragraph (1)(B) to award grants, on a competitive basis, to Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the freely associated States to carry out the purposes of this part.

"(B) AWARD BASIS.—The Secretary shall award grants under subparagraph (A) on a competitive basis, pursuant to the recommendations of the Pacific Region Educational Laboratory in Honolulu, Hawaii. Those recommendations shall be made by experts in the field of special education and related services.

"(C) ASSISTANCE REQUIREMENTS.—Any freely associated State that wishes to receive funds under this part shall include, in its application for assistance—

"(i) information demonstrating that it will meet all conditions that apply to States under this part;

"(ii) an assurance that, notwithstanding any other provision of this part, it will use those funds only for the direct provision of special education and related services to children with disabilities and to enhance its capacity to make a free appropriate public education available to all children with disabilities;

"(iii) the identity of the source and amount of funds, in addition to funds under this part, that it will make available to ensure that a free appropriate public education is available to all children with disabilities within its jurisdiction; and

"(iv) such other information and assurances as the Secretary may require.

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

"(E) ADMINISTRATIVE COSTS.—The Secretary may provide not more than five percent of the amount reserved for grants under this paragraph to pay the administrative costs of the Pacific Region Educational Laboratory under subparagraph (B).

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

"(4) SPECIAL RULE.—The provisions of Public Law 95–134, permitting the consolidation of grants by the outlying areas, shall not apply to funds provided to those areas or to the freely associated States under this section.

"(5) ELIGIBILITY FOR DISCRETIONARY PROGRAMS.—The freely associated States shall be eligible to receive assistance under subpart 2 of part D of this Act until September 30, 2001.

"(6) DEFINITION.—As used in this subsection, the term 'freely associated States' means the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

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

"(d) ALLOCATIONS TO STATES.—

"(1) IN GENERAL.—After reserving funds for studies and evaluations under section 674(e), and for payments to the outlying areas and the Secretary of the Interior under subsections (b) and (c), the Secretary shall allocate the remaining amount among the States in accordance with paragraph (2) or subsection (e), as the case may be.

"(2) INTERIM FORMULA.—Except as provided in subsection (e), the Secretary shall allocate the amount described in paragraph (1) among the States in accordance with section 611(a)(3), (4), and (5) and (b)(1), (2), and (3) of this Act, as in effect prior to the enactment of the Individuals with Disabilities Education Act Amendments of 1997, except that the determination of the number of children with disabilities receiving special education and related services under such section 611(a)(3) may, at the State's discretion, be calculated as of the last

Friday in October or as of December 1 of the fiscal year for which the funds are appropriated.

"(e) PERMANENT FORMULA.—

"(1) ESTABLISHMENT OF BASE YEAR.—The Secretary shall allocate the amount described in subsection (d)(1) among the States in accordance with this subsection for each fiscal year beginning with the first fiscal year for which the amount appropriated under subsection (j) is more than $4,924,672,200.

"(2) USE OF BASE YEAR.—

"(A) DEFINITION.—As used in this subsection, the term 'base year' means the fiscal year preceding the first fiscal year in which this subsection applies.

"(B) SPECIAL RULE FOR USE OF BASE YEAR AMOUNT.—If a State received any funds under this section for the base year on the basis of children aged 3 through 5, but does not make a free appropriate public education available to all children with disabilities aged 3 through 5 in the State in any subsequent fiscal year, the Secretary shall compute the State's base year amount, solely for the purpose of calculating the State's allocation in that subsequent year under paragraph (3) or (4), by subtracting the amount allocated to the State for the base year on the basis of those children.

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

"(A)(i) Except as provided in subparagraph (B), the Secretary shall—

"(I) allocate to each State the amount it received for the base year;

"(II) allocate 85 percent of any remaining funds to States on the basis of their relative populations of children aged 3 through 21 who are of the same age as children with disabilities for whom the State ensures the availability of a free appropriate public education under this part; and

"(III) allocate 15 percent of those remaining funds to States on the basis of their relative populations of children described in subclause (II) who are living in poverty.

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

"(B) Notwithstanding subparagraph (A), allocations under this paragraph shall be subject to the following:

"(i) No State's allocation shall be less than its allocation for the preceding fiscal year.

"(ii) No State's allocation shall be less than the greatest of—

"(I) the sum of—

"(aa) the amount it received for the base year; and

"(bb) one third of one percent of the amount by which the amount appropriated

under subsection (j) exceeds the amount appropriated under this section for the base year;

"(II) the sum of—

"(aa) the amount it received for the preceding fiscal year; and

"(bb) that amount multiplied by the percentage by which the increase in the funds appropriated from the preceding fiscal year exceeds 1.5 percent; or

"(III) the sum of—

"(aa) the amount it received for the preceding fiscal year; and

"(bb) that amount multiplied by 90 percent of the percentage increase in the amount appropriated from the preceding fiscal year.

"(iii) Notwithstanding clause (ii), no State's allocation under this paragraph shall exceed the sum of—

"(I) the amount it received for the preceding fiscal year; and

"(II) that amount multiplied by the sum of 1.5 percent and the percentage increase in the amount appropriated.

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

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

"(A) If the amount available for allocations is greater than the amount allocated to the States for the base year, each State shall be allocated the sum of—

"(i) the amount it received for the base year; and

"(ii) an amount that bears the same relation to any remaining funds as the increase the State received for the preceding fiscal year over the base year bears to the total of all such increases for all States.

"(B)(i) If the amount available for allocations is equal to or less than the amount allocated to the States for the base year, each State shall be allocated the amount it received for the base year.

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

"(f) STATE-LEVEL ACTIVITIES.—

"(1) GENERAL.—

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

"(B) For each fiscal year, the Secretary shall determine and report to the State educational agency an amount that is 25 percent of the amount the State received under this section for fiscal year 1997, cumulatively adjusted by the Secretary for each succeeding fiscal year by the lesser of—

"(i) the percentage increase, if any, from the preceding fiscal year in the State's allocation under this section; or

"(ii) the rate of inflation, as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

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

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

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

"(2) STATE ADMINISTRATION.—

"(A) For the purpose of administering this part, including section 619 (including the coordination of activities under this part with, and providing technical assistance to, other programs that provide services to children with disabilities)—

"(i) each State may use not more than twenty percent of the maximum amount it may retain under paragraph (1)(A) for any fiscal year or $500,000 (adjusted by the cumulative rate of inflation since fiscal year 1998, as measured by the percentage increase, if any, in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor), whichever is greater; and

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

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

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

"(A) Support and direct services, including technical assistance and personnel development and training.

"(B) Administrative costs of monitoring and complaint investigation, but only to the extent that those costs exceed the costs incurred for those activities during fiscal year 1985.

"(C) To establish and implement the mediation process required by section 615(e), including providing for the costs of mediators and support personnel.

"(D) To assist local educational agencies in meeting personnel shortages.

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

"(F) Activities at the State and local levels to meet the performance goals established by the State under section 612(a)(16) and to support implementation of the State Improvement Plan under subpart 1 of part D if the State receives funds under that subpart.

"(G) To supplement other amounts used to develop and implement a Statewide coordinated services system designed to improve results for children and families, including children with disabilities and their families, but not to exceed one percent of the amount received by the State under this section. This system shall be coordinated with and, to the extent appropriate, build on the system of coordinated services developed by the State under part C of this Act.

"(H) For subgrants to local educational agencies for the purposes described in paragraph (4)(A).

"(4)(A) SUBGRANTS TO LOCAL EDUCATIONAL AGENCIES FOR CAPACITY-BUILDING AND IMPROVEMENT.—In any fiscal year in which the percentage increase in the State's allocation under this section exceeds the rate of inflation (as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor), each State shall reserve, from its allocation under this section, the amount described in subparagraph (B) to make subgrants to local educational agencies, unless that amount is less than $100,000, to assist them in providing direct services and in making systemic change to improve results for children with disabilities through one or more of the following:

"(i) Direct services, including alternative programming for children who have been expelled from school, and services for children in correctional facilities, children enrolled in State-operated or State-supported schools, and children in charter schools.

"(ii) Addressing needs or carrying out improvement strategies identified in the State's Improvement Plan under subpart 1 of part D.

"(iii) Adopting promising practices, materials, and technology, based on knowledge derived from education research and other sources.

"(iv) Establishing, expanding, or implementing interagency agreements and arrangements between local educational agencies and other agencies or organizations concerning the provision of services to children with disabilities and their families.

"(v) Increasing cooperative problem-solving between parents and school personnel and promoting the use of alternative dispute resolution.

"(B) MAXIMUM SUBGRANT.—For each fiscal year, the amount referred to in subparagraph (A) is—

"(i) the maximum amount the State was allowed to retain under paragraph (1)(A) for the prior fiscal year, or for fiscal year 1998, 25 percent of the State's allocation for fiscal year 1997 under this section; multiplied by

"(ii) the difference between the percentage increase in the State's allocation under this section and the rate of inflation, as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

"(5) REPORT ON USE OF FUNDS.—As part of the information required to be submitted to the Secretary under section 612, each State shall annually describe—

"(A) how amounts retained under paragraph (1) will be used to meet the requirements of this part;

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

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

"(g) SUBGRANTS TO LOCAL EDUCATIONAL AGENCIES.—

"(1) SUBGRANTS REQUIRED.—Each State that receives a grant under this section for any fiscal year shall distribute any funds it does not retain under subsection (f) (at least 75 percent of the grant funds) to local educational agencies in the State that have established their eligibility under section 613, and to State agencies that received funds under section 614A(a) of this Act for fiscal year 1997, as then in effect, and have established their eligibility under section 613, for use in accordance with this part.

"(2) ALLOCATIONS TO LOCAL EDUCATIONAL AGENCIES.—

"(A) INTERIM PROCEDURE.—For each fiscal year for which funds are allocated to States under subsection (d)(2), each State shall allocate funds under paragraph (1) in accordance with section 611(d) of this Act, as in effect prior to the enactment of the Individuals with Disabilities Education Act Amendments of 1997.

"(B) PERMANENT PROCEDURE.—For each fiscal year for which funds are allocated to States under subsection (e), each State shall allocate funds under paragraph (1) as follows:

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

"(ii) ALLOCATION OF REMAINING FUNDS.—After making allocations under clause (i), the State shall—

"(I) allocate 85 percent of any remaining funds to those agencies on the basis of the relative numbers of children enrolled in public and private elementary and secondary schools within the agency's jurisdiction; and

"(II) allocate 15 percent of those remaining funds to those agencies in accordance with their relative numbers of children living in poverty, as determined by the State educational agency.

"(3) FORMER CHAPTER 1 STATE AGENCIES.—

"(A) To the extent necessary, the State—

"(i) shall use funds that are available under subsection (f)(1)(A) to ensure that each State agency that received fiscal year 1994 funds under subpart 2 of part D of chapter 1 of title I of the Elementary and Secondary Education Act of 1965 receives, from the combination of funds under subsection (f)(1)(A) and

funds provided under paragraph (1) of this subsection, an amount equal to—

"(I) the number of children with disabilities, aged 6 through 21, to whom the agency was providing special education and related services on December 1 of the fiscal year for which the funds were appropriated, subject to the limitation in subparagraph (B); multiplied by

"(II) the per-child amount provided under such subpart for fiscal year 1994; and

"(ii) may use those funds to ensure that each local educational agency that received fiscal year 1994 funds under that subpart for children who had transferred from a State-operated or State-supported school or program assisted under that subpart receives, from the combination of funds available under subsection (f)(1)(A) and funds provided under paragraph (1) of this subsection, an amount for each such child, aged 3 through 21 to whom the agency was providing special education and related services on December 1 of the fiscal year for which the funds were appropriated, equal to the per-child amount the agency received under that subpart for fiscal year 1994.

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

"(4) REALLOCATION OF FUNDS.—If a State educational agency determines that a local educational agency is adequately providing a free appropriate public education to all children with disabilities residing in the area served by that agency with State and local funds, the State educational agency may reallocate any portion of the funds under this part that are not needed by that local agency to provide a free appropriate public education to other local educational agencies in the State that are not adequately providing special education and related services to all children with disabilities residing in the areas they serve.

"(h) DEFINITIONS.—For the purpose of this section—

"(1) the term 'average per-pupil expenditure in public elementary and secondary schools in the United States' means—

"(A) without regard to the source of funds—

"(i) the aggregate current expenditures, during the second fiscal year preceding the fiscal year for which the determination is made (or, if satisfactory data for that year are not available, during the most recent preceding fiscal year for which satisfactory data are available) of all local educational agencies in the 50 States and the District of Columbia); plus

"(ii) any direct expenditures by the State for the operation of those agencies; divided by

"(B) the aggregate number of children in average daily attendance to whom those agencies provided free public education during that preceding year; and

"(2) the term 'State' means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

"(i) USE OF AMOUNTS BY SECRETARY OF THE INTERIOR.—

"(1) PROVISION OF AMOUNTS FOR ASSISTANCE.—

"(A) IN GENERAL.—The Secretary of Education shall provide amounts to the Secretary of the Interior to meet the need for assistance for the education of children with disabilities on reservations aged 5 to 21, inclusive, enrolled in elementary and secondary schools for Indian children operated or funded by the Secretary of the Interior. The amount of such payment for any fiscal year shall be equal to 80 percent of the amount allotted under subsection (c) for that fiscal year.

"(B) CALCULATION OF NUMBER OF CHILDREN.—In the case of Indian students aged 3 to 5, inclusive, who are enrolled in programs affiliated with the Bureau of Indian Affairs (hereafter in this subsection referred to as 'BIA') schools and that are required by the States in which such schools are located to attain or maintain State accreditation, and which schools have such accreditation prior to the date of enactment of the Individuals with Disabilities Education Act Amendments of 1991, the school shall be allowed to count those children for the purpose of distribution of the funds provided under this paragraph to the Secretary of the Interior. The Secretary of the Interior shall be responsible for meeting all of the requirements of this part for these children, in accordance with paragraph (2).

"(C) ADDITIONAL REQUIREMENT.—With respect to all other children aged 3 to 21, inclusive, on reservations, the State educational agency shall be responsible for ensuring that all of the requirements of this part are implemented.

"(2) SUBMISSION OF INFORMATION.—The Secretary of Education may provide the Secretary of the Interior amounts under paragraph (1) for a fiscal year only if the Secretary of the Interior submits to the Secretary of Education information that—

"(A) demonstrates that the Department of the Interior meets the appropriate requirements, as determined by the Secretary of Education, of sections 612 (including monitoring and evaluation activities) and 613;

"(B) includes a description of how the Secretary of the Interior will coordinate the provision of services under this part with local educational agencies, tribes and tribal organizations, and other private and Federal service providers;

"(C) includes an assurance that there are public hearings, adequate notice of such hearings, and an opportunity for comment afforded to members of tribes, tribal governing bodies, and affected local school boards before the adoption of the policies, programs, and procedures described in subparagraph (A);

"(D) includes an assurance that the Secretary of the Interior will provide such information as the Secretary of Education may require to comply with section 618;

"(E) includes an assurance that the Secretary of the Interior and the Secretary of Health and Human Services have entered into a memorandum of agreement, to be provided to the Secretary of Education, for the coordination of services, resources, and personnel between their respective Federal, State, and local offices and with State and local educational agencies and other entities to facilitate the provision of services to Indian children with disabilities residing on or near reservations (such agreement shall provide for the apportionment of responsibilities and costs including, but not limited to, child find, evaluation, diagnosis, remediation or therapeutic measures, and (where appropriate) equipment and medical or personal supplies as needed for a child to remain in school or a program); and

"(F) includes an assurance that the Department of the Interior will cooperate with the Department of Education in its exercise of monitoring and oversight of this application, and any agreements entered into between the Secretary of the Interior and other entities under this part, and will fulfill its duties under this part.

Section 616(a) shall apply to the information described in this paragraph.

"(3) PAYMENTS FOR EDUCATION AND SERVICES FOR INDIAN CHILDREN WITH DISABILITIES AGED 3 THROUGH 5.—

"(A) IN GENERAL.—With funds appropriated under subsection (j), the Secretary of Education shall make payments to the Secretary of the Interior to be distributed to tribes or tribal organizations (as defined under section 4 of the Indian Self-Determination and Education Assistance Act) or consortia of the above to provide for the coordination of assistance for special education and related services for children with disabilities aged 3 through 5 on reservations served by elementary and secondary schools for Indian children operated or funded by the Department of the Interior. The amount of such payments under subparagraph (B) for any fiscal year shall be equal to 20 percent of the amount allotted under subsection (c).

"(B) DISTRIBUTION OF FUNDS.—The Secretary of the Interior shall distribute the total amount of the payment under subparagraph (A) by allocating to each tribe or tribal organization an amount based on the number of children with disabilities ages 3 through 5 residing on reservations as reported annually, divided by the total of those children served by all tribes or tribal organizations.

"(C) SUBMISSION OF INFORMATION.—To receive a payment under this paragraph, the tribe or tribal organization shall submit such figures to the Secretary of the Interior as required to determine the amounts to be allocated under subparagraph (B). This information shall be compiled and submitted to the Secretary of Education.

"(D) USE OF FUNDS.—The funds received by a tribe or tribal organization shall be used to assist in child find, screening, and other procedures for the early identification of children aged 3 through 5, parent training, and the provision of direct services. These activities may be carried out directly or through contracts or cooperative agreements

with the BIA, local educational agencies, and other public or private nonprofit organizations. The tribe or tribal organization is encouraged to involve Indian parents in the development and implementation of these activities. The above entities shall, as appropriate, make referrals to local, State, or Federal entities for the provision of services or further diagnosis.

"(E) BIENNIAL REPORT.—To be eligible to receive a grant pursuant to subparagraph (A), the tribe or tribal organization shall provide to the Secretary of the Interior a biennial report of activities undertaken under this paragraph, including the number of contracts and cooperative agreements entered into, the number of children contacted and receiving services for each year, and the estimated number of children needing services during the 2 years following the one in which the report is made. The Secretary of the Interior shall include a summary of this information on a biennial basis in the report to the Secretary of Education required under this subsection. The Secretary of Education may require any additional information from the Secretary of the Interior.

"(F) PROHIBITIONS.—None of the funds allocated under this paragraph may be used by the Secretary of the Interior for administrative purposes, including child count and the provision of technical assistance.

"(4) PLAN FOR COORDINATION OF SERVICES.—The Secretary of the Interior shall develop and implement a plan for the coordination of services for all Indian children with disabilities residing on reservations covered under this Act. Such plan shall provide for the coordination of services benefiting these children from whatever source, including tribes, the Indian Health Service, other BIA divisions, and other Federal agencies. In developing the plan, the Secretary of the Interior shall consult with all interested and involved parties. It shall be based on the needs of the children and the system best suited for meeting those needs, and may involve the establishment of cooperative agreements between the BIA, other Federal agencies, and other entities. The plan shall also be distributed upon request to States, State and local educational agencies, and other agencies providing services to infants, toddlers, and children with disabilities, to tribes, and to other interested parties.

"(5) ESTABLISHMENT OF ADVISORY BOARD.—To meet the requirements of section 612(a)(21), the Secretary of the Interior shall establish, not later than 6 months after the date of the enactment of the Individuals with Disabilities Education Act Amendments of 1997, under the BIA, an advisory board composed of individuals involved in or concerned with the education and provision of services to Indian infants, toddlers, children, and youth with disabilities, including Indians with disabilities, Indian parents or guardians of such children, teachers, service providers, State and local educational officials, representatives of tribes or tribal organizations, representatives from State Interagency Coordinating Councils under section 641 in States having reservations, and other members representing the various divisions and entities of the BIA. The chairperson shall

be selected by the Secretary of the Interior. The advisory board shall—

"(A) assist in the coordination of services within the BIA and with other local, State, and Federal agencies in the provision of education for infants, toddlers, and children with disabilities;

"(B) advise and assist the Secretary of the Interior in the performance of the Secretary's responsibilities described in this subsection;

"(C) develop and recommend policies concerning effective inter- and intra-agency collaboration, including modifications to regulations, and the elimination of barriers to inter- and intra-agency programs and activities;

"(D) provide assistance and disseminate information on best practices, effective program coordination strategies, and recommendations for improved educational programming for Indian infants, toddlers, and children with disabilities; and

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

"(6) ANNUAL REPORTS.—

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

"(B) AVAILABILITY.—The Secretary of the Interior shall make available to the Secretary of Education the report described in subparagraph (A).

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

20 USC 1412.

"SEC. 612. STATE ELIGIBILITY.

"(a) IN GENERAL.—A State is eligible for assistance under this part for a fiscal year if the State demonstrates to the satisfaction of the Secretary that the State has in effect policies and procedures to ensure that it meets each of the following conditions:

"(1) FREE APPROPRIATE PUBLIC EDUCATION.—

"(A) IN GENERAL.—A free appropriate public education is available to all children with disabilities residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school.

"(B) LIMITATION.—The obligation to make a free appropriate public education available to all children with disabilities does not apply with respect to children:

"(i) aged 3 through 5 and 18 through 21 in a State to the extent that its application to those children would be inconsistent with State law or practice, or the order of any court, respecting the provision of public education to children in those age ranges; and

"(ii) aged 18 through 21 to the extent that State law does not require that special education and related services under this part be provided to children with disabilities who, in the educational placement prior to their incarceration in an adult correctional facility:

"(I) were not actually identified as being a child with a disability under section 602(3) of this Act; or

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

"(2) FULL EDUCATIONAL OPPORTUNITY GOAL.—The State has established a goal of providing full educational opportunity to all children with disabilities and a detailed timetable for accomplishing that goal.

"(3) CHILD FIND.—

"(A) IN GENERAL.—All children with disabilities residing in the State, including children with disabilities attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated and a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services.

"(B) CONSTRUCTION.—Nothing in this Act requires that children be classified by their disability so long as each child who has a disability listed in section 602 and who, by reason of that disability, needs special education and related services is regarded as a child with a disability under this part.

"(4) INDIVIDUALIZED EDUCATION PROGRAM.—An individualized education program, or an individualized family service plan that meets the requirements of section 636(d), is developed, reviewed, and revised for each child with a disability in accordance with section 614(d).

"(5) LEAST RESTRICTIVE ENVIRONMENT.—

"(A) IN GENERAL.—To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

"(B) ADDITIONAL REQUIREMENT.—

"(i) IN GENERAL.—If the State uses a funding mechanism by which the State distributes State funds on the basis of the type of setting in which a child is served, the funding mechanism does not result in placements that violate the requirements of subparagraph (A).

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

"(6) PROCEDURAL SAFEGUARDS.—

"(A) IN GENERAL.—Children with disabilities and their parents are afforded the procedural safeguards required by section 615.

"(B) ADDITIONAL PROCEDURAL SAFEGUARDS.—Procedures to ensure that testing and evaluation materials and procedures utilized for the purposes of evaluation and placement of children with disabilities will be selected and administered so as not to be racially or culturally discriminatory. Such materials or procedures shall be provided and administered in the child's native language or mode of communication, unless it clearly is not feasible to do so, and no single procedure shall be the sole criterion for determining an appropriate educational program for a child.

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

"(8) CONFIDENTIALITY.—Agencies in the State comply with section 617(c) (relating to the confidentiality of records and information).

"(9) TRANSITION FROM PART C TO PRESCHOOL PROGRAMS.—Children participating in early-intervention programs assisted under part C, and who will participate in preschool programs assisted under this part, experience a smooth and effective transition to those preschool programs in a manner consistent with section 637(a)(8). By the third birthday of such a child, an individualized education program or, if consistent with sections 614(d)(2)(B) and 636(d), an individualized family service plan, has been developed and is being implemented for the child. The local educational agency will participate in transition planning conferences arranged by the designated lead agency under section 637(a)(8).

"(10) CHILDREN IN PRIVATE SCHOOLS.—

"(A) CHILDREN ENROLLED IN PRIVATE SCHOOLS BY THEIR PARENTS.—

"(i) IN GENERAL.—To the extent consistent with the number and location of children with disabilities in the State who are enrolled by their parents in private elementary and secondary schools, provision is made for the participation of those children in the program assisted or carried out under this part by providing for such children special education and related services in accordance with the following requirements, unless the Secretary has arranged for services to those children under subsection (f):

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

"(II) Such services may be provided to children with disabilities on the premises of private, including parochial, schools, to the extent consistent with law.

"(ii) CHILD-FIND REQUIREMENT.—The requirements of paragraph (3) of this subsection (relating to child find) shall apply with respect to children with disabilities in the State who are enrolled in private, including parochial, elementary and secondary schools.

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

"(i) IN GENERAL.—Children with disabilities in private schools and facilities are provided special education and related services, in accordance with an individualized education program, at no cost to their parents, if such children are placed in, or referred to, such schools or facilities by the State or appropriate local educational agency as the means of carrying out the requirements of this part or any other applicable law requiring the provision of special education and related services to all children with disabilities within such State.

"(ii) STANDARDS.—In all cases described in clause (i), the State educational agency shall determine whether such schools and facilities meet standards that apply to State and local educational agencies and that children so served have all the rights they would have if served by such agencies.

"(C) PAYMENT FOR EDUCATION OF CHILDREN ENROLLED IN PRIVATE SCHOOLS WITHOUT CONSENT OF OR REFERRAL BY THE PUBLIC AGENCY.—

"(i) IN GENERAL.—Subject to subparagraph (A), this part does not require a local educational agency to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made a free appropriate public education available to the child and the parents elected to place the child in such private school or facility.

"(ii) REIMBURSEMENT FOR PRIVATE SCHOOL PLACEMENT.—If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private elementary or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made a free appropriate public education available to the child in a timely manner prior to that enrollment.

"(iii) LIMITATION ON REIMBURSEMENT.—The cost of reimbursement described in clause (ii) may be reduced or denied—

"(I) if—

"(aa) at the most recent IEP meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP Team that they were rejecting the placement proposed by the public agency to provide a free appropriate public education to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or

"(bb) 10 business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the

public agency of the information described in division (aa);

"(II) if, prior to the parents' removal of the child from the public school, the public agency informed the parents, through the notice requirements described in section 615(b)(7), of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for such evaluation; or

"(III) upon a judicial finding of unreasonableness with respect to actions taken by the parents.

"(iv) EXCEPTION.—Notwithstanding the notice requirement in clause (iii)(I), the cost of reimbursement may not be reduced or denied for failure to provide such notice if—

"(I) the parent is illiterate and cannot write in English;

"(II) compliance with clause (iii)(I) would likely result in physical or serious emotional harm to the child;

"(III) the school prevented the parent from providing such notice; or

"(IV) the parents had not received notice, pursuant to section 615, of the notice requirement in clause (iii)(I).

"(11) STATE EDUCATIONAL AGENCY RESPONSIBLE FOR GENERAL SUPERVISION.—

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

"(i) the requirements of this part are met; and

"(ii) all educational programs for children with disabilities in the State, including all such programs administered by any other State or local agency—

"(I) are under the general supervision of individuals in the State who are responsible for educational programs for children with disabilities; and

"(II) meet the educational standards of the State educational agency.

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

"(C) EXCEPTION.—Notwithstanding subparagraphs (A) and (B), the Governor (or another individual pursuant to State law), consistent with State law, may assign to any public agency in the State the responsibility of ensuring that the requirements of this part are met with respect to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons.

"(12) OBLIGATIONS RELATED TO AND METHODS OF ENSURING SERVICES.—

"(A) ESTABLISHING RESPONSIBILITY FOR SERVICES.—The Chief Executive Officer or designee of the officer shall

ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each public agency described in subparagraph (B) and the State educational agency, in order to ensure that all services described in subparagraph (B)(i) that are needed to ensure a free appropriate public education are provided, including the provision of such services during the pendency of any dispute under clause (iii). Such agreement or mechanism shall include the following:

"(i) AGENCY FINANCIAL RESPONSIBILITY.—An identification of, or a method for defining, the financial responsibility of each agency for providing services described in subparagraph (B)(i) to ensure a free appropriate public education to children with disabilities, provided that the financial responsibility of each public agency described in subparagraph (B), including the State Medicaid agency and other public insurers of children with disabilities, shall precede the financial responsibility of the local educational agency (or the State agency responsible for developing the child's IEP).

"(ii) CONDITIONS AND TERMS OF REIMBURSEMENT.—The conditions, terms, and procedures under which a local educational agency shall be reimbursed by other agencies.

"(iii) INTERAGENCY DISPUTES.—Procedures for resolving interagency disputes (including procedures under which local educational agencies may initiate proceedings) under the agreement or other mechanism to secure reimbursement from other agencies or otherwise implement the provisions of the agreement or mechanism.

"(iv) COORDINATION OF SERVICES PROCEDURES.—Policies and procedures for agencies to determine and identify the interagency coordination responsibilities of each agency to promote the coordination and timely and appropriate delivery of services described in subparagraph (B)(i).

"(B) OBLIGATION OF PUBLIC AGENCY.—

"(i) IN GENERAL.—If any public agency other than an educational agency is otherwise obligated under Federal or State law, or assigned responsibility under State policy or pursuant to subparagraph (A), to provide or pay for any services that are also considered special education or related services (such as, but not limited to, services described in sections 602(1) relating to assistive technology devices, 602(2) relating to assistive technology services, 602(22) relating to related services, 602(29) relating to supplementary aids and services, and 602(30) relating to transition services) that are necessary for ensuring a free appropriate public education to children with disabilities within the State, such public agency shall fulfill that obligation or responsibility, either directly or through contract or other arrangement.

"(ii) REIMBURSEMENT FOR SERVICES BY PUBLIC AGENCY.—If a public agency other than an educational

agency fails to provide or pay for the special education and related services described in clause (i), the local educational agency (or State agency responsible for developing the child's IEP) shall provide or pay for such services to the child. Such local educational agency or State agency may then claim reimbursement for the services from the public agency that failed to provide or pay for such services and such public agency shall reimburse the local educational agency or State agency pursuant to the terms of the interagency agreement or other mechanism described in subparagraph (A)(i) according to the procedures established in such agreement pursuant to subparagraph (A)(ii).

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

"(i) state statute or regulation;

"(ii) signed agreements between respective agency officials that clearly identify the responsibilities of each agency relating to the provision of services; or

"(iii) other appropriate written methods as determined by the Chief Executive Officer of the State or designee of the officer.

"(13) PROCEDURAL REQUIREMENTS RELATING TO LOCAL EDUCATIONAL AGENCY ELIGIBILITY.—The State educational agency will not make a final determination that a local educational agency is not eligible for assistance under this part without first affording that agency reasonable notice and an opportunity for a hearing.

"(14) COMPREHENSIVE SYSTEM OF PERSONNEL DEVELOPMENT.—The State has in effect, consistent with the purposes of this Act and with section 635(a)(8), a comprehensive system of personnel development that is designed to ensure an adequate supply of qualified special education, regular education, and related services personnel that meets the requirements for a State improvement plan relating to personnel development in subsections (b)(2)(B) and (c)(3)(D) of section 653.

"(15) PERSONNEL STANDARDS.—

"(A) IN GENERAL.—The State educational agency has established and maintains standards to ensure that personnel necessary to carry out this part are appropriately and adequately prepared and trained.

"(B) STANDARDS DESCRIBED.—Such standards shall—

"(i) be consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services;

"(ii) to the extent the standards described in subparagraph (A) are not based on the highest requirements in the State applicable to a specific profession or discipline, the State is taking steps to require retraining or hiring of personnel that meet appropriate professional requirements in the State; and

"(iii) allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulations, or written policy,

in meeting the requirements of this part to be used to assist in the provision of special education and related services to children with disabilities under this part.

"(C) POLICY.—In implementing this paragraph, a State may adopt a policy that includes a requirement that local educational agencies in the State make an ongoing good-faith effort to recruit and hire appropriately and adequately trained personnel to provide special education and related services to children with disabilities, including, in a geographic area of the State where there is a shortage of such personnel, the most qualified individuals available who are making satisfactory progress toward completing applicable course work necessary to meet the standards described in subparagraph (B)(i), consistent with State law, and the steps described in subparagraph (B)(ii) within three years.

"(16) PERFORMANCE GOALS AND INDICATORS.—The State—

"(A) has established goals for the performance of children with disabilities in the State that—

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

"(ii) are consistent, to the maximum extent appropriate, with other goals and standards for children established by the State;

"(B) has established performance indicators the State will use to assess progress toward achieving those goals that, at a minimum, address the performance of children with disabilities on assessments, drop-out rates, and graduation rates;

"(C) will, every two years, report to the Secretary and the public on the progress of the State, and of children with disabilities in the State, toward meeting the goals established under subparagraph (A); and Reports.

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

"(17) PARTICIPATION IN ASSESSMENTS.—

"(A) IN GENERAL.—Children with disabilities are included in general State and district-wide assessment programs, with appropriate accommodations, where necessary. As appropriate, the State or local educational agency—

"(i) develops guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in State and district-wide assessment programs; and

"(ii) develops and, beginning not later than July 1, 2000, conducts those alternate assessments.

"(B) REPORTS.—The State educational agency makes available to the public, and reports to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled children, the following:

"(i) The number of children with disabilities participating in regular assessments.

"(ii) The number of those children participating in alternate assessments.

"(iii)(I) The performance of those children on regular assessments (beginning not later than July 1, 1998) and on alternate assessments (not later than July 1, 2000), if doing so would be statistically sound and would not result in the disclosure of performance results identifiable to individual children.

"(II) Data relating to the performance of children described under subclause (I) shall be disaggregated—

"(aa) for assessments conducted after July 1, 1998; and

"(bb) for assessments conducted before July 1, 1998, if the State is required to disaggregate such data prior to July 1, 1998.

"(18) SUPPLEMENTATION OF STATE, LOCAL, AND OTHER FEDERAL FUNDS.—

"(A) EXPENDITURES.—Funds paid to a State under this part will be expended in accordance with all the provisions of this part.

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

"(C) PROHIBITION AGAINST SUPPLANTATION AND CONDITIONS FOR WAIVER BY SECRETARY.—Except as provided in section 613, funds paid to a State under this part will be used to supplement the level of Federal, State, and local funds (including funds that are not under the direct control of State or local educational agencies) expended for special education and related services provided to children with disabilities under this part and in no case to supplant such Federal, State, and local funds, except that, where the State provides clear and convincing evidence that all children with disabilities have available to them a free appropriate public education, the Secretary may waive, in whole or in part, the requirements of this subparagraph if the Secretary concurs with the evidence provided by the State.

"(19) MAINTENANCE OF STATE FINANCIAL SUPPORT.—

"(A) IN GENERAL.—The State does not reduce the amount of State financial support for special education and related services for children with disabilities, or otherwise made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year.

"(B) REDUCTION OF FUNDS FOR FAILURE TO MAINTAIN SUPPORT.—The Secretary shall reduce the allocation of funds under section 611 for any fiscal year following the fiscal year in which the State fails to comply with the requirement of subparagraph (A) by the same amount by which the State fails to meet the requirement.

"(C) WAIVERS FOR EXCEPTIONAL OR UNCONTROLLABLE CIRCUMSTANCES.—The Secretary may waive the requirement of subparagraph (A) for a State, for one fiscal year at a time, if the Secretary determines that—

"(i) granting a waiver would be equitable due to exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State; or

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

"(D) SUBSEQUENT YEARS.—If, for any year, a State fails to meet the requirement of subparagraph (A), including any year for which the State is granted a waiver under subparagraph (C), the financial support required of the State in future years under subparagraph (A) shall be the amount that would have been required in the absence of that failure and not the reduced level of the State's support.

"(E) REGULATIONS.—

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

"(ii) The Secretary shall publish proposed regulations under clause (i) not later than 6 months after the date of the enactment of the Individuals with Disabilities Education Act Amendments of 1997, and shall issue final regulations under clause (i) not later than 1 year after such date of enactment.

"(20) PUBLIC PARTICIPATION.—Prior to the adoption of any policies and procedures needed to comply with this section (including any amendments to such policies and procedures), the State ensures that there are public hearings, adequate notice of the hearings, and an opportunity for comment available to the general public, including individuals with disabilities and parents of children with disabilities.

"(21) STATE ADVISORY PANEL.—

"(A) IN GENERAL.—The State has established and maintains an advisory panel for the purpose of providing policy guidance with respect to special education and related services for children with disabilities in the State.

"(B) MEMBERSHIP.—Such advisory panel shall consist of members appointed by the Governor, or any other official authorized under State law to make such appointments, that is representative of the State population and that is composed of individuals involved in, or concerned with, the education of children with disabilities, including—

"(i) parents of children with disabilities;

"(ii) individuals with disabilities;

"(iii) teachers;

"(iv) representatives of institutions of higher education that prepare special education and related services personnel;

"(v) State and local education officials;

"(vi) administrators of programs for children with disabilities;

"(vii) representatives of other State agencies involved in the financing or delivery of related services to children with disabilities;

"(viii) representatives of private schools and public charter schools;

"(ix) at least one representative of a vocational, community, or business organization concerned with the provision of transition services to children with disabilities; and

"(x) representatives from the State juvenile and adult corrections agencies.

"(C) SPECIAL RULE.—A majority of the members of the panel shall be individuals with disabilities or parents of children with disabilities.

"(D) DUTIES.—The advisory panel shall—

"(i) advise the State educational agency of unmet needs within the State in the education of children with disabilities;

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

"(iii) advise the State educational agency in developing evaluations and reporting on data to the Secretary under section 618;

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

"(v) advise the State educational agency in developing and implementing policies relating to the coordination of services for children with disabilities.

"(22) SUSPENSION AND EXPULSION RATES.—

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

"(i) among local educational agencies in the State; or

"(ii) compared to such rates for nondisabled children within such agencies.

"(B) REVIEW AND REVISION OF POLICIES.—If such discrepancies are occurring, the State educational agency reviews and, if appropriate, revises (or requires the affected State or local educational agency to revise) its policies, procedures, and practices relating to the development and implementation of IEPs, the use of behavioral interventions, and procedural safeguards, to ensure that such policies, procedures, and practices comply with this Act.

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

"(1) shall comply with any additional requirements of section 613(a), as if such agency were a local educational agency; and

"(2) may use amounts that are otherwise available to such agency under this part to serve those children without regard to section 613(a)(2)(A)(i) (relating to excess costs).

"(c) EXCEPTION FOR PRIOR STATE PLANS.—

"(1) IN GENERAL.—If a State has on file with the Secretary policies and procedures that demonstrate that such State meets

any requirement of subsection (a), including any policies and procedures filed under this part as in effect before the effective date of the Individuals with Disabilities Education Act Amendments of 1997, the Secretary shall consider such State to have met such requirement for purposes of receiving a grant under this part.

"(2) MODIFICATIONS MADE BY STATE.—Subject to paragraph (3), an application submitted by a State in accordance with this section shall remain in effect until the State submits to the Secretary such modifications as the State deems necessary. This section shall apply to a modification to an application to the same extent and in the same manner as this section applies to the original plan. Applicability.

"(3) MODIFICATIONS REQUIRED BY THE SECRETARY.—If, after the effective date of the Individuals with Disabilities Education Act Amendments of 1997, the provisions of this Act are amended (or the regulations developed to carry out this Act are amended), or there is a new interpretation of this Act by a Federal court or a State's highest court, or there is an official finding of noncompliance with Federal law or regulations, the Secretary may require a State to modify its application only to the extent necessary to ensure the State's compliance with this part.

"(d) APPROVAL BY THE SECRETARY.—

"(1) IN GENERAL.—If the Secretary determines that a State is eligible to receive a grant under this part, the Secretary shall notify the State of that determination.

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

"(A) with reasonable notice; and

"(B) with an opportunity for a hearing.

"(e) ASSISTANCE UNDER OTHER FEDERAL PROGRAMS.—Nothing in this title permits a State to reduce medical and other assistance available, or to alter eligibility, under titles V and XIX of the Social Security Act with respect to the provision of a free appropriate public education for children with disabilities in the State.

"(f) BY-PASS FOR CHILDREN IN PRIVATE SCHOOLS.—

"(1) IN GENERAL.—If, on the date of enactment of the Education of the Handicapped Act Amendments of 1983, a State educational agency is prohibited by law from providing for the participation in special programs of children with disabilities enrolled in private elementary and secondary schools as required by subsection (a)(10)(A), the Secretary shall, notwithstanding such provision of law, arrange for the provision of services to such children through arrangements which shall be subject to the requirements of such subsection.

"(2) PAYMENTS.—

"(A) DETERMINATION OF AMOUNTS.—If the Secretary arranges for services pursuant to this subsection, the Secretary, after consultation with the appropriate public and private school officials, shall pay to the provider of such services for a fiscal year an amount per child that does not exceed the amount determined by dividing—

"(i) the total amount received by the State under this part for such fiscal year; by

"(ii) the number of children with disabilities served in the prior year, as reported to the Secretary by the State under section 618.

"(B) WITHHOLDING OF CERTAIN AMOUNTS.—Pending final resolution of any investigation or complaint that could result in a determination under this subsection, the Secretary may withhold from the allocation of the affected State educational agency the amount the Secretary estimates would be necessary to pay the cost of services described in subparagraph (A).

"(C) PERIOD OF PAYMENTS.—The period under which payments are made under subparagraph (A) shall continue until the Secretary determines that there will no longer be any failure or inability on the part of the State educational agency to meet the requirements of subsection (a)(10)(A).

"(3) NOTICE AND HEARING.—

"(A) IN GENERAL.—The Secretary shall not take any final action under this subsection until the State educational agency affected by such action has had an opportunity, for at least 45 days after receiving written notice thereof, to submit written objections and to appear before the Secretary or the Secretary's designee to show cause why such action should not be taken.

"(B) REVIEW OF ACTION.—If a State educational agency is dissatisfied with the Secretary's final action after a proceeding under subparagraph (A), such agency may, not later than 60 days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings on which the Secretary based the Secretary's action, as provided in section 2112 of title 28, United States Code.

Records.

Records.

"(C) REVIEW OF FINDINGS OF FACT.—The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive, but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify the Secretary's previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

"(D) JURISDICTION OF COURT OF APPEALS; REVIEW BY UNITED STATES SUPREME COURT.—Upon the filing of a petition under subparagraph (B), the United States court of appeals shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

"SEC. 613. LOCAL EDUCATIONAL AGENCY ELIGIBILITY. 20 USC 1413.

"(a) IN GENERAL.—A local educational agency is eligible for assistance under this part for a fiscal year if such agency demonstrates to the satisfaction of the State educational agency that it meets each of the following conditions:

"(1) CONSISTENCY WITH STATE POLICIES.—The local educational agency, in providing for the education of children with disabilities within its jurisdiction, has in effect policies, procedures, and programs that are consistent with the State policies and procedures established under section 612.

"(2) USE OF AMOUNTS.—

"(A) IN GENERAL.—Amounts provided to the local educational agency under this part shall be expended in accordance with the applicable provisions of this part and—

"(i) shall be used only to pay the excess costs of providing special education and related services to children with disabilities;

"(ii) shall be used to supplement State, local, and other Federal funds and not to supplant such funds; and

"(iii) shall not be used, except as provided in subparagraphs (B) and (C), to reduce the level of expenditures for the education of children with disabilities made by the local educational agency from local funds below the level of those expenditures for the preceding fiscal year.

"(B) EXCEPTION.—Notwithstanding the restriction in subparagraph (A)(iii), a local educational agency may reduce the level of expenditures where such reduction is attributable to—

"(i) the voluntary departure, by retirement or otherwise, or departure for just cause, of special education personnel;

"(ii) a decrease in the enrollment of children with disabilities;

"(iii) the termination of the obligation of the agency, consistent with this part, to provide a program of special education to a particular child with a disability that is an exceptionally costly program, as determined by the State educational agency, because the child—

"(I) has left the jurisdiction of the agency;

"(II) has reached the age at which the obligation of the agency to provide a free appropriate public education to the child has terminated; or

"(III) no longer needs such program of special education; or

"(iv) the termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of school facilities.

"(C) TREATMENT OF FEDERAL FUNDS IN CERTAIN FISCAL YEARS.—

"(i) Notwithstanding clauses (ii) and (iii) of subparagraph (A), for any fiscal year for which amounts appropriated to carry out section 611 exceeds $4,100,000,000, a local educational agency may treat as local funds, for the purpose of such clauses, up

to 20 percent of the amount of funds it receives under this part that exceeds the amount it received under this part for the previous fiscal year.

"(ii) Notwithstanding clause (i), if a State educational agency determines that a local educational agency is not meeting the requirements of this part, the State educational agency may prohibit the local educational agency from treating funds received under this part as local funds under clause (i) for any fiscal year, only if it is authorized to do so by the State constitution or a State statute.

"(D) SCHOOLWIDE PROGRAMS UNDER TITLE I OF THE ESEA.—Notwithstanding subparagraph (A) or any other provision of this part, a local educational agency may use funds received under this part for any fiscal year to carry out a schoolwide program under section 1114 of the Elementary and Secondary Education Act of 1965, except that the amount so used in any such program shall not exceed—

"(i) the number of children with disabilities participating in the schoolwide program; multiplied by

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

"(II) the number of children with disabilities in the jurisdiction of that agency.

"(3) PERSONNEL DEVELOPMENT.—The local educational agency—

"(A) shall ensure that all personnel necessary to carry out this part are appropriately and adequately prepared, consistent with the requirements of section 653(c)(3)(D); and

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

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

"(A) SERVICES AND AIDS THAT ALSO BENEFIT NONDISABLED CHILDREN.—For the costs of special education and related services and supplementary aids and services provided in a regular class or other education-related setting to a child with a disability in accordance with the individualized education program of the child, even if one or more nondisabled children benefit from such services.

"(B) INTEGRATED AND COORDINATED SERVICES SYSTEM.—To develop and implement a fully integrated and coordinated services system in accordance with subsection (f).

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

"(A) serves children with disabilities attending those schools in the same manner as it serves children with disabilities in its other schools; and

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

"(6) INFORMATION FOR STATE EDUCATIONAL AGENCY.—The local educational agency shall provide the State educational agency with information necessary to enable the State educational agency to carry out its duties under this part, including, with respect to paragraphs (16) and (17) of section 612(a), information relating to the performance of children with disabilities participating in programs carried out under this part.

"(7) PUBLIC INFORMATION.—The local educational agency shall make available to parents of children with disabilities and to the general public all documents relating to the eligibility of such agency under this part.

"(b) EXCEPTION FOR PRIOR LOCAL PLANS.—

"(1) IN GENERAL.—If a local educational agency or State agency has on file with the State educational agency policies and procedures that demonstrate that such local educational agency, or such State agency, as the case may be, meets any requirement of subsection (a), including any policies and procedures filed under this part as in effect before the effective date of the Individuals with Disabilities Education Act Amendments of 1997, the State educational agency shall consider such local educational agency or State agency, as the case may be, to have met such requirement for purposes of receiving assistance under this part.

"(2) MODIFICATION MADE BY LOCAL EDUCATIONAL AGENCY.—Subject to paragraph (3), an application submitted by a local educational agency in accordance with this section shall remain in effect until it submits to the State educational agency such modifications as the local educational agency deems necessary.

"(3) MODIFICATIONS REQUIRED BY STATE EDUCATIONAL AGENCY.—If, after the effective date of the Individuals with Disabilities Education Act Amendments of 1997, the provisions of this Act are amended (or the regulations developed to carry out this Act are amended), or there is a new interpretation of this Act by Federal or State courts, or there is an official finding of noncompliance with Federal or State law or regulations, the State educational agency may require a local educational agency to modify its application only to the extent necessary to ensure the local educational agency's compliance with this part or State law.

"(c) NOTIFICATION OF LOCAL EDUCATIONAL AGENCY OR STATE AGENCY IN CASE OF INELIGIBILITY.—If the State educational agency determines that a local educational agency or State agency is not eligible under this section, the State educational agency shall notify the local educational agency or State agency, as the case may be, of that determination and shall provide such local educational agency or State agency with reasonable notice and an opportunity for a hearing.

"(d) LOCAL EDUCATIONAL AGENCY COMPLIANCE.—

"(1) IN GENERAL.—If the State educational agency, after reasonable notice and an opportunity for a hearing, finds that

a local educational agency or State agency that has been determined to be eligible under this section is failing to comply with any requirement described in subsection (a), the State educational agency shall reduce or shall not provide any further payments to the local educational agency or State agency until the State educational agency is satisfied that the local educational agency or State agency, as the case may be, is complying with that requirement.

"(2) ADDITIONAL REQUIREMENT.—Any State agency or local educational agency in receipt of a notice described in paragraph (1) shall, by means of public notice, take such measures as may be necessary to bring the pendency of an action pursuant to this subsection to the attention of the public within the jurisdiction of such agency.

"(3) CONSIDERATION.—In carrying out its responsibilities under paragraph (1), the State educational agency shall consider any decision made in a hearing held under section 615 that is adverse to the local educational agency or State agency involved in that decision.

"(e) JOINT ESTABLISHMENT OF ELIGIBILITY.—

"(1) JOINT ESTABLISHMENT.—

"(A) IN GENERAL.—A State educational agency may require a local educational agency to establish its eligibility jointly with another local educational agency if the State educational agency determines that the local educational agency would be ineligible under this section because the local educational agency would not be able to establish and maintain programs of sufficient size and scope to effectively meet the needs of children with disabilities.

"(B) CHARTER SCHOOL EXCEPTION.—A State educational agency may not require a charter school that is a local educational agency to jointly establish its eligibility under subparagraph (A) unless it is explicitly permitted to do so under the State's charter school statute.

"(2) AMOUNT OF PAYMENTS.—If a State educational agency requires the joint establishment of eligibility under paragraph (1), the total amount of funds made available to the affected local educational agencies shall be equal to the sum of the payments that each such local educational agency would have received under section 611(g) if such agencies were eligible for such payments.

"(3) REQUIREMENTS.—Local educational agencies that establish joint eligibility under this subsection shall—

"(A) adopt policies and procedures that are consistent with the State's policies and procedures under section 612(a); and

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

"(4) REQUIREMENTS FOR EDUCATIONAL SERVICE AGENCIES.—

"(A) IN GENERAL.—If an educational service agency is required by State law to carry out programs under this part, the joint responsibilities given to local educational agencies under this subsection shall—

"(i) not apply to the administration and disbursement of any payments received by that educational service agency; and

"(ii) be carried out only by that educational service agency.

"(B) ADDITIONAL REQUIREMENT.—Notwithstanding any other provision of this subsection, an educational service agency shall provide for the education of children with disabilities in the least restrictive environment, as required by section 612(a)(5).

"(f) COORDINATED SERVICES SYSTEM.—

"(1) IN GENERAL.—A local educational agency may not use more than 5 percent of the amount such agency receives under this part for any fiscal year, in combination with other amounts (which shall include amounts other than education funds), to develop and implement a coordinated services system designed to improve results for children and families, including children with disabilities and their families.

"(2) ACTIVITIES.—In implementing a coordinated services system under this subsection, a local educational agency may carry out activities that include—

"(A) improving the effectiveness and efficiency of service delivery, including developing strategies that promote accountability for results;

"(B) service coordination and case management that facilitates the linkage of individualized education programs under this part and individualized family service plans under part C with individualized service plans under multiple Federal and State programs, such as title I of the Rehabilitation Act of 1973 (vocational rehabilitation), title XIX of the Social Security Act (Medicaid), and title XVI of the Social Security Act (supplemental security income);

"(C) developing and implementing interagency financing strategies for the provision of education, health, mental health, and social services, including transition services and related services under this Act; and

"(D) interagency personnel development for individuals working on coordinated services.

"(3) COORDINATION WITH CERTAIN PROJECTS UNDER ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965.—If a local educational agency is carrying out a coordinated services project under title XI of the Elementary and Secondary Education Act of 1965 and a coordinated services project under this part in the same schools, such agency shall use amounts under this subsection in accordance with the requirements of that title.

"(g) SCHOOL-BASED IMPROVEMENT PLAN.—

"(1) IN GENERAL.—Each local educational agency may, in accordance with paragraph (2), use funds made available under this part to permit a public school within the jurisdiction of the local educational agency to design, implement, and evaluate a school-based improvement plan that is consistent with the purposes described in section 651(b) and that is designed to improve educational and transitional results for all children with disabilities and, as appropriate, for other children consistent with subparagraphs (A) and (B) of subsection (a)(4) in that public school.

"(2) AUTHORITY.—

"(A) IN GENERAL.—A State educational agency may grant authority to a local educational agency to permit

a public school described in paragraph (1) (through a school-based standing panel established under paragraph (4)(B)) to design, implement, and evaluate a school-based improvement plan described in paragraph (1) for a period not to exceed 3 years.

"(B) RESPONSIBILITY OF LOCAL EDUCATIONAL AGENCY.—If a State educational agency grants the authority described in subparagraph (A), a local educational agency that is granted such authority shall have the sole responsibility of oversight of all activities relating to the design, implementation, and evaluation of any school-based improvement plan that a public school is permitted to design under this subsection.

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

"(A) be designed to be consistent with the purposes described in section 651(b) and to improve educational and transitional results for all children with disabilities and, as appropriate, for other children consistent with subparagraphs (A) and (B) of subsection (a)(4), who attend the school for which the plan is designed and implemented;

"(B) be designed, evaluated, and, as appropriate, implemented by a school-based standing panel established in accordance with paragraph (4)(B);

"(C) include goals and measurable indicators to assess the progress of the public school in meeting such goals; and

"(D) ensure that all children with disabilities receive the services described in the individualized education programs of such children.

"(4) RESPONSIBILITIES OF THE LOCAL EDUCATIONAL AGENCY.—A local educational agency that is granted authority under paragraph (2) to permit a public school to design, implement, and evaluate a school-based improvement plan shall—

"(A) select each school under the jurisdiction of such agency that is eligible to design, implement, and evaluate such a plan;

"(B) require each school selected under subparagraph (A), in accordance with criteria established by such local educational agency under subparagraph (C), to establish a school-based standing panel to carry out the duties described in paragraph (3)(B);

"(C) establish—

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

"(ii) criteria that shall be used by a public school selected under subparagraph (A) in the establishment of a school-based standing panel to carry out the duties described in paragraph (3)(B) and that shall ensure that the membership of such panel reflects the diversity of the community in which the public school is located and includes, at a minimum—

"(I) parents of children with disabilities who attend such public school, including parents of

children with disabilities from unserved and underserved populations, as appropriate;

"(II) special education and general education teachers of such public school;

"(III) special education and general education administrators, or the designee of such administrators, of such public school; and

"(IV) related services providers who are responsible for providing services to the children with disabilities who attend such public school; and

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

"(D) disseminate the criteria established under subparagraph (C) to local school district personnel and local parent organizations within the jurisdiction of such local educational agency;

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

"(F) establish procedures for approval by such local educational agency of a school-based improvement plan designed under this subsection.

"(5) LIMITATION.—A school-based improvement plan described in paragraph (1) may be submitted to a local educational agency for approval only if a consensus with respect to any matter relating to the design, implementation, or evaluation of the goals of such plan is reached by the school-based standing panel that designed such plan.

"(6) ADDITIONAL REQUIREMENTS.—

"(A) PARENTAL INVOLVEMENT.—In carrying out the requirements of this subsection, a local educational agency shall ensure that the parents of children with disabilities are involved in the design, evaluation, and, where appropriate, implementation of school-based improvement plans in accordance with this subsection.

"(B) PLAN APPROVAL.—A local educational agency may approve a school-based improvement plan of a public school within the jurisdiction of such agency for a period of 3 years, if—

"(i) the approval is consistent with the policies, procedures, and practices established by such local educational agency and in accordance with this subsection; and

"(ii) a majority of parents of children who are members of the school-based standing panel, and a majority of other members of the school-based standing panel, that designed such plan agree in writing to such plan.

"(7) EXTENSION OF PLAN.—If a public school within the jurisdiction of a local educational agency meets the applicable requirements and criteria described in paragraphs (3) and (4) at the expiration of the 3-year approval period described in

paragraph (6)(B), such agency may approve a school-based improvement plan of such school for an additional 3-year period.

"(h) DIRECT SERVICES BY THE STATE EDUCATIONAL AGENCY.—

"(1) IN GENERAL.—A State educational agency shall use the payments that would otherwise have been available to a local educational agency or to a State agency to provide special education and related services directly to children with disabilities residing in the area served by that local agency, or for whom that State agency is responsible, if the State educational agency determines that the local education agency or State agency, as the case may be—

"(A) has not provided the information needed to establish the eligibility of such agency under this section;

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

"(C) is unable or unwilling to be consolidated with one or more local educational agencies in order to establish and maintain such programs; or

"(D) has one or more children with disabilities who can best be served by a regional or State program or service-delivery system designed to meet the needs of such children.

"(2) MANNER AND LOCATION OF EDUCATION AND SERVICES.—The State educational agency may provide special education and related services under paragraph (1) in such manner and at such locations (including regional or State centers) as the State agency considers appropriate. Such education and services shall be provided in accordance with this part.

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

"(1) all children with disabilities who are participating in programs and projects funded under this part receive a free appropriate public education, and that those children and their parents are provided all the rights and procedural safeguards described in this part; and

"(2) the agency meets such other conditions of this section as the Secretary determines to be appropriate.

"(j) DISCIPLINARY INFORMATION.—The State may require that a local educational agency include in the records of a child with a disability a statement of any current or previous disciplinary action that has been taken against the child and transmit such statement to the same extent that such disciplinary information is included in, and transmitted with, the student records of nondisabled children. The statement may include a description of any behavior engaged in by the child that required disciplinary action, a description of the disciplinary action taken, and any other information that is relevant to the safety of the child and other individuals involved with the child. If the State adopts such a policy, and the child transfers from one school to another, the transmission of any of the child's records must include both the child's current individualized education program and any such statement of current or previous disciplinary action that has been taken against the child.

"SEC. 614. EVALUATIONS, ELIGIBILITY DETERMINATIONS, INDIVIDUALIZED EDUCATION PROGRAMS, AND EDUCATIONAL PLACEMENTS. 20 USC 1414.

"(a) EVALUATIONS AND REEVALUATIONS.—

"(1) INITIAL EVALUATIONS.—

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

"(B) PROCEDURES.—Such initial evaluation shall consist of procedures—

"(i) to determine whether a child is a child with a disability (as defined in section 602(3)); and

"(ii) to determine the educational needs of such child.

"(C) PARENTAL CONSENT.—

"(i) IN GENERAL.—The agency proposing to conduct an initial evaluation to determine if the child qualifies as a child with a disability as defined in section 602(3)(A) or 602(3)(B) shall obtain an informed consent from the parent of such child before the evaluation is conducted. Parental consent for evaluation shall not be construed as consent for placement for receipt of special education and related services.

"(ii) REFUSAL.—If the parents of such child refuse consent for the evaluation, the agency may continue to pursue an evaluation by utilizing the mediation and due process procedures under section 615, except to the extent inconsistent with State law relating to parental consent.

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

"(A) if conditions warrant a reevaluation or if the child's parent or teacher requests a reevaluation, but at least once every 3 years; and

"(B) in accordance with subsections (b) and (c).

"(b) EVALUATION PROCEDURES.—

"(1) NOTICE.—The local educational agency shall provide notice to the parents of a child with a disability, in accordance with subsections (b)(3), (b)(4), and (c) of section 615, that describes any evaluation procedures such agency proposes to conduct.

"(2) CONDUCT OF EVALUATION.—In conducting the evaluation, the local educational agency shall—

"(A) use a variety of assessment tools and strategies to gather relevant functional and developmental information, including information provided by the parent, that may assist in determining whether the child is a child with a disability and the content of the child's individualized education program, including information related to enabling the child to be involved in and progress in the general curriculum or, for preschool children, to participate in appropriate activities;

"(B) not use any single procedure as the sole criterion for determining whether a child is a child with a disability or determining an appropriate educational program for the child; and

"(C) use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

"(3) ADDITIONAL REQUIREMENTS.—Each local educational agency shall ensure that—

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

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

"(ii) are provided and administered in the child's native language or other mode of communication, unless it is clearly not feasible to do so; and

"(B) any standardized tests that are given to the child—

"(i) have been validated for the specific purpose for which they are used;

"(ii) are administered by trained and knowledgeable personnel; and

"(iii) are administered in accordance with any instructions provided by the producer of such tests;

"(C) the child is assessed in all areas of suspected disability; and

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

"(4) DETERMINATION OF ELIGIBILITY.—Upon completion of administration of tests and other evaluation materials—

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

"(B) a copy of the evaluation report and the documentation of determination of eligibility will be given to the parent.

"(5) SPECIAL RULE FOR ELIGIBILITY DETERMINATION.—In making a determination of eligibility under paragraph (4)(A), a child shall not be determined to be a child with a disability if the determinant factor for such determination is lack of instruction in reading or math or limited English proficiency.

"(c) ADDITIONAL REQUIREMENTS FOR EVALUATION AND REEVALUATIONS.—

"(1) REVIEW OF EXISTING EVALUATION DATA.—As part of an initial evaluation (if appropriate) and as part of any reevaluation under this section, the IEP Team described in subsection (d)(1)(B) and other qualified professionals, as appropriate, shall—

"(A) review existing evaluation data on the child, including evaluations and information provided by the parents of the child, current classroom-based assessments and observations, and teacher and related services providers observation; and

"(B) on the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine—

"(i) whether the child has a particular category of disability, as described in section 602(3), or, in case of a reevaluation of a child, whether the child continues to have such a disability;

"(ii) the present levels of performance and educational needs of the child;

"(iii) whether the child needs special education and related services, or in the case of a reevaluation of a child, whether the child continues to need special education and related services; and

"(iv) whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the individualized education program of the child and to participate, as appropriate, in the general curriculum.

"(2) SOURCE OF DATA.—The local educational agency shall administer such tests and other evaluation materials as may be needed to produce the data identified by the IEP Team under paragraph (1)(B).

"(3) PARENTAL CONSENT.—Each local educational agency shall obtain informed parental consent, in accordance with subsection (a)(1)(C), prior to conducting any reevaluation of a child with a disability, except that such informed parent consent need not be obtained if the local educational agency can demonstrate that it had taken reasonable measures to obtain such consent and the child's parent has failed to respond.

"(4) REQUIREMENTS IF ADDITIONAL DATA ARE NOT NEEDED.—If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability, the local educational agency—

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

"(i) that determination and the reasons for it; and

"(ii) the right of such parents to request an assessment to determine whether the child continues to be a child with a disability; and

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

"(5) EVALUATIONS BEFORE CHANGE IN ELIGIBILITY.—A local educational agency shall evaluate a child with a disability in accordance with this section before determining that the child is no longer a child with a disability.

"(d) INDIVIDUALIZED EDUCATION PROGRAMS.—

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

"(A) INDIVIDUALIZED EDUCATION PROGRAM.—The term 'individualized education program' or 'IEP' means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with this section and that includes—

"(i) a statement of the child's present levels of educational performance, including—

"(I) how the child's disability affects the child's involvement and progress in the general curriculum; or

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

"(ii) a statement of measurable annual goals, including benchmarks or short-term objectives, related to—

"(I) meeting the child's needs that result from the child's disability to enable the child to be involved in and progress in the general curriculum; and

"(II) meeting each of the child's other educational needs that result from the child's disability;

"(iii) a statement of the special education and related services and supplementary aids and services to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child—

"(I) to advance appropriately toward attaining the annual goals;

"(II) to be involved and progress in the general curriculum in accordance with clause (i) and to participate in extracurricular and other nonacademic activities; and

"(III) to be educated and participate with other children with disabilities and nondisabled children in the activities described in this paragraph;

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

"(v)(I) a statement of any individual modifications in the administration of State or districtwide assessments of student achievement that are needed in order for the child to participate in such assessment; and

"(II) if the IEP Team determines that the child will not participate in a particular State or districtwide assessment of student achievement (or part of such an assessment), a statement of—

"(aa) why that assessment is not appropriate for the child; and

"(bb) how the child will be assessed;

"(vi) the projected date for the beginning of the services and modifications described in clause (iii), and the anticipated frequency, location, and duration of those services and modifications;

"(vii)(I) beginning at age 14, and updated annually, a statement of the transition service needs of the child under the applicable components of the child's IEP that focuses on the child's courses of study (such as participation in advanced-placement courses or a vocational education program);

"(II) beginning at age 16 (or younger, if determined appropriate by the IEP Team), a statement of needed

transition services for the child, including, when appropriate, a statement of the interagency responsibilities or any needed linkages; and

"(III) beginning at least one year before the child reaches the age of majority under State law, a statement that the child has been informed of his or her rights under this title, if any, that will transfer to the child on reaching the age of majority under section 615(m); and

"(viii) a statement of—

"(I) how the child's progress toward the annual goals described in clause (ii) will be measured; and

"(II) how the child's parents will be regularly informed (by such means as periodic report cards), at least as often as parents are informed of their nondisabled children's progress, of—

"(aa) their child's progress toward the annual goals described in clause (ii); and

"(bb) the extent to which that progress is sufficient to enable the child to achieve the goals by the end of the year.

"(B) INDIVIDUALIZED EDUCATION PROGRAM TEAM.—The term 'individualized education program team' or 'IEP Team' means a group of individuals composed of—

"(i) the parents of a child with a disability;

"(ii) at least one regular education teacher of such child (if the child is, or may be, participating in the regular education environment);

"(iii) at least one special education teacher, or where appropriate, at least one special education provider of such child;

"(iv) a representative of the local educational agency who—

"(I) is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;

"(II) is knowledgeable about the general curriculum; and

"(III) is knowledgeable about the availability of resources of the local educational agency;

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

"(vi) at the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and

"(vii) whenever appropriate, the child with a disability.

"(2) REQUIREMENT THAT PROGRAM BE IN EFFECT.—

"(A) IN GENERAL.—At the beginning of each school year, each local educational agency, State educational agency, or other State agency, as the case may be, shall

have in effect, for each child with a disability in its jurisdiction, an individualized education program, as defined in paragraph (1)(A).

"(B) PROGRAM FOR CHILD AGED 3 THROUGH 5.—In the case of a child with a disability aged 3 through 5 (or, at the discretion of the State educational agency, a 2 year-old child with a disability who will turn age 3 during the school year), an individualized family service plan that contains the material described in section 636, and that is developed in accordance with this section, may serve as the IEP of the child if using that plan as the IEP is—

"(i) consistent with State policy; and

"(ii) agreed to by the agency and the child's parents.

"(3) DEVELOPMENT OF IEP.—

"(A) IN GENERAL.—In developing each child's IEP, the IEP Team, subject to subparagraph (C), shall consider—

"(i) the strengths of the child and the concerns of the parents for enhancing the education of their child; and

"(ii) the results of the initial evaluation or most recent evaluation of the child.

"(B) CONSIDERATION OF SPECIAL FACTORS.—The IEP Team shall—

"(i) in the case of a child whose behavior impedes his or her learning or that of others, consider, when appropriate, strategies, including positive behavioral interventions, strategies, and supports to address that behavior;

"(ii) in the case of a child with limited English proficiency, consider the language needs of the child as such needs relate to the child's IEP;

"(iii) in the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP Team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child;

"(iv) consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and

"(v) consider whether the child requires assistive technology devices and services.

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

of the child, including the determination of appropriate positive behavioral interventions and strategies and the determination of supplementary aids and services, program modifications, and support for school personnel consistent with paragraph (1)(A)(iii).

"(4) REVIEW AND REVISION OF IEP.—

"(A) IN GENERAL.—The local educational agency shall ensure that, subject to subparagraph (B), the IEP Team—

"(i) reviews the child's IEP periodically, but not less than annually to determine whether the annual goals for the child are being achieved; and

"(ii) revises the IEP as appropriate to address—

"(I) any lack of expected progress toward the annual goals and in the general curriculum, where appropriate;

"(II) the results of any reevaluation conducted under this section;

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

"(IV) the child's anticipated needs; or

"(V) other matters.

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

"(5) FAILURE TO MEET TRANSITION OBJECTIVES.—If a participating agency, other than the local educational agency, fails to provide the transition services described in the IEP in accordance with paragraph (1)(A)(vii), the local educational agency shall reconvene the IEP Team to identify alternative strategies to meet the transition objectives for the child set out in that program.

"(6) CHILDREN WITH DISABILITIES IN ADULT PRISONS.—

"(A) IN GENERAL.—The following requirements do not apply to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons:

"(i) The requirements contained in section 612(a)(17) and paragraph (1)(A)(v) of this subsection (relating to participation of children with disabilities in general assessments).

"(ii) The requirements of subclauses (I) and (II) of paragraph (1)(A)(vii) of this subsection (relating to transition planning and transition services), do not apply with respect to such children whose eligibility under this part will end, because of their age, before they will be released from prison.

"(B) ADDITIONAL REQUIREMENT.—If a child with a disability is convicted as an adult under State law and incarcerated in an adult prison, the child's IEP Team may modify the child's IEP or placement notwithstanding the requirements of sections 612(a)(5)(A) and 614(d)(1)(A) if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

"(e) CONSTRUCTION.—Nothing in this section shall be construed to require the IEP Team to include information under one component of a child's IEP that is already contained under another component of such IEP.

"(f) EDUCATIONAL PLACEMENTS.—Each local educational agency or State educational agency shall ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child.

20 USC 1415.

"SEC. 615. PROCEDURAL SAFEGUARDS.

"(a) ESTABLISHMENT OF PROCEDURES.—Any State educational agency, State agency, or local educational agency that receives assistance under this part shall establish and maintain procedures in accordance with this section to ensure that children with disabilities and their parents are guaranteed procedural safeguards with respect to the provision of free appropriate public education by such agencies.

"(b) TYPES OF PROCEDURES.—The procedures required by this section shall include—

"(1) an opportunity for the parents of a child with a disability to examine all records relating to such child and to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to such child, and to obtain an independent educational evaluation of the child;

"(2) procedures to protect the rights of the child whenever the parents of the child are not known, the agency cannot, after reasonable efforts, locate the parents, or the child is a ward of the State, including the assignment of an individual (who shall not be an employee of the State educational agency, the local educational agency, or any other agency that is involved in the education or care of the child) to act as a surrogate for the parents;

"(3) written prior notice to the parents of the child whenever such agency—

"(A) proposes to initiate or change; or

"(B) refuses to initiate or change;

the identification, evaluation, or educational placement of the child, in accordance with subsection (c), or the provision of a free appropriate public education to the child;

"(4) procedures designed to ensure that the notice required by paragraph (3) is in the native language of the parents, unless it clearly is not feasible to do so;

"(5) an opportunity for mediation in accordance with subsection (e);

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

"(7) procedures that require the parent of a child with a disability, or the attorney representing the child, to provide notice (which shall remain confidential)—

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

"(B) that shall include—

"(i) the name of the child, the address of the residence of the child, and the name of the school the child is attending;

"(ii) a description of the nature of the problem of the child relating to such proposed initiation or change, including facts relating to such problem; and

"(iii) a proposed resolution of the problem to the extent known and available to the parents at the time; and

"(8) procedures that require the State educational agency to develop a model form to assist parents in filing a complaint in accordance with paragraph (7).

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

"(1) a description of the action proposed or refused by the agency;

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

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

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

"(5) a description of any other factors that are relevant to the agency's proposal or refusal;

"(6) a statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; and

"(7) sources for parents to contact to obtain assistance in understanding the provisions of this part.

"(d) PROCEDURAL SAFEGUARDS NOTICE.—

"(1) IN GENERAL.—A copy of the procedural safeguards available to the parents of a child with a disability shall be given to the parents, at a minimum—

"(A) upon initial referral for evaluation;

"(B) upon each notification of an individualized education program meeting and upon reevaluation of the child; and

"(C) upon registration of a complaint under subsection (b)(6).

"(2) CONTENTS.—The procedural safeguards notice shall include a full explanation of the procedural safeguards, written in the native language of the parents, unless it clearly is not feasible to do so, and written in an easily understandable manner, available under this section and under regulations promulgated by the Secretary relating to—

"(A) independent educational evaluation;

"(B) prior written notice;

"(C) parental consent;

"(D) access to educational records;

"(E) opportunity to present complaints;

"(F) the child's placement during pendency of due process proceedings;

"(G) procedures for students who are subject to placement in an interim alternative educational setting;

"(H) requirements for unilateral placement by parents of children in private schools at public expense;

"(I) mediation;

"(J) due process hearings, including requirements for disclosure of evaluation results and recommendations;

"(K) State-level appeals (if applicable in that State);

"(L) civil actions; and

"(M) attorneys' fees.

"(e) MEDIATION.—

"(1) IN GENERAL.—Any State educational agency or local educational agency that receives assistance under this part shall ensure that procedures are established and implemented to allow parties to disputes involving any matter described in subsection (b)(6) to resolve such disputes through a mediation process which, at a minimum, shall be available whenever a hearing is requested under subsection (f) or (k).

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

"(A) The procedures shall ensure that the mediation process—

"(i) is voluntary on the part of the parties;

"(ii) is not used to deny or delay a parent's right to a due process hearing under subsection (f), or to deny any other rights afforded under this part; and

"(iii) is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

"(B) A local educational agency or a State agency may establish procedures to require parents who choose not to use the mediation process to meet, at a time and location convenient to the parents, with a disinterested party who is under contract with—

"(i) a parent training and information center or community parent resource center in the State established under section 682 or 683; or

"(ii) an appropriate alternative dispute resolution entity;

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

"(C) The State shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.

"(D) The State shall bear the cost of the mediation process, including the costs of meetings described in subparagraph (B).

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

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

"(G) Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings and the parties to the mediation process may be required

to sign a confidentiality pledge prior to the commencement of such process.

"(f) IMPARTIAL DUE PROCESS HEARING.—

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

"(2) DISCLOSURE OF EVALUATIONS AND RECOMMENDATIONS.—

"(A) IN GENERAL.—At least 5 business days prior to a hearing conducted pursuant to paragraph (1), each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing.

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

"(3) LIMITATION ON CONDUCT OF HEARING.—A hearing conducted pursuant to paragraph (1) may not be conducted by an employee of the State educational agency or the local educational agency involved in the education or care of the child.

"(g) APPEAL.—If the hearing required by subsection (f) is conducted by a local educational agency, any party aggrieved by the findings and decision rendered in such a hearing may appeal such findings and decision to the State educational agency. Such agency shall conduct an impartial review of such decision. The officer conducting such review shall make an independent decision upon completion of such review.

"(h) SAFEGUARDS.—Any party to a hearing conducted pursuant to subsection (f) or (k), or an appeal conducted pursuant to subsection (g), shall be accorded—

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

"(2) the right to present evidence and confront, cross-examine, and compel the attendance of witnesses;

"(3) the right to a written, or, at the option of the parents, electronic verbatim record of such hearing; and

"(4) the right to written, or, at the option of the parents, electronic findings of fact and decisions (which findings and decisions shall be made available to the public consistent with the requirements of section 617(c) (relating to the confidentiality of data, information, and records) and shall also be transmitted to the advisory panel established pursuant to section 612(a)(21)).

"(i) ADMINISTRATIVE PROCEDURES.—

"(1) IN GENERAL.—

"(A) DECISION MADE IN HEARING.—A decision made in a hearing conducted pursuant to subsection (f) or (k) shall be final, except that any party involved in such hearing may appeal such decision under the provisions of subsection (g) and paragraph (2) of this subsection.

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"(B) DECISION MADE AT APPEAL.—A decision made under subsection (g) shall be final, except that any party may bring an action under paragraph (2) of this subsection.

"(2) RIGHT TO BRING CIVIL ACTION.—

"(A) IN GENERAL.—Any party aggrieved by the findings and decision made under subsection (f) or (k) who does not have the right to an appeal under subsection (g), and any party aggrieved by the findings and decision under this subsection, shall have the right to bring a civil action with respect to the complaint presented pursuant to this section, which action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy.

"(B) ADDITIONAL REQUIREMENTS.—In any action brought under this paragraph, the court—

"(i) shall receive the records of the administrative proceedings;

"(ii) shall hear additional evidence at the request of a party; and

"(iii) basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.

"(3) JURISDICTION OF DISTRICT COURTS; ATTORNEYS' FEES.—

"(A) IN GENERAL.—The district courts of the United States shall have jurisdiction of actions brought under this section without regard to the amount in controversy.

"(B) AWARD OF ATTORNEYS' FEES.—In any action or proceeding brought under this section, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to the parents of a child with a disability who is the prevailing party.

"(C) DETERMINATION OF AMOUNT OF ATTORNEYS' FEES.—Fees awarded under this paragraph shall be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this subsection.

"(D) PROHIBITION OF ATTORNEYS' FEES AND RELATED COSTS FOR CERTAIN SERVICES.—

"(i) Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under this section for services performed subsequent to the time of a written offer of settlement to a parent if—

"(I) the offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than 10 days before the proceeding begins;

"(II) the offer is not accepted within 10 days; and

"(III) the court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.

"(ii) Attorneys' fees may not be awarded relating to any meeting of the IEP Team unless such meeting

is convened as a result of an administrative proceeding or judicial action, or, at the discretion of the State, for a mediation described in subsection (e) that is conducted prior to the filing of a complaint under subsection (b)(6) or (k) of this section.

"(E) EXCEPTION TO PROHIBITION ON ATTORNEYS' FEES AND RELATED COSTS.—Notwithstanding subparagraph (D), an award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.

"(F) REDUCTION IN AMOUNT OF ATTORNEYS' FEES.—Except as provided in subparagraph (G), whenever the court finds that—

"(i) the parent, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;

"(ii) the amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;

"(iii) the time spent and legal services furnished were excessive considering the nature of the action or proceeding; or

"(iv) the attorney representing the parent did not provide to the school district the appropriate information in the due process complaint in accordance with subsection (b)(7);

the court shall reduce, accordingly, the amount of the attorneys' fees awarded under this section.

"(G) EXCEPTION TO REDUCTION IN AMOUNT OF ATTORNEYS' FEES.—The provisions of subparagraph (F) shall not apply in any action or proceeding if the court finds that the State or local educational agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of this section.

"(j) MAINTENANCE OF CURRENT EDUCATIONAL PLACEMENT.—Except as provided in subsection (k)(7), during the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents otherwise agree, the child shall remain in the then-current educational placement of such child, or, if applying for initial admission to a public school, shall, with the consent of the parents, be placed in the public school program until all such proceedings have been completed.

"(k) PLACEMENT IN ALTERNATIVE EDUCATIONAL SETTING.—

"(1) AUTHORITY OF SCHOOL PERSONNEL.—

"(A) School personnel under this section may order a change in the placement of a child with a disability—

"(i) to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 school days (to the extent such alternatives would be applied to children without disabilities); and

"(ii) to an appropriate interim alternative educational setting for the same amount of time that a child without a disability would be subject to discipline, but for not more than 45 days if—

"(I) the child carries a weapon to school or to a school function under the jurisdiction of a State or a local educational agency; or

"(II) the child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function under the jurisdiction of a State or local educational agency.

"(B) Either before or not later than 10 days after taking a disciplinary action described in subparagraph (A)—

"(i) if the local educational agency did not conduct a functional behavioral assessment and implement a behavioral intervention plan for such child before the behavior that resulted in the suspension described in subparagraph (A), the agency shall convene an IEP meeting to develop an assessment plan to address that behavior; or

"(ii) if the child already has a behavioral intervention plan, the IEP Team shall review the plan and modify it, as necessary, to address the behavior.

"(2) AUTHORITY OF HEARING OFFICER.—A hearing officer under this section may order a change in the placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 days if the hearing officer—

"(A) determines that the public agency has demonstrated by substantial evidence that maintaining the current placement of such child is substantially likely to result in injury to the child or to others;

"(B) considers the appropriateness of the child's current placement;

"(C) considers whether the public agency has made reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services; and

"(D) determines that the interim alternative educational setting meets the requirements of paragraph (3)(B).

"(3) DETERMINATION OF SETTING.—

"(A) IN GENERAL.—The alternative educational setting described in paragraph (1)(A)(ii) shall be determined by the IEP Team.

"(B) ADDITIONAL REQUIREMENTS.—Any interim alternative educational setting in which a child is placed under paragraph (1) or (2) shall—

"(i) be selected so as to enable the child to continue to participate in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the child's current IEP, that will enable the child to meet the goals set out in that IEP; and

"(ii) include services and modifications designed to address the behavior described in paragraph (1) or paragraph (2) so that it does not recur.

"(4) MANIFESTATION DETERMINATION REVIEW.—

"(A) IN GENERAL.—If a disciplinary action is contemplated as described in paragraph (1) or paragraph (2) for a behavior of a child with a disability described in either of those paragraphs, or if a disciplinary action involving a change of placement for more than 10 days is contemplated for a child with a disability who has engaged in other behavior that violated any rule or code of conduct of the local educational agency that applies to all children—

"(i) not later than the date on which the decision to take that action is made, the parents shall be notified of that decision and of all procedural safeguards accorded under this section; and

"(ii) immediately, if possible, but in no case later than 10 school days after the date on which the decision to take that action is made, a review shall be conducted of the relationship between the child's disability and the behavior subject to the disciplinary action.

"(B) INDIVIDUALS TO CARRY OUT REVIEW.—A review described in subparagraph (A) shall be conducted by the IEP Team and other qualified personnel.

"(C) CONDUCT OF REVIEW.—In carrying out a review described in subparagraph (A), the IEP Team may determine that the behavior of the child was not a manifestation of such child's disability only if the IEP Team—

"(i) first considers, in terms of the behavior subject to disciplinary action, all relevant information, including—

"(I) evaluation and diagnostic results, including such results or other relevant information supplied by the parents of the child;

"(II) observations of the child; and

"(III) the child's IEP and placement; and

"(ii) then determines that—

"(I) in relationship to the behavior subject to disciplinary action, the child's IEP and placement were appropriate and the special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with the child's IEP and placement;

"(II) the child's disability did not impair the ability of the child to understand the impact and consequences of the behavior subject to disciplinary action; and

"(III) the child's disability did not impair the ability of the child to control the behavior subject to disciplinary action.

"(5) DETERMINATION THAT BEHAVIOR WAS NOT MANIFESTATION OF DISABILITY.—

"(A) IN GENERAL.—If the result of the review described in paragraph (4) is a determination, consistent with paragraph (4)(C), that the behavior of the child with a disability was not a manifestation of the child's disability, the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner in which they would be applied to children without disabilities, except as provided in section 612(a)(1).

"(B) ADDITIONAL REQUIREMENT.—If the public agency initiates disciplinary procedures applicable to all children, the agency shall ensure that the special education and disciplinary records of the child with a disability are transmitted for consideration by the person or persons making the final determination regarding the disciplinary action.

"(6) PARENT APPEAL.—

"(A) IN GENERAL.—

"(i) If the child's parent disagrees with a determination that the child's behavior was not a manifestation of the child's disability or with any decision regarding placement, the parent may request a hearing.

"(ii) The State or local educational agency shall arrange for an expedited hearing in any case described in this subsection when requested by a parent.

"(B) REVIEW OF DECISION.—

"(i) In reviewing a decision with respect to the manifestation determination, the hearing officer shall determine whether the public agency has demonstrated that the child's behavior was not a manifestation of such child's disability consistent with the requirements of paragraph (4)(C).

"(ii) In reviewing a decision under paragraph (1)(A)(ii) to place the child in an interim alternative educational setting, the hearing officer shall apply the standards set out in paragraph (2).

"(7) PLACEMENT DURING APPEALS.—

"(A) IN GENERAL.—When a parent requests a hearing regarding a disciplinary action described in paragraph (1)(A)(ii) or paragraph (2) to challenge the interim alternative educational setting or the manifestation determination, the child shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period provided for in paragraph (1)(A)(ii) or paragraph (2), whichever occurs first, unless the parent and the State or local educational agency agree otherwise.

"(B) CURRENT PLACEMENT.—If a child is placed in an interim alternative educational setting pursuant to paragraph (1)(A)(ii) or paragraph (2) and school personnel propose to change the child's placement after expiration of the interim alternative placement, during the pendency of any proceeding to challenge the proposed change in placement, the child shall remain in the current placement (the child's placement prior to the interim alternative educational setting), except as provided in subparagraph (C).

"(C) EXPEDITED HEARING.—

"(i) If school personnel maintain that it is dangerous for the child to be in the current placement (placement prior to removal to the interim alternative education setting) during the pendency of the due process proceedings, the local educational agency may request an expedited hearing.

"(ii) In determining whether the child may be placed in the alternative educational setting or in

another appropriate placement ordered by the hearing officer, the hearing officer shall apply the standards set out in paragraph (2).

"(8) PROTECTIONS FOR CHILDREN NOT YET ELIGIBLE FOR SPECIAL EDUCATION AND RELATED SERVICES.—

"(A) IN GENERAL.—A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violated any rule or code of conduct of the local educational agency, including any behavior described in paragraph (1), may assert any of the protections provided for in this part if the local educational agency had knowledge (as determined in accordance with this paragraph) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

"(B) BASIS OF KNOWLEDGE.—A local educational agency shall be deemed to have knowledge that a child is a child with a disability if—

"(i) the parent of the child has expressed concern in writing (unless the parent is illiterate or has a disability that prevents compliance with the requirements contained in this clause) to personnel of the appropriate educational agency that the child is in need of special education and related services;

"(ii) the behavior or performance of the child demonstrates the need for such services;

"(iii) the parent of the child has requested an evaluation of the child pursuant to section 614; or

"(iv) the teacher of the child, or other personnel of the local educational agency, has expressed concern about the behavior or performance of the child to the director of special education of such agency or to other personnel of the agency.

"(C) CONDITIONS THAT APPLY IF NO BASIS OF KNOWLEDGE.—

"(i) IN GENERAL.—If a local educational agency does not have knowledge that a child is a child with a disability (in accordance with subparagraph (B)) prior to taking disciplinary measures against the child, the child may be subjected to the same disciplinary measures as measures applied to children without disabilities who engaged in comparable behaviors consistent with clause (ii).

"(ii) LIMITATIONS.—If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under paragraph (1) or (2), the evaluation shall be conducted in an expedited manner. If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency shall provide special education and related services in accordance with the provisions of this part, except that, pending the results of the evaluation, the child shall remain in the educational placement determined by school authorities.

"(9) REFERRAL TO AND ACTION BY LAW ENFORCEMENT AND JUDICIAL AUTHORITIES.—

"(A) Nothing in this part shall be construed to prohibit an agency from reporting a crime committed by a child with a disability to appropriate authorities or to prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.

"(B) An agency reporting a crime committed by a child with a disability shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom it reports the crime.

"(10) DEFINITIONS.—For purposes of this subsection, the following definitions apply:

"(A) CONTROLLED SUBSTANCE.—The term 'controlled substance' means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

"(B) ILLEGAL DRUG.—The term 'illegal drug'—

"(i) means a controlled substance; but

"(ii) does not include such a substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.

"(C) SUBSTANTIAL EVIDENCE.—The term 'substantial evidence' means beyond a preponderance of the evidence.

"(D) WEAPON.—The term 'weapon' has the meaning given the term 'dangerous weapon' under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code.

"(l) RULE OF CONSTRUCTION.—Nothing in this title shall be construed to restrict or limit the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under such laws seeking relief that is also available under this part, the procedures under subsections (f) and (g) shall be exhausted to the same extent as would be required had the action been brought under this part.

"(m) TRANSFER OF PARENTAL RIGHTS AT AGE OF MAJORITY.—

"(1) IN GENERAL.—A State that receives amounts from a grant under this part may provide that, when a child with a disability reaches the age of majority under State law (except for a child with a disability who has been determined to be incompetent under State law)—

"(A) the public agency shall provide any notice required by this section to both the individual and the parents;

"(B) all other rights accorded to parents under this part transfer to the child;

"(C) the agency shall notify the individual and the parents of the transfer of rights; and

"(D) all rights accorded to parents under this part transfer to children who are incarcerated in an adult or juvenile Federal, State, or local correctional institution.

"(2) SPECIAL RULE.—If, under State law, a child with a disability who has reached the age of majority under State law, who has not been determined to be incompetent, but who is determined not to have the ability to provide informed consent with respect to the educational program of the child, the State shall establish procedures for appointing the parent of the child, or if the parent is not available, another appropriate individual, to represent the educational interests of the child throughout the period of eligibility of the child under this part.

"SEC. 616. WITHHOLDING AND JUDICIAL REVIEW. 20 USC 1416.

"(a) WITHHOLDING OF PAYMENTS.—

"(1) IN GENERAL.—Whenever the Secretary, after reasonable notice and opportunity for hearing to the State educational agency involved (and to any local educational agency or State agency affected by any failure described in subparagraph (B)), finds—

"(A) that there has been a failure by the State to comply substantially with any provision of this part; or

"(B) that there is a failure to comply with any condition of a local educational agency's or State agency's eligibility under this part, including the terms of any agreement to achieve compliance with this part within the timelines specified in the agreement;

the Secretary shall, after notifying the State educational agency, withhold, in whole or in part, any further payments to the State under this part, or refer the matter for appropriate enforcement action, which may include referral to the Department of Justice.

"(2) NATURE OF WITHHOLDING.—If the Secretary withholds further payments under paragraph (1), the Secretary may determine that such withholding will be limited to programs or projects, or portions thereof, affected by the failure, or that the State educational agency shall not make further payments under this part to specified local educational agencies or State agencies affected by the failure. Until the Secretary is satisfied that there is no longer any failure to comply with the provisions of this part, as specified in subparagraph (A) or (B) of paragraph (1), payments to the State under this part shall be withheld in whole or in part, or payments by the State educational agency under this part shall be limited to local educational agencies and State agencies whose actions did not cause or were not involved in the failure, as the case may be. Any State educational agency, State agency, or local educational agency that has received notice under paragraph (1) shall, by means of a public notice, take such measures as may be necessary to bring the pendency of an action pursuant to this subsection to the attention of the public within the jurisdiction of such agency.

"(b) JUDICIAL REVIEW.—

"(1) IN GENERAL.—If any State is dissatisfied with the Secretary's final action with respect to the eligibility of the State under section 612, such State may, not later than 60 days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition

Records.

shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings upon which the Secretary's action was based, as provided in section 2112 of title 28, United States Code.

"(2) JURISDICTION; REVIEW BY UNITED STATES SUPREME COURT.—Upon the filing of such petition, the court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

"(3) STANDARD OF REVIEW.—The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive, but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify the Secretary's previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

"(c) DIVIDED STATE AGENCY RESPONSIBILITY.—For purposes of this section, where responsibility for ensuring that the requirements of this part are met with respect to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons is assigned to a public agency other than the State educational agency pursuant to section 612(a)(11)(C), the Secretary, in instances where the Secretary finds that the failure to comply substantially with the provisions of this part are related to a failure by the public agency, shall take appropriate corrective action to ensure compliance with this part, except—

"(1) any reduction or withholding of payments to the State is proportionate to the total funds allotted under section 611 to the State as the number of eligible children with disabilities in adult prisons under the supervision of the other public agency is proportionate to the number of eligible individuals with disabilities in the State under the supervision of the State educational agency; and

"(2) any withholding of funds under paragraph (1) shall be limited to the specific agency responsible for the failure to comply with this part.

20 USC 1417.

"SEC. 617. ADMINISTRATION.

"(a) RESPONSIBILITIES OF SECRETARY.—In carrying out this part, the Secretary shall—

"(1) cooperate with, and (directly or by grant or contract) furnish technical assistance necessary to, the State in matters relating to—

"(A) the education of children with disabilities; and

"(B) carrying out this part; and

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

"(b) RULES AND REGULATIONS.—In carrying out the provisions of this part, the Secretary shall issue regulations under this Act only to the extent that such regulations are necessary to ensure that there is compliance with the specific requirements of this Act.

"(c) CONFIDENTIALITY.—The Secretary shall take appropriate action, in accordance with the provisions of section 444 of the General Education Provisions Act (20 U.S.C. 1232g), to assure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by the Secretary and by State and local educational agencies pursuant to the provisions of this part.

"(d) PERSONNEL.—The Secretary is authorized to hire qualified personnel necessary to carry out the Secretary's duties under subsection (a) and under sections 618, 661, and 673 (or their predecessor authorities through October 1, 1997) without regard to the provisions of title 5, United States Code, relating to appointments in the competitive service and without regard to chapter 51 and subchapter III of chapter 53 of such title relating to classification and general schedule pay rates, except that no more than twenty such personnel shall be employed at any time.

"SEC. 618. PROGRAM INFORMATION. 20 USC 1418.

"(a) IN GENERAL.—Each State that receives assistance under this part, and the Secretary of the Interior, shall provide data each year to the Secretary—

"(1)(A) on—

"(i) the number of children with disabilities, by race, ethnicity, and disability category, who are receiving a free appropriate public education;

"(ii) the number of children with disabilities, by race and ethnicity, who are receiving early intervention services;

"(iii) the number of children with disabilities, by race, ethnicity, and disability category, who are participating in regular education;

"(iv) the number of children with disabilities, by race, ethnicity, and disability category, who are in separate classes, separate schools or facilities, or public or private residential facilities;

"(v) the number of children with disabilities, by race, ethnicity, and disability category, who, for each year of age from age 14 to 21, stopped receiving special education and related services because of program completion or other reasons and the reasons why those children stopped receiving special education and related services;

"(vi) the number of children with disabilities, by race and ethnicity, who, from birth through age 2, stopped receiving early intervention services because of program completion or for other reasons; and

"(vii)(I) the number of children with disabilities, by race, ethnicity, and disability category, who under subparagraphs (A)(ii) and (B) of section 615(k)(1), are removed to an interim alternative educational setting;

"(II) the acts or items precipitating those removals; and

"(III) the number of children with disabilities who are subject to long-term suspensions or expulsions; and

"(B) on the number of infants and toddlers, by race and ethnicity, who are at risk of having substantial developmental delays (as described in section 632), and who are receiving early intervention services under part C; and

"(2) on any other information that may be required by the Secretary.

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

"(c) DISPROPORTIONALITY.—

"(1) IN GENERAL.—Each State that receives assistance under this part, and the Secretary of the Interior, shall provide for the collection and examination of data to determine if significant disproportionality based on race is occurring in the State with respect to—

"(A) the identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment described in section 602(3); and

"(B) the placement in particular educational settings of such children.

"(2) REVIEW AND REVISION OF POLICIES, PRACTICES, AND PROCEDURES.—In the case of a determination of significant disproportionality with respect to the identification of children as children with disabilities, or the placement in particular educational settings of such children, in accordance with paragraph (1), the State or the Secretary of the Interior, as the case may be, shall provide for the review and, if appropriate, revision of the policies, procedures, and practices used in such identification or placement to ensure that such policies, procedures, and practices comply with the requirements of this Act.

20 USC 1419.

"SEC. 619. PRESCHOOL GRANTS.

"(a) IN GENERAL.—The Secretary shall provide grants under this section to assist States to provide special education and related services, in accordance with this part—

"(1) to children with disabilities aged 3 through 5, inclusive; and

"(2) at the State's discretion, to 2-year-old children with disabilities who will turn 3 during the school year.

"(b) ELIGIBILITY.—A State shall be eligible for a grant under this section if such State—

"(1) is eligible under section 612 to receive a grant under this part; and

"(2) makes a free appropriate public education available to all children with disabilities, aged 3 through 5, residing in the State.

"(c) ALLOCATIONS TO STATES.—

"(1) IN GENERAL.—After reserving funds for studies and evaluations under section 674(e), the Secretary shall allocate the remaining amount among the States in accordance with paragraph (2) or (3), as the case may be.

"(2) INCREASE IN FUNDS.—If the amount available for allocations to States under paragraph (1) is equal to or greater than the amount allocated to the States under this section for the preceding fiscal year, those allocations shall be calculated as follows:

"(A)(i) Except as provided in subparagraph (B), the Secretary shall—

"(I) allocate to each State the amount it received for fiscal year 1997;

"(II) allocate 85 percent of any remaining funds to States on the basis of their relative populations of children aged 3 through 5; and

"(III) allocate 15 percent of those remaining funds to States on the basis of their relative populations of all children aged 3 through 5 who are living in poverty.

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

"(B) Notwithstanding subparagraph (A), allocations under this paragraph shall be subject to the following:

"(i) No State's allocation shall be less than its allocation for the preceding fiscal year.

"(ii) No State's allocation shall be less than the greatest of—

"(I) the sum of—

"(aa) the amount it received for fiscal year 1997; and

"(bb) one third of one percent of the amount by which the amount appropriated under subsection (j) exceeds the amount appropriated under this section for fiscal year 1997;

"(II) the sum of—

"(aa) the amount it received for the preceding fiscal year; and

"(bb) that amount multiplied by the percentage by which the increase in the funds appropriated from the preceding fiscal year exceeds 1.5 percent; or

"(III) the sum of—

"(aa) the amount it received for the preceding fiscal year; and

"(bb) that amount multiplied by 90 percent of the percentage increase in the amount appropriated from the preceding fiscal year.

"(iii) Notwithstanding clause (ii), no State's allocation under this paragraph shall exceed the sum of—

"(I) the amount it received for the preceding fiscal year; and

"(II) that amount multiplied by the sum of 1.5 percent and the percentage increase in the amount appropriated.

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

"(3) DECREASE IN FUNDS.—If the amount available for allocations to States under paragraph (1) is less than the amount allocated to the States under this section for the preceding fiscal year, those allocations shall be calculated as follows:

"(A) If the amount available for allocations is greater than the amount allocated to the States for fiscal year 1997, each State shall be allocated the sum of—

"(i) the amount it received for fiscal year 1997; and

"(ii) an amount that bears the same relation to any remaining funds as the increase the State received for the preceding fiscal year over fiscal year 1997 bears to the total of all such increases for all States.

"(B) If the amount available for allocations is equal to or less than the amount allocated to the States for fiscal year 1997, each State shall be allocated the amount it received for that year, ratably reduced, if necessary.

"(4) OUTLYING AREAS.—The Secretary shall increase the fiscal year 1998 allotment of each outlying area under section 611 by at least the amount that that area received under this section for fiscal year 1997.

"(d) RESERVATION FOR STATE ACTIVITIES.—

"(1) IN GENERAL.—Each State may retain not more than the amount described in paragraph (2) for administration and other State-level activities in accordance with subsections (e) and (f).

"(2) AMOUNT DESCRIBED.—For each fiscal year, the Secretary shall determine and report to the State educational agency an amount that is 25 percent of the amount the State received under this section for fiscal year 1997, cumulatively adjusted by the Secretary for each succeeding fiscal year by the lesser of—

"(A) the percentage increase, if any, from the preceding fiscal year in the State's allocation under this section; or

"(B) the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor.

"(e) STATE ADMINISTRATION.—

"(1) IN GENERAL.—For the purpose of administering this section (including the coordination of activities under this part with, and providing technical assistance to, other programs that provide services to children with disabilities) a State may use not more than 20 percent of the maximum amount it may retain under subsection (d) for any fiscal year.

"(2) ADMINISTRATION OF PART C.—Funds described in paragraph (1) may also be used for the administration of part C of this Act, if the State educational agency is the lead agency for the State under that part.

"(f) OTHER STATE-LEVEL ACTIVITIES.—Each State shall use any funds it retains under subsection (d) and does not use for administration under subsection (e)—

"(1) for support services (including establishing and implementing the mediation process required by section 615(e)), which may benefit children with disabilities younger than 3 or older than 5 as long as those services also benefit children with disabilities aged 3 through 5;

"(2) for direct services for children eligible for services under this section;

"(3) to develop a State improvement plan under subpart 1 of part D;

"(4) for activities at the State and local levels to meet the performance goals established by the State under section

612(a)(16) and to support implementation of the State improvement plan under subpart 1 of part D if the State receives funds under that subpart; or

"(5) to supplement other funds used to develop and implement a Statewide coordinated services system designed to improve results for children and families, including children with disabilities and their families, but not to exceed one percent of the amount received by the State under this section for a fiscal year.

"(g) SUBGRANTS TO LOCAL EDUCATIONAL AGENCIES.—

"(1) SUBGRANTS REQUIRED.—Each State that receives a grant under this section for any fiscal year shall distribute any of the grant funds that it does not reserve under subsection (d) to local educational agencies in the State that have established their eligibility under section 613, as follows:

"(A) BASE PAYMENTS.—The State shall first award each agency described in paragraph (1) the amount that agency would have received under this section for fiscal year 1997 if the State had distributed 75 percent of its grant for that year under section 619(c)(3), as then in effect.

"(B) ALLOCATION OF REMAINING FUNDS.—After making allocations under subparagraph (A), the State shall—

"(i) allocate 85 percent of any remaining funds to those agencies on the basis of the relative numbers of children enrolled in public and private elementary and secondary schools within the agency's jurisdiction; and

"(ii) allocate 15 percent of those remaining funds to those agencies in accordance with their relative numbers of children living in poverty, as determined by the State educational agency.

"(2) REALLOCATION OF FUNDS.—If a State educational agency determines that a local educational agency is adequately providing a free appropriate public education to all children with disabilities aged 3 through 5 residing in the area served by that agency with State and local funds, the State educational agency may reallocate any portion of the funds under this section that are not needed by that local agency to provide a free appropriate public education to other local educational agencies in the State that are not adequately providing special education and related services to all children with disabilities aged 3 through 5 residing in the areas they serve.

"(h) PART C INAPPLICABLE.—Part C of this Act does not apply to any child with a disability receiving a free appropriate public education, in accordance with this part, with funds received under this section.

"(i) DEFINITION.—For the purpose of this section, the term 'State' means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

"(j) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this section, there are authorized to be appropriated to the Secretary $500,000,000 for fiscal year 1998 and such sums as may be necessary for each subsequent fiscal year.

"PART C—INFANTS AND TODDLERS WITH DISABILITIES

20 USC 1431. **"SEC. 631. FINDINGS AND POLICY.**

"(a) FINDINGS.—The Congress finds that there is an urgent and substantial need—

"(1) to enhance the development of infants and toddlers with disabilities and to minimize their potential for developmental delay;

"(2) to reduce the educational costs to our society, including our Nation's schools, by minimizing the need for special education and related services after infants and toddlers with disabilities reach school age;

"(3) to minimize the likelihood of institutionalization of individuals with disabilities and maximize the potential for their independently living in society;

"(4) to enhance the capacity of families to meet the special needs of their infants and toddlers with disabilities; and

"(5) to enhance the capacity of State and local agencies and service providers to identify, evaluate, and meet the needs of historically underrepresented populations, particularly minority, low-income, inner-city, and rural populations.

"(b) POLICY.—It is therefore the policy of the United States to provide financial assistance to States—

"(1) to develop and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system that provides early intervention services for infants and toddlers with disabilities and their families;

"(2) to facilitate the coordination of payment for early intervention services from Federal, State, local, and private sources (including public and private insurance coverage);

"(3) to enhance their capacity to provide quality early intervention services and expand and improve existing early intervention services being provided to infants and toddlers with disabilities and their families; and

"(4) to encourage States to expand opportunities for children under 3 years of age who would be at risk of having substantial developmental delay if they did not receive early intervention services.

20 USC 1432. **"SEC. 632. DEFINITIONS.**

"As used in this part:

"(1) AT-RISK INFANT OR TODDLER.—The term 'at-risk infant or toddler' means an individual under 3 years of age who would be at risk of experiencing a substantial developmental delay if early intervention services were not provided to the individual.

"(2) COUNCIL.—The term 'council' means a State interagency coordinating council established under section 641.

"(3) DEVELOPMENTAL DELAY.—The term 'developmental delay', when used with respect to an individual residing in a State, has the meaning given such term by the State under section 635(a)(1).

"(4) EARLY INTERVENTION SERVICES.—The term 'early intervention services' means developmental services that—

"(A) are provided under public supervision;

"(B) are provided at no cost except where Federal or State law provides for a system of payments by families, including a schedule of sliding fees;

"(C) are designed to meet the developmental needs of an infant or toddler with a disability in any one or more of the following areas—

"(i) physical development;

"(ii) cognitive development;

"(iii) communication development;

"(iv) social or emotional development; or

"(v) adaptive development;

"(D) meet the standards of the State in which they are provided, including the requirements of this part;

"(E) include—

"(i) family training, counseling, and home visits;

"(ii) special instruction;

"(iii) speech-language pathology and audiology services;

"(iv) occupational therapy;

"(v) physical therapy;

"(vi) psychological services;

"(vii) service coordination services;

"(viii) medical services only for diagnostic or evaluation purposes;

"(ix) early identification, screening, and assessment services;

"(x) health services necessary to enable the infant or toddler to benefit from the other early intervention services;

"(xi) social work services;

"(xii) vision services;

"(xiii) assistive technology devices and assistive technology services; and

"(xiv) transportation and related costs that are necessary to enable an infant or toddler and the infant's or toddler's family to receive another service described in this paragraph;

"(F) are provided by qualified personnel, including—

"(i) special educators;

"(ii) speech-language pathologists and audiologists;

"(iii) occupational therapists;

"(iv) physical therapists;

"(v) psychologists;

"(vi) social workers;

"(vii) nurses;

"(viii) nutritionists;

"(ix) family therapists;

"(x) orientation and mobility specialists; and

"(xi) pediatricians and other physicians;

"(G) to the maximum extent appropriate, are provided in natural environments, including the home, and community settings in which children without disabilities participate; and

"(H) are provided in conformity with an individualized family service plan adopted in accordance with section 636.

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"(5) INFANT OR TODDLER WITH A DISABILITY.—The term 'infant or toddler with a disability'—

"(A) means an individual under 3 years of age who needs early intervention services because the individual—

"(i) is experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures in one or more of the areas of cognitive development, physical development, communication development, social or emotional development, and adaptive development; or

"(ii) has a diagnosed physical or mental condition which has a high probability of resulting in developmental delay; and

"(B) may also include, at a State's discretion, at-risk infants and toddlers.

Grants.
20 USC 1433.

"SEC. 633. GENERAL AUTHORITY.

"The Secretary shall, in accordance with this part, make grants to States (from their allotments under section 643) to assist each State to maintain and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system to provide early intervention services for infants and toddlers with disabilities and their families.

20 USC 1434.

"SEC. 634. ELIGIBILITY.

"In order to be eligible for a grant under section 633, a State shall demonstrate to the Secretary that the State—

"(1) has adopted a policy that appropriate early intervention services are available to all infants and toddlers with disabilities in the State and their families, including Indian infants and toddlers with disabilities and their families residing on a reservation geographically located in the State; and

"(2) has in effect a statewide system that meets the requirements of section 635.

20 USC 1435.

"SEC. 635. REQUIREMENTS FOR STATEWIDE SYSTEM.

"(a) IN GENERAL.—A statewide system described in section 633 shall include, at a minimum, the following components:

"(1) A definition of the term 'developmental delay' that will be used by the State in carrying out programs under this part.

"(2) A State policy that is in effect and that ensures that appropriate early intervention services are available to all infants and toddlers with disabilities and their families, including Indian infants and toddlers and their families residing on a reservation geographically located in the State.

"(3) A timely, comprehensive, multidisciplinary evaluation of the functioning of each infant or toddler with a disability in the State, and a family-directed identification of the needs of each family of such an infant or toddler, to appropriately assist in the development of the infant or toddler.

"(4) For each infant or toddler with a disability in the State, an individualized family service plan in accordance with section 636, including service coordination services in accordance with such service plan.

"(5) A comprehensive child find system, consistent with part B, including a system for making referrals to service

providers that includes timelines and provides for participation by primary referral sources.

"(6) A public awareness program focusing on early identification of infants and toddlers with disabilities, including the preparation and dissemination by the lead agency designated or established under paragraph (10) to all primary referral sources, especially hospitals and physicians, of information for parents on the availability of early intervention services, and procedures for determining the extent to which such sources disseminate such information to parents of infants and toddlers.

"(7) A central directory which includes information on early intervention services, resources, and experts available in the State and research and demonstration projects being conducted in the State.

"(8) A comprehensive system of personnel development, including the training of paraprofessionals and the training of primary referral sources respecting the basic components of early intervention services available in the State, that is consistent with the comprehensive system of personnel development described in section 612(a)(14) and may include—

"(A) implementing innovative strategies and activities for the recruitment and retention of early education service providers;

"(B) promoting the preparation of early intervention providers who are fully and appropriately qualified to provide early intervention services under this part;

"(C) training personnel to work in rural and inner-city areas; and

"(D) training personnel to coordinate transition services for infants and toddlers served under this part from an early intervention program under this part to preschool or other appropriate services.

"(9) Subject to subsection (b), policies and procedures relating to the establishment and maintenance of standards to ensure that personnel necessary to carry out this part are appropriately and adequately prepared and trained, including—

"(A) the establishment and maintenance of standards which are consistent with any State-approved or recognized certification, licensing, registration, or other comparable requirements which apply to the area in which such personnel are providing early intervention services; and

"(B) to the extent such standards are not based on the highest requirements in the State applicable to a specific profession or discipline, the steps the State is taking to require the retraining or hiring of personnel that meet appropriate professional requirements in the State;

except that nothing in this part, including this paragraph, prohibits the use of paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulations, or written policy, to assist in the provision of early intervention services to infants and toddlers with disabilities under this part.

"(10) A single line of responsibility in a lead agency designated or established by the Governor for carrying out—

"(A) the general administration and supervision of programs and activities receiving assistance under section 633, and the monitoring of programs and activities used by

the State to carry out this part, whether or not such programs or activities are receiving assistance made available under section 633, to ensure that the State complies with this part;

"(B) the identification and coordination of all available resources within the State from Federal, State, local, and private sources;

"(C) the assignment of financial responsibility in accordance with section 637(a)(2) to the appropriate agencies;

"(D) the development of procedures to ensure that services are provided to infants and toddlers with disabilities and their families under this part in a timely manner pending the resolution of any disputes among public agencies or service providers;

"(E) the resolution of intra- and interagency disputes; and

"(F) the entry into formal interagency agreements that define the financial responsibility of each agency for paying for early intervention services (consistent with State law) and procedures for resolving disputes and that include all additional components necessary to ensure meaningful cooperation and coordination.

"(11) A policy pertaining to the contracting or making of other arrangements with service providers to provide early intervention services in the State, consistent with the provisions of this part, including the contents of the application used and the conditions of the contract or other arrangements.

"(12) A procedure for securing timely reimbursements of funds used under this part in accordance with section 640(a).

"(13) Procedural safeguards with respect to programs under this part, as required by section 639.

"(14) A system for compiling data requested by the Secretary under section 618 that relates to this part.

"(15) A State interagency coordinating council that meets the requirements of section 641.

"(16) Policies and procedures to ensure that, consistent with section 636(d)(5)—

"(A) to the maximum extent appropriate, early intervention services are provided in natural environments; and

"(B) the provision of early intervention services for any infant or toddler occurs in a setting other than a natural environment only when early intervention cannot be achieved satisfactorily for the infant or toddler in a natural environment.

"(b) POLICY.—In implementing subsection (a)(9), a State may adopt a policy that includes making ongoing good-faith efforts to recruit and hire appropriately and adequately trained personnel to provide early intervention services to infants and toddlers with disabilities, including, in a geographic area of the State where there is a shortage of such personnel, the most qualified individuals available who are making satisfactory progress toward completing applicable course work necessary to meet the standards described in subsection (a)(9), consistent with State law within 3 years.

"SEC. 636. INDIVIDUALIZED FAMILY SERVICE PLAN. 20 USC 1436.

"(a) ASSESSMENT AND PROGRAM DEVELOPMENT.—A statewide system described in section 633 shall provide, at a minimum, for each infant or toddler with a disability, and the infant's or toddler's family, to receive—

"(1) a multidisciplinary assessment of the unique strengths and needs of the infant or toddler and the identification of services appropriate to meet such needs;

"(2) a family-directed assessment of the resources, priorities, and concerns of the family and the identification of the supports and services necessary to enhance the family's capacity to meet the developmental needs of the infant or toddler; and

"(3) a written individualized family service plan developed by a multidisciplinary team, including the parents, as required by subsection (e).

"(b) PERIODIC REVIEW.—The individualized family service plan shall be evaluated once a year and the family shall be provided a review of the plan at 6-month intervals (or more often where appropriate based on infant or toddler and family needs).

"(c) PROMPTNESS AFTER ASSESSMENT.—The individualized family service plan shall be developed within a reasonable time after the assessment required by subsection (a)(1) is completed. With the parents' consent, early intervention services may commence prior to the completion of the assessment.

"(d) CONTENT OF PLAN.—The individualized family service plan shall be in writing and contain—

"(1) a statement of the infant's or toddler's present levels of physical development, cognitive development, communication development, social or emotional development, and adaptive development, based on objective criteria;

"(2) a statement of the family's resources, priorities, and concerns relating to enhancing the development of the family's infant or toddler with a disability;

"(3) a statement of the major outcomes expected to be achieved for the infant or toddler and the family, and the criteria, procedures, and timelines used to determine the degree to which progress toward achieving the outcomes is being made and whether modifications or revisions of the outcomes or services are necessary;

"(4) a statement of specific early intervention services necessary to meet the unique needs of the infant or toddler and the family, including the frequency, intensity, and method of delivering services;

"(5) a statement of the natural environments in which early intervention services shall appropriately be provided, including a justification of the extent, if any, to which the services will not be provided in a natural environment;

"(6) the projected dates for initiation of services and the anticipated duration of the services;

"(7) the identification of the service coordinator from the profession most immediately relevant to the infant's or toddler's or family's needs (or who is otherwise qualified to carry out all applicable responsibilities under this part) who will be responsible for the implementation of the plan and coordination with other agencies and persons; and

"(8) the steps to be taken to support the transition of the toddler with a disability to preschool or other appropriate services.

"(e) PARENTAL CONSENT.—The contents of the individualized family service plan shall be fully explained to the parents and informed written consent from the parents shall be obtained prior to the provision of early intervention services described in such plan. If the parents do not provide consent with respect to a particular early intervention service, then the early intervention services to which consent is obtained shall be provided.

20 USC 1437.

"SEC. 637. STATE APPLICATION AND ASSURANCES.

"(a) APPLICATION.—A State desiring to receive a grant under section 633 shall submit an application to the Secretary at such time and in such manner as the Secretary may reasonably require. The application shall contain—

"(1) a designation of the lead agency in the State that will be responsible for the administration of funds provided under section 633;

"(2) a designation of an individual or entity responsible for assigning financial responsibility among appropriate agencies;

"(3) information demonstrating eligibility of the State under section 634, including—

"(A) information demonstrating to the Secretary's satisfaction that the State has in effect the statewide system required by section 633; and

"(B) a description of services to be provided to infants and toddlers with disabilities and their families through the system;

"(4) if the State provides services to at-risk infants and toddlers through the system, a description of such services;

"(5) a description of the uses for which funds will be expended in accordance with this part;

"(6) a description of the procedure used to ensure that resources are made available under this part for all geographic areas within the State;

"(7) a description of State policies and procedures that ensure that, prior to the adoption by the State of any other policy or procedure necessary to meet the requirements of this part, there are public hearings, adequate notice of the hearings, and an opportunity for comment available to the general public, including individuals with disabilities and parents of infants and toddlers with disabilities;

"(8) a description of the policies and procedures to be used—

"(A) to ensure a smooth transition for toddlers receiving early intervention services under this part to preschool or other appropriate services, including a description of how—

"(i) the families of such toddlers will be included in the transition plans required by subparagraph (C); and

"(ii) the lead agency designated or established under section 635(a)(10) will—

"(I) notify the local educational agency for the area in which such a child resides that the child will shortly reach the age of eligibility for preschool

services under part B, as determined in accordance with State law;

"(II) in the case of a child who may be eligible for such preschool services, with the approval of the family of the child, convene a conference among the lead agency, the family, and the local educational agency at least 90 days (and at the discretion of all such parties, up to 6 months) before the child is eligible for the preschool services, to discuss any such services that the child may receive; and

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

"(B) to review the child's program options for the period from the child's third birthday through the remainder of the school year; and

"(C) to establish a transition plan; and

"(9) such other information and assurances as the Secretary may reasonably require.

"(b) ASSURANCES.—The application described in subsection (a)—

"(1) shall provide satisfactory assurance that Federal funds made available under section 643 to the State will be expended in accordance with this part;

"(2) shall contain an assurance that the State will comply with the requirements of section 640;

"(3) shall provide satisfactory assurance that the control of funds provided under section 643, and title to property derived from those funds, will be in a public agency for the uses and purposes provided in this part and that a public agency will administer such funds and property;

"(4) shall provide for—

"(A) making such reports in such form and containing such information as the Secretary may require to carry out the Secretary's functions under this part; and

"(B) keeping such records and affording such access to them as the Secretary may find necessary to ensure the correctness and verification of those reports and proper disbursement of Federal funds under this part;

"(5) provide satisfactory assurance that Federal funds made available under section 643 to the State—

"(A) will not be commingled with State funds; and

"(B) will be used so as to supplement the level of State and local funds expended for infants and toddlers with disabilities and their families and in no case to supplant those State and local funds;

"(6) shall provide satisfactory assurance that such fiscal control and fund accounting procedures will be adopted as may be necessary to ensure proper disbursement of, and accounting for, Federal funds paid under section 643 to the State;

"(7) shall provide satisfactory assurance that policies and procedures have been adopted to ensure meaningful involvement of underserved groups, including minority, low-income, and rural families, in the planning and implementation of all the requirements of this part; and

"(8) shall contain such other information and assurances as the Secretary may reasonably require by regulation.

"(c) STANDARD FOR DISAPPROVAL OF APPLICATION.—The Secretary may not disapprove such an application unless the Secretary determines, after notice and opportunity for a hearing, that the application fails to comply with the requirements of this section.

"(d) SUBSEQUENT STATE APPLICATION.—If a State has on file with the Secretary a policy, procedure, or assurance that demonstrates that the State meets a requirement of this section, including any policy or procedure filed under part H (as in effect before July 1, 1998), the Secretary shall consider the State to have met the requirement for purposes of receiving a grant under this part.

"(e) MODIFICATION OF APPLICATION.—An application submitted by a State in accordance with this section shall remain in effect until the State submits to the Secretary such modifications as the State determines necessary. This section shall apply to a modification of an application to the same extent and in the same manner as this section applies to the original application.

Applicability.

"(f) MODIFICATIONS REQUIRED BY THE SECRETARY.—The Secretary may require a State to modify its application under this section, but only to the extent necessary to ensure the State's compliance with this part, if—

"(1) an amendment is made to this Act, or a Federal regulation issued under this Act;

"(2) a new interpretation of this Act is made by a Federal court or the State's highest court; or

"(3) an official finding of noncompliance with Federal law or regulations is made with respect to the State.

20 USC 1438.

"SEC. 638. USES OF FUNDS.

"In addition to using funds provided under section 633 to maintain and implement the statewide system required by such section, a State may use such funds—

"(1) for direct early intervention services for infants and toddlers with disabilities, and their families, under this part that are not otherwise funded through other public or private sources;

"(2) to expand and improve on services for infants and toddlers and their families under this part that are otherwise available;

"(3) to provide a free appropriate public education, in accordance with part B, to children with disabilities from their third birthday to the beginning of the following school year; and

"(4) in any State that does not provide services for at-risk infants and toddlers under section 637(a)(4), to strengthen the statewide system by initiating, expanding, or improving collaborative efforts related to at-risk infants and toddlers, including establishing linkages with appropriate public or private community-based organizations, services, and personnel for the purposes of—

"(A) identifying and evaluating at-risk infants and toddlers;

"(B) making referrals of the infants and toddlers identified and evaluated under subparagraph (A); and

"(C) conducting periodic follow-up on each such referral to determine if the status of the infant or toddler involved has changed with respect to the eligibility of the infant or toddler for services under this part.

"SEC. 639. PROCEDURAL SAFEGUARDS. 20 USC 1439.

"(a) MINIMUM PROCEDURES.—The procedural safeguards required to be included in a statewide system under section 635(a)(13) shall provide, at a minimum, the following:

"(1) The timely administrative resolution of complaints by parents. Any party aggrieved by the findings and decision regarding an administrative complaint shall have the right to bring a civil action with respect to the complaint in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy. In any action brought under this paragraph, the court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and, basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate. Records.

"(2) The right to confidentiality of personally identifiable information, including the right of parents to written notice of and written consent to the exchange of such information among agencies consistent with Federal and State law.

"(3) The right of the parents to determine whether they, their infant or toddler, or other family members will accept or decline any early intervention service under this part in accordance with State law without jeopardizing other early intervention services under this part.

"(4) The opportunity for parents to examine records relating to assessment, screening, eligibility determinations, and the development and implementation of the individualized family service plan.

"(5) Procedures to protect the rights of the infant or toddler whenever the parents of the infant or toddler are not known or cannot be found or the infant or toddler is a ward of the State, including the assignment of an individual (who shall not be an employee of the State lead agency, or other State agency, and who shall not be any person, or any employee of a person, providing early intervention services to the infant or toddler or any family member of the infant or toddler) to act as a surrogate for the parents.

"(6) Written prior notice to the parents of the infant or toddler with a disability whenever the State agency or service provider proposes to initiate or change or refuses to initiate or change the identification, evaluation, or placement of the infant or toddler with a disability, or the provision of appropriate early intervention services to the infant or toddler.

"(7) Procedures designed to ensure that the notice required by paragraph (6) fully informs the parents, in the parents' native language, unless it clearly is not feasible to do so, of all procedures available pursuant to this section.

"(8) The right of parents to use mediation in accordance with section 615(e), except that—

"(A) any reference in the section to a State educational agency shall be considered to be a reference to a State's lead agency established or designated under section 635(a)(10);

"(B) any reference in the section to a local educational agency shall be considered to be a reference to a local service provider or the State's lead agency under this part, as the case may be; and

"(C) any reference in the section to the provision of free appropriate public education to children with disabilities shall be considered to be a reference to the provision of appropriate early intervention services to infants and toddlers with disabilities.

"(b) SERVICES DURING PENDENCY OF PROCEEDINGS.—During the pendency of any proceeding or action involving a complaint by the parents of an infant or toddler with a disability, unless the State agency and the parents otherwise agree, the infant or toddler shall continue to receive the appropriate early intervention services currently being provided or, if applying for initial services, shall receive the services not in dispute.

20 USC 1440.

"SEC. 640. PAYOR OF LAST RESORT.

"(a) NONSUBSTITUTION.—Funds provided under section 643 may not be used to satisfy a financial commitment for services that would have been paid for from another public or private source, including any medical program administered by the Secretary of Defense, but for the enactment of this part, except that whenever considered necessary to prevent a delay in the receipt of appropriate early intervention services by an infant, toddler, or family in a timely fashion, funds provided under section 643 may be used to pay the provider of services pending reimbursement from the agency that has ultimate responsibility for the payment.

"(b) REDUCTION OF OTHER BENEFITS.—Nothing in this part shall be construed to permit the State to reduce medical or other assistance available or to alter eligibility under title V of the Social Security Act (relating to maternal and child health) or title XIX of the Social Security Act (relating to Medicaid for infants or toddlers with disabilities) within the State.

20 USC 1441.

"SEC. 641. STATE INTERAGENCY COORDINATING COUNCIL.

"(a) ESTABLISHMENT.—

"(1) IN GENERAL.—A State that desires to receive financial assistance under this part shall establish a State interagency coordinating council.

"(2) APPOINTMENT.—The council shall be appointed by the Governor. In making appointments to the council, the Governor shall ensure that the membership of the council reasonably represents the population of the State.

"(3) CHAIRPERSON.—The Governor shall designate a member of the council to serve as the chairperson of the council, or shall require the council to so designate such a member. Any member of the council who is a representative of the lead agency designated under section 635(a)(10) may not serve as the chairperson of the council.

"(b) COMPOSITION.—

"(1) IN GENERAL.—The council shall be composed as follows:

"(A) PARENTS.—At least 20 percent of the members shall be parents of infants or toddlers with disabilities or children with disabilities aged 12 or younger, with knowledge of, or experience with, programs for infants and toddlers with disabilities. At least one such member shall be a parent of an infant or toddler with a disability or a child with a disability aged 6 or younger.

"(B) SERVICE PROVIDERS.—At least 20 percent of the members shall be public or private providers of early intervention services.

"(C) STATE LEGISLATURE.—At least one member shall be from the State legislature.

"(D) PERSONNEL PREPARATION.—At least one member shall be involved in personnel preparation.

"(E) AGENCY FOR EARLY INTERVENTION SERVICES.—At least one member shall be from each of the State agencies involved in the provision of, or payment for, early intervention services to infants and toddlers with disabilities and their families and shall have sufficient authority to engage in policy planning and implementation on behalf of such agencies.

"(F) AGENCY FOR PRESCHOOL SERVICES.—At least one member shall be from the State educational agency responsible for preschool services to children with disabilities and shall have sufficient authority to engage in policy planning and implementation on behalf of such agency.

"(G) AGENCY FOR HEALTH INSURANCE.—At least one member shall be from the agency responsible for the State governance of health insurance.

"(H) HEAD START AGENCY.—At least one representative from a Head Start agency or program in the State.

"(I) CHILD CARE AGENCY.—At least one representative from a State agency responsible for child care.

"(2) OTHER MEMBERS.—The council may include other members selected by the Governor, including a representative from the Bureau of Indian Affairs, or where there is no BIA-operated or BIA-funded school, from the Indian Health Service or the tribe or tribal council.

"(c) MEETINGS.—The council shall meet at least quarterly and in such places as it deems necessary. The meetings shall be publicly announced, and, to the extent appropriate, open and accessible to the general public.

"(d) MANAGEMENT AUTHORITY.—Subject to the approval of the Governor, the council may prepare and approve a budget using funds under this part to conduct hearings and forums, to reimburse members of the council for reasonable and necessary expenses for attending council meetings and performing council duties (including child care for parent representatives), to pay compensation to a member of the council if the member is not employed or must forfeit wages from other employment when performing official council business, to hire staff, and to obtain the services of such professional, technical, and clerical personnel as may be necessary to carry out its functions under this part.

"(e) FUNCTIONS OF COUNCIL.—

"(1) DUTIES.—The council shall—

"(A) advise and assist the lead agency designated or established under section 635(a)(10) in the performance

of the responsibilities set forth in such section, particularly the identification of the sources of fiscal and other support for services for early intervention programs, assignment of financial responsibility to the appropriate agency, and the promotion of the interagency agreements;

"(B) advise and assist the lead agency in the preparation of applications and amendments thereto;

"(C) advise and assist the State educational agency regarding the transition of toddlers with disabilities to preschool and other appropriate services; and

Reports.

"(D) prepare and submit an annual report to the Governor and to the Secretary on the status of early intervention programs for infants and toddlers with disabilities and their families operated within the State.

"(2) AUTHORIZED ACTIVITY.—The council may advise and assist the lead agency and the State educational agency regarding the provision of appropriate services for children from birth through age 5. The council may advise appropriate agencies in the State with respect to the integration of services for infants and toddlers with disabilities and at-risk infants and toddlers and their families, regardless of whether at-risk infants and toddlers are eligible for early intervention services in the State.

"(f) CONFLICT OF INTEREST.—No member of the council shall cast a vote on any matter that would provide direct financial benefit to that member or otherwise give the appearance of a conflict of interest under State law.

20 USC 1442.

"SEC. 642. FEDERAL ADMINISTRATION.

"Sections 616, 617, and 618 shall, to the extent not inconsistent with this part, apply to the program authorized by this part, except that—

"(1) any reference in such sections to a State educational agency shall be considered to be a reference to a State's lead agency established or designated under section 635(a)(10);

"(2) any reference in such sections to a local educational agency, educational service agency, or a State agency shall be considered to be a reference to an early intervention service provider under this part; and

"(3) any reference to the education of children with disabilities or the education of all children with disabilities shall be considered to be a reference to the provision of appropriate early intervention services to infants and toddlers with disabilities.

20 USC 1443.

"SEC. 643. ALLOCATION OF FUNDS.

"(a) RESERVATION OF FUNDS FOR OUTLYING AREAS.—

"(1) IN GENERAL.—From the sums appropriated to carry out this part for any fiscal year, the Secretary may reserve up to one percent for payments to Guam, American Samoa, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands in accordance with their respective needs.

"(2) CONSOLIDATION OF FUNDS.—The provisions of Public Law 95–134, permitting the consolidation of grants to the outlying areas, shall not apply to funds those areas receive under this part.

"(b) PAYMENTS TO INDIANS.—

"(1) IN GENERAL.—The Secretary shall, subject to this subsection, make payments to the Secretary of the Interior to be distributed to tribes, tribal organizations (as defined under section 4 of the Indian Self-Determination and Education Assistance Act), or consortia of the above entities for the coordination of assistance in the provision of early intervention services by the States to infants and toddlers with disabilities and their families on reservations served by elementary and secondary schools for Indian children operated or funded by the Department of the Interior. The amount of such payment for any fiscal year shall be 1.25 percent of the aggregate of the amount available to all States under this part for such fiscal year.

"(2) ALLOCATION.—For each fiscal year, the Secretary of the Interior shall distribute the entire payment received under paragraph (1) by providing to each tribe, tribal organization, or consortium an amount based on the number of infants and toddlers residing on the reservation, as determined annually, divided by the total of such children served by all tribes, tribal organizations, or consortia.

"(3) INFORMATION.—To receive a payment under this subsection, the tribe, tribal organization, or consortium shall submit such information to the Secretary of the Interior as is needed to determine the amounts to be distributed under paragraph (2).

"(4) USE OF FUNDS.—The funds received by a tribe, tribal organization, or consortium shall be used to assist States in child find, screening, and other procedures for the early identification of Indian children under 3 years of age and for parent training. Such funds may also be used to provide early intervention services in accordance with this part. Such activities may be carried out directly or through contracts or cooperative agreements with the BIA, local educational agencies, and other public or private nonprofit organizations. The tribe, tribal organization, or consortium is encouraged to involve Indian parents in the development and implementation of these activities. The above entities shall, as appropriate, make referrals to local, State, or Federal entities for the provision of services or further diagnosis.

"(5) REPORTS.—To be eligible to receive a grant under paragraph (2), a tribe, tribal organization, or consortium shall make a biennial report to the Secretary of the Interior of activities undertaken under this subsection, including the number of contracts and cooperative agreements entered into, the number of children contacted and receiving services for each year, and the estimated number of children needing services during the 2 years following the year in which the report is made. The Secretary of the Interior shall include a summary of this information on a biennial basis to the Secretary of Education along with such other information as required under section 611(i)(3)(E). The Secretary of Education may require any additional information from the Secretary of the Interior.

"(6) PROHIBITED USES OF FUNDS.—None of the funds under this subsection may be used by the Secretary of the Interior for administrative purposes, including child count, and the provision of technical assistance.

"(c) STATE ALLOTMENTS.—

"(1) IN GENERAL.—Except as provided in paragraphs (2), (3), and (4), from the funds remaining for each fiscal year after the reservation and payments under subsections (a) and (b), the Secretary shall first allot to each State an amount that bears the same ratio to the amount of such remainder as the number of infants and toddlers in the State bears to the number of infants and toddlers in all States.

"(2) MINIMUM ALLOTMENTS.—Except as provided in paragraphs (3) and (4), no State shall receive an amount under this section for any fiscal year that is less than the greatest of—

"(A) one-half of one percent of the remaining amount described in paragraph (1); or

"(B) $500,000.

"(3) SPECIAL RULE FOR 1998 AND 1999.—

"(A) IN GENERAL.—Except as provided in paragraph (4), no State may receive an amount under this section for either fiscal year 1998 or 1999 that is less than the sum of the amounts such State received for fiscal year 1994 under—

"(i) part H (as in effect for such fiscal year); and

"(ii) subpart 2 of part D of chapter 1 of title I of the Elementary and Secondary Education Act of 1965 (as in effect on the day before the date of the enactment of the Improving America's Schools Act of 1994) for children with disabilities under 3 years of age.

"(B) EXCEPTION.—If, for fiscal year 1998 or 1999, the number of infants and toddlers in a State, as determined under paragraph (1), is less than the number of infants and toddlers so determined for fiscal year 1994, the amount determined under subparagraph (A) for the State shall be reduced by the same percentage by which the number of such infants and toddlers so declined.

"(4) RATABLE REDUCTION.—

"(A) IN GENERAL.—If the sums made available under this part for any fiscal year are insufficient to pay the full amounts that all States are eligible to receive under this subsection for such year, the Secretary shall ratably reduce the allotments to such States for such year.

"(B) ADDITIONAL FUNDS.—If additional funds become available for making payments under this subsection for a fiscal year, allotments that were reduced under subparagraph (A) shall be increased on the same basis they were reduced.

"(5) DEFINITIONS.—For the purpose of this subsection—

"(A) the terms 'infants' and 'toddlers' mean children under 3 years of age; and

"(B) the term 'State' means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

"(d) REALLOTMENT OF FUNDS.—If a State elects not to receive its allotment under subsection (c), the Secretary shall reallot, among the remaining States, amounts from such State in accordance with such subsection.

"SEC. 644. FEDERAL INTERAGENCY COORDINATING COUNCIL. 20 USC 1444.

"(a) ESTABLISHMENT AND PURPOSE.—

"(1) IN GENERAL.—The Secretary shall establish a Federal Interagency Coordinating Council in order to—

"(A) minimize duplication of programs and activities across Federal, State, and local agencies, relating to—

"(i) early intervention services for infants and toddlers with disabilities (including at-risk infants and toddlers) and their families; and

"(ii) preschool or other appropriate services for children with disabilities;

"(B) ensure the effective coordination of Federal early intervention and preschool programs and policies across Federal agencies;

"(C) coordinate the provision of Federal technical assistance and support activities to States;

"(D) identify gaps in Federal agency programs and services; and

"(E) identify barriers to Federal interagency cooperation.

"(2) APPOINTMENTS.—The council established under paragraph (1) (hereafter in this section referred to as the 'Council') and the chairperson of the Council shall be appointed by the Secretary in consultation with other appropriate Federal agencies. In making the appointments, the Secretary shall ensure that each member has sufficient authority to engage in policy planning and implementation on behalf of the department, agency, or program that the member represents.

"(b) COMPOSITION.—The Council shall be composed of—

"(1) a representative of the Office of Special Education Programs;

"(2) a representative of the National Institute on Disability and Rehabilitation Research and a representative of the Office of Educational Research and Improvement;

"(3) a representative of the Maternal and Child Health Services Block Grant Program;

"(4) a representative of programs administered under the Developmental Disabilities Assistance and Bill of Rights Act;

"(5) a representative of the Health Care Financing Administration;

"(6) a representative of the Division of Birth Defects and Developmental Disabilities of the Centers for Disease Control;

"(7) a representative of the Social Security Administration;

"(8) a representative of the special supplemental nutrition program for women, infants, and children of the Department of Agriculture;

"(9) a representative of the National Institute of Mental Health;

"(10) a representative of the National Institute of Child Health and Human Development;

"(11) a representative of the Bureau of Indian Affairs of the Department of the Interior;

"(12) a representative of the Indian Health Service;

"(13) a representative of the Surgeon General;

"(14) a representative of the Department of Defense;

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"(15) a representative of the Children's Bureau, and a representative of the Head Start Bureau, of the Administration for Children and Families;

"(16) a representative of the Substance Abuse and Mental Health Services Administration;

"(17) a representative of the Pediatric AIDS Health Care Demonstration Program in the Public Health Service;

"(18) parents of children with disabilities age 12 or under (who shall constitute at least 20 percent of the members of the Council), of whom at least one must have a child with a disability under the age of 6;

"(19) at least two representatives of State lead agencies for early intervention services to infants and toddlers, one of whom must be a representative of a State educational agency and the other a representative of a non-educational agency;

"(20) other members representing appropriate agencies involved in the provision of, or payment for, early intervention services and special education and related services to infants and toddlers with disabilities and their families and preschool children with disabilities; and

"(21) other persons appointed by the Secretary.

"(c) MEETINGS.—The Council shall meet at least quarterly and in such places as the Council deems necessary. The meetings shall be publicly announced, and, to the extent appropriate, open and accessible to the general public.

"(d) FUNCTIONS OF THE COUNCIL.—The Council shall—

"(1) advise and assist the Secretary of Education, the Secretary of Health and Human Services, the Secretary of Defense, the Secretary of the Interior, the Secretary of Agriculture, and the Commissioner of Social Security in the performance of their responsibilities related to serving children from birth through age 5 who are eligible for services under this part or under part B;

"(2) conduct policy analyses of Federal programs related to the provision of early intervention services and special educational and related services to infants and toddlers with disabilities and their families, and preschool children with disabilities, in order to determine areas of conflict, overlap, duplication, or inappropriate omission;

"(3) identify strategies to address issues described in paragraph (2);

"(4) develop and recommend joint policy memoranda concerning effective interagency collaboration, including modifications to regulations, and the elimination of barriers to interagency programs and activities;

"(5) coordinate technical assistance and disseminate information on best practices, effective program coordination strategies, and recommendations for improved early intervention programming for infants and toddlers with disabilities and their families and preschool children with disabilities; and

"(6) facilitate activities in support of States' interagency coordination efforts.

"(e) CONFLICT OF INTEREST.—No member of the Council shall cast a vote on any matter that would provide direct financial benefit to that member or otherwise give the appearance of a conflict of interest under Federal law.

"(f) FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the establishment or operation of the Council.

"SEC. 645. AUTHORIZATION OF APPROPRIATIONS. 20 USC 1445.

"For the purpose of carrying out this part, there are authorized to be appropriated $400,000,000 for fiscal year 1998 and such sums as may be necessary for each of the fiscal years 1999 through 2002.

"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. 20 USC 1451.

"(a) FINDINGS.—The Congress finds the following:

"(1) States are responding with some success to multiple pressures to improve educational and transitional services and results for children with disabilities in response to growing demands imposed by ever-changing factors, such as demographics, social policies, and labor and economic markets.

"(2) In order for States to address such demands and to facilitate lasting systemic change that is of benefit to all students, including children with disabilities, States must involve local educational agencies, parents, individuals with disabilities and their families, teachers and other service providers, and other interested individuals and organizations in carrying out comprehensive strategies to improve educational results for children with disabilities.

"(3) Targeted Federal financial resources are needed to assist States, working in partnership with others, to identify and make needed changes to address the needs of children with disabilities into the next century.

"(4) State educational agencies, in partnership with local educational agencies and other individuals and organizations, are in the best position to identify and design ways to meet emerging and expanding demands to improve education for children with disabilities and to address their special needs.

"(5) Research, demonstration, and practice over the past 20 years in special education and related disciplines have built a foundation of knowledge on which State and local systemic-change activities can now be based.

"(6) Such research, demonstration, and practice in special education and related disciplines have demonstrated that an effective educational system now and in the future must—

"(A) maintain high academic standards and clear performance goals for children with disabilities, consistent with the standards and expectations for all students in the educational system, and provide for appropriate and effective strategies and methods to ensure that students who are children with disabilities have maximum opportunities to achieve those standards and goals;

"(B) create a system that fully addresses the needs of all students, including children with disabilities, by

addressing the needs of children with disabilities in carrying out educational reform activities;

"(C) clearly define, in measurable terms, the school and post-school results that children with disabilities are expected to achieve;

"(D) promote service integration, and the coordination of State and local education, social, health, mental health, and other services, in addressing the full range of student needs, particularly the needs of children with disabilities who require significant levels of support to maximize their participation and learning in school and the community;

"(E) ensure that children with disabilities are provided assistance and support in making transitions as described in section 674(b)(3)(C);

"(F) promote comprehensive programs of professional development to ensure that the persons responsible for the education or a transition of children with disabilities possess the skills and knowledge necessary to address the educational and related needs of those children;

"(G) disseminate to teachers and other personnel serving children with disabilities research-based knowledge about successful teaching practices and models and provide technical assistance to local educational agencies and schools on how to improve results for children with disabilities;

"(H) create school-based disciplinary strategies that will be used to reduce or eliminate the need to use suspension and expulsion as disciplinary options for children with disabilities;

"(I) establish placement-neutral funding formulas and cost-effective strategies for meeting the needs of children with disabilities; and

"(J) involve individuals with disabilities and parents of children with disabilities in planning, implementing, and evaluating systemic-change activities and educational reforms.

"(b) PURPOSE.—The purpose of this subpart is to assist State educational agencies, and their partners referred to in section 652(b), in reforming and improving their systems for providing educational, early intervention, and transitional services, including their systems for professional development, technical assistance, and dissemination of knowledge about best practices, to improve results for children with disabilities.

20 USC 1452.

"SEC. 652. ELIGIBILITY AND COLLABORATIVE PROCESS.

"(a) ELIGIBLE APPLICANTS.—A State educational agency may apply for a grant under this subpart for a grant period of not less than 1 year and not more than 5 years.

"(b) PARTNERS.—

"(1) REQUIRED PARTNERS.—

"(A) CONTRACTUAL PARTNERS.—In order to be considered for a grant under this subpart, a State educational agency shall establish a partnership with local educational agencies and other State agencies involved in, or concerned with, the education of children with disabilities.

"(B) OTHER PARTNERS.—In order to be considered for a grant under this subpart, a State educational agency

shall work in partnership with other persons and organizations involved in, and concerned with, the education of children with disabilities, including—

"(i) the Governor;

"(ii) parents of children with disabilities;

"(iii) parents of nondisabled children;

"(iv) individuals with disabilities;

"(v) organizations representing individuals with disabilities and their parents, such as parent training and information centers;

"(vi) community-based and other nonprofit organizations involved in the education and employment of individuals with disabilities;

"(vii) the lead State agency for part C;

"(viii) general and special education teachers, and early intervention personnel;

"(ix) the State advisory panel established under part C;

"(x) the State interagency coordinating council established under part C; and

"(xi) institutions of higher education within the State.

"(2) OPTIONAL PARTNERS.—A partnership under subparagraph (A) or (B) of paragraph (1) may also include—

"(A) individuals knowledgeable about vocational education;

"(B) the State agency for higher education;

"(C) the State vocational rehabilitation agency;

"(D) public agencies with jurisdiction in the areas of health, mental health, social services, and juvenile justice; and

"(E) other individuals.

"SEC. 653. APPLICATIONS.

20 USC 1453.

"(a) IN GENERAL.—

"(1) SUBMISSION.—A State educational agency that desires to receive a grant under this subpart shall submit to the Secretary an application at such time, in such manner, and including such information as the Secretary may require.

"(2) STATE IMPROVEMENT PLAN.—The application shall include a State improvement plan that—

"(A) is integrated, to the maximum extent possible, with State plans under the Elementary and Secondary Education Act of 1965 and the Rehabilitation Act of 1973, as appropriate; and

"(B) meets the requirements of this section.

"(b) DETERMINING CHILD AND PROGRAM NEEDS.—

"(1) IN GENERAL.—Each State improvement plan shall identify those critical aspects of early intervention, general education, and special education programs (including professional development, based on an assessment of State and local needs) that must be improved to enable children with disabilities to meet the goals established by the State under section 612(a)(16).

"(2) REQUIRED ANALYSES.—To meet the requirement of paragraph (1), the State improvement plan shall include at least—

"(A) an analysis of all information, reasonably available to the State educational agency, on the performance of children with disabilities in the State, including—

"(i) their performance on State assessments and other performance indicators established for all children, including drop-out rates and graduation rates;

"(ii) their participation in postsecondary education and employment; and

"(iii) how their performance on the assessments and indicators described in clause (i) compares to that of non-disabled children;

"(B) an analysis of State and local needs for professional development for personnel to serve children with disabilities that includes, at a minimum—

"(i) the number of personnel providing special education and related services; and

"(ii) relevant information on current and anticipated personnel vacancies and shortages (including the number of individuals described in clause (i) with temporary certification), and on the extent of certification or retraining necessary to eliminate such shortages, that is based, to the maximum extent possible, on existing assessments of personnel needs;

"(C) an analysis of the major findings of the Secretary's most recent reviews of State compliance, as they relate to improving results for children with disabilities; and

"(D) an analysis of other information, reasonably available to the State, on the effectiveness of the State's systems of early intervention, special education, and general education in meeting the needs of children with disabilities.

"(c) IMPROVEMENT STRATEGIES.—Each State improvement plan shall—

"(1) describe a partnership agreement that—

"(A) specifies—

"(i) the nature and extent of the partnership among the State educational agency, local educational agencies, and other State agencies involved in, or concerned with, the education of children with disabilities, and the respective roles of each member of the partnership; and

"(ii) how such agencies will work in partnership with other persons and organizations involved in, and concerned with, the education of children with disabilities, including the respective roles of each of these persons and organizations; and

"(B) is in effect for the period of the grant;

"(2) describe how grant funds will be used in undertaking the systemic-change activities, and the amount and nature of funds from any other sources, including part B funds retained for use at the State level under sections 611(f) and 619(d), that will be committed to the systemic-change activities;

"(3) describe the strategies the State will use to address the needs identified under subsection (b), including—

"(A) how the State will change State policies and procedures to address systemic barriers to improving results for children with disabilities;

"(B) how the State will hold local educational agencies and schools accountable for educational progress of children with disabilities;

"(C) how the State will provide technical assistance to local educational agencies and schools to improve results for children with disabilities;

"(D) how the State will address the identified needs for in-service and pre-service preparation to ensure that all personnel who work with children with disabilities (including both professional and paraprofessional personnel who provide special education, general education, related services, or early intervention services) have the skills and knowledge necessary to meet the needs of children with disabilities, including a description of how—

"(i) the State will prepare general and special education personnel with the content knowledge and collaborative skills needed to meet the needs of children with disabilities, including how the State will work with other States on common certification criteria;

"(ii) the State will prepare professionals and paraprofessionals in the area of early intervention with the content knowledge and collaborative skills needed to meet the needs of infants and toddlers with disabilities;

"(iii) the State will work with institutions of higher education and other entities that (on both a pre-service and an in-service basis) prepare personnel who work with children with disabilities to ensure that those institutions and entities develop the capacity to support quality professional development programs that meet State and local needs;

"(iv) the State will work to develop collaborative agreements with other States for the joint support and development of programs to prepare personnel for which there is not sufficient demand within a single State to justify support or development of such a program of preparation;

"(v) the State will work in collaboration with other States, particularly neighboring States, to address the lack of uniformity and reciprocity in the credentialing of teachers and other personnel;

"(vi) the State will enhance the ability of teachers and others to use strategies, such as behavioral interventions, to address the conduct of children with disabilities that impedes the learning of children with disabilities and others;

"(vii) the State will acquire and disseminate, to teachers, administrators, school board members, and related services personnel, significant knowledge derived from educational research and other sources, and how the State will, when appropriate, adopt promising practices, materials, and technology;

"(viii) the State will recruit, prepare, and retain qualified personnel, including personnel with disabilities and personnel from groups that are underrepresented in the fields of regular education, special education, and related services;

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"(ix) the plan is integrated, to the maximum extent possible, with other professional development plans and activities, including plans and activities developed and carried out under other Federal and State laws that address personnel recruitment and training; and

"(x) the State will provide for the joint training of parents and special education, related services, and general education personnel;

"(E) strategies that will address systemic problems identified in Federal compliance reviews, including shortages of qualified personnel;

"(F) how the State will disseminate results of the local capacity-building and improvement projects funded under section 611(f)(4);

"(G) how the State will address improving results for children with disabilities in the geographic areas of greatest need; and

"(H) how the State will assess, on a regular basis, the extent to which the strategies implemented under this subpart have been effective; and

"(4) describe how the improvement strategies described in paragraph (3) will be coordinated with public and private sector resources.

"(d) COMPETITIVE AWARDS.—

Grants.

"(1) IN GENERAL.—The Secretary shall make grants under this subpart on a competitive basis.

"(2) PRIORITY.—The Secretary may give priority to applications on the basis of need, as indicated by such information as the findings of Federal compliance reviews.

"(e) PEER REVIEW.—

"(1) IN GENERAL.—The Secretary shall use a panel of experts who are competent, by virtue of their training, expertise, or experience, to evaluate applications under this subpart.

"(2) COMPOSITION OF PANEL.—A majority of a panel described in paragraph (1) shall be composed of individuals who are not employees of the Federal Government.

"(3) PAYMENT OF FEES AND EXPENSES OF CERTAIN MEMBERS.—The Secretary may use available funds appropriated to carry out this subpart to pay the expenses and fees of panel members who are not employees of the Federal Government.

"(f) REPORTING PROCEDURES.—Each State educational agency that receives a grant under this subpart shall submit performance reports to the Secretary pursuant to a schedule to be determined by the Secretary, but not more frequently than annually. The reports shall describe the progress of the State in meeting the performance goals established under section 612(a)(16), analyze the effectiveness of the State's strategies in meeting those goals, and identify any changes in the strategies needed to improve its performance.

20 USC 1454.

"SEC. 654. USE OF FUNDS.

"(a) IN GENERAL.—

"(1) ACTIVITIES.—A State educational agency that receives a grant under this subpart may use the grant to carry out any activities that are described in the State's application and that are consistent with the purpose of this subpart.

"(2) CONTRACTS AND SUBGRANTS.—Each such State educational agency—

"(A) shall, consistent with its partnership agreement under section 652(b), award contracts or subgrants to local educational agencies, institutions of higher education, and parent training and information centers, as appropriate, to carry out its State improvement plan under this subpart; and

"(B) may award contracts and subgrants to other public and private entities, including the lead agency under part C, to carry out such plan.

"(b) USE OF FUNDS FOR PROFESSIONAL DEVELOPMENT.—A State educational agency that receives a grant under this subpart—

"(1) shall use not less than 75 percent of the funds it receives under the grant for any fiscal year—

"(A) to ensure that there are sufficient regular education, special education, and related services personnel who have the skills and knowledge necessary to meet the needs of children with disabilities and developmental goals of young children; or

"(B) to work with other States on common certification criteria; or

"(2) shall use not less than 50 percent of such funds for such purposes, if the State demonstrates to the Secretary's satisfaction that it has the personnel described in paragraph (1)(A).

"(c) GRANTS TO OUTLYING AREAS.—Public Law 95–134, permitting the consolidation of grants to the outlying areas, shall not apply to funds received under this subpart.

"SEC. 655. MINIMUM STATE GRANT AMOUNTS. 20 USC 1455.

"(a) IN GENERAL.—The Secretary shall make a grant to each State educational agency whose application the Secretary has selected for funding under this subpart in an amount for each fiscal year that is—

"(1) not less than $500,000, nor more than $2,000,000, in the case of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico; and

"(2) not less than $80,000, in the case of an outlying area.

"(b) INFLATION ADJUSTMENT.—Beginning with fiscal year 1999, the Secretary may increase the maximum amount described in subsection (a)(1) to account for inflation.

"(c) FACTORS.—The Secretary shall set the amount of each grant under subsection (a) after considering—

"(1) the amount of funds available for making the grants;

"(2) the relative population of the State or outlying area; and

"(3) the types of activities proposed by the State or outlying area.

"SEC. 656. AUTHORIZATION OF APPROPRIATIONS. 20 USC 1456.

"There are authorized to be appropriated to carry out this subpart such sums as may be necessary for each of the fiscal years 1998 through 2002.

"Subpart 2—Coordinated Research, Personnel Preparation, Technical Assistance, Support, and Dissemination of Information

20 USC 1461.

"SEC. 661. ADMINISTRATIVE PROVISIONS.

"(a) COMPREHENSIVE PLAN.—

"(1) IN GENERAL.—The Secretary shall develop and implement a comprehensive plan for activities carried out under this subpart in order to enhance the provision of educational, related, transitional, and early intervention services to children with disabilities under parts B and C. The plan shall include mechanisms to address educational, related services, transitional, and early intervention needs identified by State educational agencies in applications submitted for State program improvement grants under subpart 1.

"(2) PARTICIPANTS IN PLAN DEVELOPMENT.—In developing the plan described in paragraph (1), the Secretary shall consult with—

"(A) individuals with disabilities;

"(B) parents of children with disabilities;

"(C) appropriate professionals; and

"(D) representatives of State and local educational agencies, private schools, institutions of higher education, other Federal agencies, the National Council on Disability, and national organizations with an interest in, and expertise in, providing services to children with disabilities and their families.

"(3) PUBLIC COMMENT.—The Secretary shall take public comment on the plan.

"(4) DISTRIBUTION OF FUNDS.—In implementing the plan, the Secretary shall, to the extent appropriate, ensure that funds are awarded to recipients under this subpart to carry out activities that benefit, directly or indirectly, children with disabilities of all ages.

"(5) REPORTS TO CONGRESS.—The Secretary shall periodically report to the Congress on the Secretary's activities under this subsection, including an initial report not later than the date that is 18 months after the date of the enactment of the Individuals with Disabilities Education Act Amendments of 1997.

"(b) ELIGIBLE APPLICANTS.—

"(1) IN GENERAL.—Except as otherwise provided in this subpart, the following entities are eligible to apply for a grant, contract, or cooperative agreement under this subpart:

"(A) A State educational agency.

"(B) A local educational agency.

"(C) An institution of higher education.

"(D) Any other public agency.

"(E) A private nonprofit organization.

"(F) An outlying area.

"(G) An Indian tribe or a tribal organization (as defined under section 4 of the Indian Self-Determination and Education Assistance Act).

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"(H) A for-profit organization, if the Secretary finds it appropriate in light of the purposes of a particular competition for a grant, contract, or cooperative agreement under this subpart.

"(2) SPECIAL RULE.—The Secretary may limit the entities eligible for an award of a grant, contract, or cooperative agreement to one or more categories of eligible entities described in paragraph (1).

"(c) USE OF FUNDS BY SECRETARY.—Notwithstanding any other provision of law, and in addition to any authority granted the Secretary under chapter 1 or chapter 2, the Secretary may use up to 20 percent of the funds available under either chapter 1 or chapter 2 for any fiscal year to carry out any activity, or combination of activities, subject to such conditions as the Secretary determines are appropriate effectively to carry out the purposes of such chapters, that—

"(1) is consistent with the purposes of chapter 1, chapter 2, or both; and

"(2) involves—

"(A) research;

"(B) personnel preparation;

"(C) parent training and information;

"(D) technical assistance and dissemination;

"(E) technology development, demonstration, and utilization; or

"(F) media services.

"(d) SPECIAL POPULATIONS.—

"(1) APPLICATION REQUIREMENT.—In making an award of a grant, contract, or cooperative agreement under this subpart, the Secretary shall, as appropriate, require an applicant to demonstrate how the applicant will address the needs of children with disabilities from minority backgrounds.

"(2) OUTREACH AND TECHNICAL ASSISTANCE.—

"(A) REQUIREMENT.—Notwithstanding any other provision of this Act, the Secretary shall ensure that at least one percent of the total amount of funds appropriated to carry out this subpart is used for either or both of the following activities:

"(i) To provide outreach and technical assistance to Historically Black Colleges and Universities, and to institutions of higher education with minority enrollments of at least 25 percent, to promote the participation of such colleges, universities, and institutions in activities under this subpart.

"(ii) To enable Historically Black Colleges and Universities, and the institutions described in clause (i), to assist other colleges, universities, institutions, and agencies in improving educational and transitional results for children with disabilities.

"(B) RESERVATION OF FUNDS.—The Secretary may reserve funds appropriated under this subpart to satisfy the requirement of subparagraph (A).

"(e) PRIORITIES.—

"(1) IN GENERAL.—Except as otherwise explicitly authorized in this subpart, the Secretary shall ensure that a grant, contract, or cooperative agreement under chapter 1 or 2 is awarded only—

"(A) for activities that are designed to benefit children with disabilities, their families, or the personnel employed to work with such children or their families; or

"(B) to benefit other individuals with disabilities that such chapter is intended to benefit.

"(2) PRIORITY FOR PARTICULAR ACTIVITIES.—Subject to paragraph (1), the Secretary, in making an award of a grant, contract, or cooperative agreement under this subpart, may, without regard to the rule making procedures under section 553 of title 5, United States Code, limit competitions to, or otherwise give priority to—

"(A) projects that address one or more—

"(i) age ranges;

"(ii) disabilities;

"(iii) school grades;

"(iv) types of educational placements or early intervention environments;

"(v) types of services;

"(vi) content areas, such as reading; or

"(vii) effective strategies for helping children with disabilities learn appropriate behavior in the school and other community-based educational settings;

"(B) projects that address the needs of children based on the severity of their disability;

"(C) projects that address the needs of—

"(i) low-achieving students;

"(ii) underserved populations;

"(iii) children from low-income families;

"(iv) children with limited English proficiency;

"(v) unserved and underserved areas;

"(vi) particular types of geographic areas; or

"(vii) children whose behavior interferes with their learning and socialization;

"(D) projects to reduce inappropriate identification of children as children with disabilities, particularly among minority children;

"(E) projects that are carried out in particular areas of the country, to ensure broad geographic coverage; and

"(F) any activity that is expressly authorized in chapter 1 or 2.

"(f) APPLICANT AND RECIPIENT RESPONSIBILITIES.—

"(1) DEVELOPMENT AND ASSESSMENT OF PROJECTS.—The Secretary shall require that an applicant for, and a recipient of, a grant, contract, or cooperative agreement for a project under this subpart—

"(A) involve individuals with disabilities or parents of individuals with disabilities in planning, implementing, and evaluating the project; and

"(B) where appropriate, determine whether the project has any potential for replication and adoption by other entities.

"(2) ADDITIONAL RESPONSIBILITIES.—The Secretary may require a recipient of a grant, contract, or cooperative agreement for a project under this subpart—

"(A) to share in the cost of the project;

"(B) to prepare the research and evaluation findings and products from the project in formats that are useful

for specific audiences, including parents, administrators, teachers, early intervention personnel, related services personnel, and individuals with disabilities;

"(C) to disseminate such findings and products; and

"(D) to collaborate with other such recipients in carrying out subparagraphs (B) and (C).

"(g) APPLICATION MANAGEMENT.—

"(1) STANDING PANEL.—

"(A) IN GENERAL.—The Secretary shall establish and use a standing panel of experts who are competent, by virtue of their training, expertise, or experience, to evaluate applications under this subpart that, individually, request more than $75,000 per year in Federal financial assistance.

"(B) MEMBERSHIP.—The standing panel shall include, at a minimum—

"(i) individuals who are representatives of institutions of higher education that plan, develop, and carry out programs of personnel preparation;

"(ii) individuals who design and carry out programs of research targeted to the improvement of special education programs and services;

"(iii) individuals who have recognized experience and knowledge necessary to integrate and apply research findings to improve educational and transitional results for children with disabilities;

"(iv) individuals who administer programs at the State or local level in which children with disabilities participate;

"(v) individuals who prepare parents of children with disabilities to participate in making decisions about the education of their children;

"(vi) individuals who establish policies that affect the delivery of services to children with disabilities;

"(vii) individuals who are parents of children with disabilities who are benefiting, or have benefited, from coordinated research, personnel preparation, and technical assistance; and

"(viii) individuals with disabilities.

"(C) TRAINING.—The Secretary shall provide training to the individuals who are selected as members of the standing panel under this paragraph.

"(D) TERM.—No individual shall serve on the standing panel for more than 3 consecutive years, unless the Secretary determines that the individual's continued participation is necessary for the sound administration of this subpart.

"(2) PEER-REVIEW PANELS FOR PARTICULAR COMPETITIONS.—

"(A) COMPOSITION.—The Secretary shall ensure that each sub-panel selected from the standing panel that reviews applications under this subpart includes—

"(i) individuals with knowledge and expertise on the issues addressed by the activities authorized by the subpart; and

"(ii) to the extent practicable, parents of children with disabilities, individuals with disabilities, and persons from diverse backgrounds.

"(B) FEDERAL EMPLOYMENT LIMITATION.—A majority of the individuals on each sub-panel that reviews an application under this subpart shall be individuals who are not employees of the Federal Government.

"(3) USE OF DISCRETIONARY FUNDS FOR ADMINISTRATIVE PURPOSES.—

"(A) EXPENSES AND FEES OF NON-FEDERAL PANEL MEMBERS.—The Secretary may use funds available under this subpart to pay the expenses and fees of the panel members who are not officers or employees of the Federal Government.

"(B) ADMINISTRATIVE SUPPORT.—The Secretary may use not more than 1 percent of the funds appropriated to carry out this subpart to pay non-Federal entities for administrative support related to management of applications submitted under this subpart.

"(C) MONITORING.—The Secretary may use funds available under this subpart to pay the expenses of Federal employees to conduct on-site monitoring of projects receiving $500,000 or more for any fiscal year under this subpart.

"(h) PROGRAM EVALUATION.—The Secretary may use funds appropriated to carry out this subpart to evaluate activities carried out under the subpart.

"(i) MINIMUM FUNDING REQUIRED.—

"(1) IN GENERAL.—Subject to paragraph (2), the Secretary shall ensure that, for each fiscal year, at least the following amounts are provided under this subpart to address the following needs:

"(A) $12,832,000 to address the educational, related services, transitional, and early intervention needs of children with deaf-blindness.

"(B) $4,000,000 to address the postsecondary, vocational, technical, continuing, and adult education needs of individuals with deafness.

"(C) $4,000,000 to address the educational, related services, and transitional needs of children with an emotional disturbance and those who are at risk of developing an emotional disturbance.

"(2) RATABLE REDUCTION.—If the total amount appropriated to carry out sections 672, 673, and 685 for any fiscal year is less than $130,000,000, the amounts listed in paragraph (1) shall be ratably reduced.

"(j) ELIGIBILITY FOR FINANCIAL ASSISTANCE.—Effective for fiscal years for which the Secretary may make grants under section 619(b), no State or local educational agency or educational service agency or other public institution or agency may receive a grant under this subpart which relates exclusively to programs, projects, and activities pertaining to children aged 3 through 5, inclusive, unless the State is eligible to receive a grant under section 619(b).

"Chapter 1—Improving Early Intervention, Educational, and Transitional Services and Results for Children with Disabilities through Coordinated Research and Personnel Preparation

"SEC. 671. FINDINGS AND PURPOSE. 20 USC 1471.

"(a) FINDINGS.—The Congress finds the following:

"(1) The Federal Government has an ongoing obligation to support programs, projects, and activities that contribute to positive results for children with disabilities, enabling them—

"(A) to meet their early intervention, educational, and transitional goals and, to the maximum extent possible, educational standards that have been established for all children; and

"(B) to acquire the skills that will empower them to lead productive and independent adult lives.

"(2)(A) As a result of more than 20 years of Federal support for research, demonstration projects, and personnel preparation, there is an important knowledge base for improving results for children with disabilities.

"(B) Such knowledge should be used by States and local educational agencies to design and implement state-of-the-art educational systems that consider the needs of, and include, children with disabilities, especially in environments in which they can learn along with their peers and achieve results measured by the same standards as the results of their peers.

"(3)(A) Continued Federal support is essential for the development and maintenance of a coordinated and high-quality program of research, demonstration projects, dissemination of information, and personnel preparation.

"(B) Such support—

"(i) enables State educational agencies and local educational agencies to improve their educational systems and results for children with disabilities;

"(ii) enables State and local agencies to improve early intervention services and results for infants and toddlers with disabilities and their families; and

"(iii) enhances the opportunities for general and special education personnel, related services personnel, parents, and paraprofessionals to participate in pre-service and in-service training, to collaborate, and to improve results for children with disabilities and their families.

"(4) The Federal Government plays a critical role in facilitating the availability of an adequate number of qualified personnel—

"(A) to serve effectively the over 5,000,000 children with disabilities;

"(B) to assume leadership positions in administrative and direct-service capacities related to teacher training and research concerning the provision of early intervention services, special education, and related services; and

"(C) to work with children with low-incidence disabilities and their families.

"(5) The Federal Government performs the role described in paragraph (4)—

"(A) by supporting models of personnel development that reflect successful practice, including strategies for recruiting, preparing, and retaining personnel;

"(B) by promoting the coordination and integration of—

"(i) personnel-development activities for teachers of children with disabilities; and

"(ii) other personnel-development activities supported under Federal law, including this chapter;

"(C) by supporting the development and dissemination of information about teaching standards; and

"(D) by promoting the coordination and integration of personnel-development activities through linkage with systemic-change activities within States and nationally.

"(b) PURPOSE.—The purpose of this chapter is to provide Federal funding for coordinated research, demonstration projects, outreach, and personnel-preparation activities that—

"(1) are described in sections 672 through 674;

"(2) are linked with, and promote, systemic change; and

"(3) improve early intervention, educational, and transitional results for children with disabilities.

20 USC 1472.

"SEC. 672. RESEARCH AND INNOVATION TO IMPROVE SERVICES AND RESULTS FOR CHILDREN WITH DISABILITIES.

Grants.
Contracts.

"(a) IN GENERAL.—The Secretary shall make competitive grants to, or enter into contracts or cooperative agreements with, eligible entities to produce, and advance the use of, knowledge—

"(1) to improve—

"(A) services provided under this Act, including the practices of professionals and others involved in providing such services to children with disabilities; and

"(B) educational results for children with disabilities;

"(2) to address the special needs of preschool-aged children and infants and toddlers with disabilities, including infants and toddlers who would be at risk of having substantial developmental delays if early intervention services were not provided to them;

"(3) to address the specific problems of over-identification and under-identification of children with disabilities;

"(4) to develop and implement effective strategies for addressing inappropriate behavior of students with disabilities in schools, including strategies to prevent children with emotional and behavioral problems from developing emotional disturbances that require the provision of special education and related services;

"(5) to improve secondary and postsecondary education and transitional services for children with disabilities; and

"(6) to address the range of special education, related services, and early intervention needs of children with disabilities who need significant levels of support to maximize their participation and learning in school and in the community.

"(b) NEW KNOWLEDGE PRODUCTION; AUTHORIZED ACTIVITIES.—

"(1) IN GENERAL.—In carrying out this section, the Secretary shall support activities, consistent with the objectives described in subsection (a), that lead to the production of new knowledge.

"(2) AUTHORIZED ACTIVITIES.—Activities that may be carried out under this subsection include activities such as the following:

"(A) Expanding understanding of the relationships between learning characteristics of children with disabilities and the diverse ethnic, cultural, linguistic, social, and economic backgrounds of children with disabilities and their families.

"(B) Developing or identifying innovative, effective, and efficient curricula designs, instructional approaches, and strategies, and developing or identifying positive academic and social learning opportunities, that—

"(i) enable children with disabilities to make effective transitions described in section 674(b)(3)(C) or transitions between educational settings; and

"(ii) improve educational and transitional results for children with disabilities at all levels of the educational system in which the activities are carried out and, in particular, that improve the progress of the children, as measured by assessments within the general education curriculum involved.

"(C) Advancing the design of assessment tools and procedures that will accurately and efficiently determine the special instructional, learning, and behavioral needs of children with disabilities, especially within the context of general education.

"(D) Studying and promoting improved alignment and compatibility of general and special education reforms concerned with curricular and instructional reform, evaluation and accountability of such reforms, and administrative procedures.

"(E) Advancing the design, development, and integration of technology, assistive technology devices, media, and materials, to improve early intervention, educational, and transitional services and results for children with disabilities.

"(F) Improving designs, processes, and results of personnel preparation for personnel who provide services to children with disabilities through the acquisition of information on, and implementation of, research-based practices.

"(G) Advancing knowledge about the coordination of education with health and social services.

"(H) Producing information on the long-term impact of early intervention and education on results for individuals with disabilities through large-scale longitudinal studies.

"(c) INTEGRATION OF RESEARCH AND PRACTICE; AUTHORIZED ACTIVITIES.—

"(1) IN GENERAL.—In carrying out this section, the Secretary shall support activities, consistent with the objectives described in subsection (a), that integrate research and practice, including activities that support State systemic-change and local capacity-building and improvement efforts.

"(2) AUTHORIZED ACTIVITIES.—Activities that may be carried out under this subsection include activities such as the following:

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"(A) Model demonstration projects to apply and test research findings in typical service settings to determine the usability, effectiveness, and general applicability of such research findings in such areas as improving instructional methods, curricula, and tools, such as textbooks and media.

"(B) Demonstrating and applying research-based findings to facilitate systemic changes, related to the provision of services to children with disabilities, in policy, procedure, practice, and the training and use of personnel.

"(C) Promoting and demonstrating the coordination of early intervention and educational services for children with disabilities with services provided by health, rehabilitation, and social service agencies.

"(D) Identifying and disseminating solutions that overcome systemic barriers to the effective and efficient delivery of early intervention, educational, and transitional services to children with disabilities.

"(d) IMPROVING THE USE OF PROFESSIONAL KNOWLEDGE; AUTHORIZED ACTIVITIES.—

"(1) IN GENERAL.—In carrying out this section, the Secretary shall support activities, consistent with the objectives described in subsection (a), that improve the use of professional knowledge, including activities that support State systemic-change and local capacity-building and improvement efforts.

"(2) AUTHORIZED ACTIVITIES.—Activities that may be carried out under this subsection include activities such as the following:

"(A) Synthesizing useful research and other information relating to the provision of services to children with disabilities, including effective practices.

"(B) Analyzing professional knowledge bases to advance an understanding of the relationships, and the effectiveness of practices, relating to the provision of services to children with disabilities.

"(C) Ensuring that research and related products are in appropriate formats for distribution to teachers, parents, and individuals with disabilities.

"(D) Enabling professionals, parents of children with disabilities, and other persons, to learn about, and implement, the findings of research, and successful practices developed in model demonstration projects, relating to the provision of services to children with disabilities.

"(E) Conducting outreach, and disseminating information relating to successful approaches to overcoming systemic barriers to the effective and efficient delivery of early intervention, educational, and transitional services, to personnel who provide services to children with disabilities.

"(e) BALANCE AMONG ACTIVITIES AND AGE RANGES.—In carrying out this section, the Secretary shall ensure that there is an appropriate balance—

"(1) among knowledge production, integration of research and practice, and use of professional knowledge; and

"(2) across all age ranges of children with disabilities.

"(f) APPLICATIONS.—An eligible entity that wishes to receive a grant, or enter into a contract or cooperative agreement, under

this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

"(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary for each of the fiscal years 1998 through 2002.

"SEC. 673. PERSONNEL PREPARATION TO IMPROVE SERVICES AND RESULTS FOR CHILDREN WITH DISABILITIES. 20 USC 1473.

"(a) IN GENERAL.—The Secretary shall, on a competitive basis, make grants to, or enter into contracts or cooperative agreements with, eligible entities— Grants. Contracts.

"(1) to help address State-identified needs for qualified personnel in special education, related services, early intervention, and regular education, to work with children with disabilities; and

"(2) to ensure that those personnel have the skills and knowledge, derived from practices that have been determined, through research and experience, to be successful, that are needed to serve those children.

"(b) LOW-INCIDENCE DISABILITIES; AUTHORIZED ACTIVITIES.—

"(1) IN GENERAL.—In carrying out this section, the Secretary shall support activities, consistent with the objectives described in subsection (a), that benefit children with low-incidence disabilities.

"(2) AUTHORIZED ACTIVITIES.—Activities that may be carried out under this subsection include activities such as the following:

"(A) Preparing persons who—

"(i) have prior training in educational and other related service fields; and

"(ii) are studying to obtain degrees, certificates, or licensure that will enable them to assist children with disabilities to achieve the objectives set out in their individualized education programs described in section 614(d), or to assist infants and toddlers with disabilities to achieve the outcomes described in their individualized family service plans described in section 636.

"(B) Providing personnel from various disciplines with interdisciplinary training that will contribute to improvement in early intervention, educational, and transitional results for children with disabilities.

"(C) Preparing personnel in the innovative uses and application of technology to enhance learning by children with disabilities through early intervention, educational, and transitional services.

"(D) Preparing personnel who provide services to visually impaired or blind children to teach and use Braille in the provision of services to such children.

"(E) Preparing personnel to be qualified educational interpreters, to assist children with disabilities, particularly deaf and hard-of-hearing children in school and school-related activities and deaf and hard-of-hearing infants and toddlers and preschool children in early intervention and preschool programs.

"(F) Preparing personnel who provide services to children with significant cognitive disabilities and children with multiple disabilities.

"(3) DEFINITION.—As used in this section, the term 'low-incidence disability' means—

"(A) a visual or hearing impairment, or simultaneous visual and hearing impairments;

"(B) a significant cognitive impairment; or

"(C) any impairment for which a small number of personnel with highly specialized skills and knowledge are needed in order for children with that impairment to receive early intervention services or a free appropriate public education.

"(4) SELECTION OF RECIPIENTS.—In selecting recipients under this subsection, the Secretary may give preference to applications that propose to prepare personnel in more than one low-incidence disability, such as deafness and blindness.

"(5) PREPARATION IN USE OF BRAILLE.—The Secretary shall ensure that all recipients of assistance under this subsection who will use that assistance to prepare personnel to provide services to visually impaired or blind children that can appropriately be provided in Braille will prepare those individuals to provide those services in Braille.

"(c) LEADERSHIP PREPARATION; AUTHORIZED ACTIVITIES.—

"(1) IN GENERAL.—In carrying out this section, the Secretary shall support leadership preparation activities that are consistent with the objectives described in subsection (a).

"(2) AUTHORIZED ACTIVITIES.—Activities that may be carried out under this subsection include activities such as the following:

"(A) Preparing personnel at the advanced graduate, doctoral, and postdoctoral levels of training to administer, enhance, or provide services for children with disabilities.

"(B) Providing interdisciplinary training for various types of leadership personnel, including teacher preparation faculty, administrators, researchers, supervisors, principals, and other persons whose work affects early intervention, educational, and transitional services for children with disabilities.

"(d) PROJECTS OF NATIONAL SIGNIFICANCE; AUTHORIZED ACTIVITIES.—

"(1) IN GENERAL.—In carrying out this section, the Secretary shall support activities, consistent with the objectives described in subsection (a), that are of national significance and have broad applicability.

"(2) AUTHORIZED ACTIVITIES.—Activities that may be carried out under this subsection include activities such as the following:

"(A) Developing and demonstrating effective and efficient practices for preparing personnel to provide services to children with disabilities, including practices that address any needs identified in the State's improvement plan under part C;

"(B) Demonstrating the application of significant knowledge derived from research and other sources in the development of programs to prepare personnel to provide services to children with disabilities.

"(C) Demonstrating models for the preparation of, and interdisciplinary training of, early intervention, special education, and general education personnel, to enable the personnel—

"(i) to acquire the collaboration skills necessary to work within teams to assist children with disabilities; and

"(ii) to achieve results that meet challenging standards, particularly within the general education curriculum.

"(D) Demonstrating models that reduce shortages of teachers, and personnel from other relevant disciplines, who serve children with disabilities, through reciprocity arrangements between States that are related to licensure and certification.

"(E) Developing, evaluating, and disseminating model teaching standards for persons working with children with disabilities.

"(F) Promoting the transferability, across State and local jurisdictions, of licensure and certification of teachers and administrators working with such children.

"(G) Developing and disseminating models that prepare teachers with strategies, including behavioral interventions, for addressing the conduct of children with disabilities that impedes their learning and that of others in the classroom.

"(H) Institutes that provide professional development that addresses the needs of children with disabilities to teachers or teams of teachers, and where appropriate, to school board members, administrators, principals, pupil-service personnel, and other staff from individual schools.

"(I) Projects to improve the ability of general education teachers, principals, and other administrators to meet the needs of children with disabilities.

"(J) Developing, evaluating, and disseminating innovative models for the recruitment, induction, retention, and assessment of new, qualified teachers, especially from groups that are underrepresented in the teaching profession, including individuals with disabilities.

"(K) Supporting institutions of higher education with minority enrollments of at least 25 percent for the purpose of preparing personnel to work with children with disabilities.

"(e) HIGH-INCIDENCE DISABILITIES; AUTHORIZED ACTIVITIES.—

"(1) IN GENERAL.—In carrying out this section, the Secretary shall support activities, consistent with the objectives described in subsection (a), to benefit children with high-incidence disabilities, such as children with specific learning disabilities, speech or language impairment, or mental retardation.

"(2) AUTHORIZED ACTIVITIES.—Activities that may be carried out under this subsection include the following:

"(A) Activities undertaken by institutions of higher education, local educational agencies, and other local entities—

"(i) to improve and reform their existing programs to prepare teachers and related services personnel—

"(I) to meet the diverse needs of children with disabilities for early intervention, educational, and transitional services; and

"(II) to work collaboratively in regular classroom settings; and

"(ii) to incorporate best practices and research-based knowledge about preparing personnel so they will have the knowledge and skills to improve educational results for children with disabilities.

"(B) Activities incorporating innovative strategies to recruit and prepare teachers and other personnel to meet the needs of areas in which there are acute and persistent shortages of personnel.

"(C) Developing career opportunities for paraprofessionals to receive training as special education teachers, related services personnel, and early intervention personnel, including interdisciplinary training to enable them to improve early intervention, educational, and transitional results for children with disabilities.

"(f) APPLICATIONS.—

"(1) IN GENERAL.—Any eligible entity that wishes to receive a grant, or enter into a contract or cooperative agreement, under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

"(2) IDENTIFIED STATE NEEDS.—

"(A) REQUIREMENT TO ADDRESS IDENTIFIED NEEDS.—Any application under subsection (b), (c), or (e) shall include information demonstrating to the satisfaction of the Secretary that the activities described in the application will address needs identified by the State or States the applicant proposes to serve.

"(B) COOPERATION WITH STATE EDUCATIONAL AGENCIES.—Any applicant that is not a local educational agency or a State educational agency shall include information demonstrating to the satisfaction of the Secretary that the applicant and one or more State educational agencies have engaged in a cooperative effort to plan the project to which the application pertains, and will cooperate in carrying out and monitoring the project.

"(3) ACCEPTANCE BY STATES OF PERSONNEL PREPARATION REQUIREMENTS.—The Secretary may require applicants to provide letters from one or more States stating that the States—

"(A) intend to accept successful completion of the proposed personnel preparation program as meeting State personnel standards for serving children with disabilities or serving infants and toddlers with disabilities; and

"(B) need personnel in the area or areas in which the applicant proposes to provide preparation, as identified in the States' comprehensive systems of personnel development under parts B and C.

"(g) SELECTION OF RECIPIENTS.—

"(1) IMPACT OF PROJECT.—In selecting recipients under this section, the Secretary may consider the impact of the project proposed in the application in meeting the need for personnel identified by the States.

"(2) REQUIREMENT ON APPLICANTS TO MEET STATE AND PROFESSIONAL STANDARDS.—The Secretary shall make grants under this section only to eligible applicants that meet State and professionally-recognized standards for the preparation of special education and related services personnel, if the purpose of the project is to assist personnel in obtaining degrees. Grants.

"(3) PREFERENCES.—In selecting recipients under this section, the Secretary may—

"(A) give preference to institutions of higher education that are educating regular education personnel to meet the needs of children with disabilities in integrated settings and educating special education personnel to work in collaboration with regular educators in integrated settings; and

"(B) give preference to institutions of higher education that are successfully recruiting and preparing individuals with disabilities and individuals from groups that are underrepresented in the profession for which they are preparing individuals.

"(h) SERVICE OBLIGATION.—

"(1) IN GENERAL.—Each application for funds under subsections (b) and (e), and to the extent appropriate subsection (d), shall include an assurance that the applicant will ensure that individuals who receive a scholarship under the proposed project will subsequently provide special education and related services to children with disabilities for a period of 2 years for every year for which assistance was received or repay all or part of the cost of that assistance, in accordance with regulations issued by the Secretary.

"(2) LEADERSHIP PREPARATION.—Each application for funds under subsection (c) shall include an assurance that the applicant will ensure that individuals who receive a scholarship under the proposed project will subsequently perform work related to their preparation for a period of 2 years for every year for which assistance was received or repay all or part of such costs, in accordance with regulations issued by the Secretary.

"(i) SCHOLARSHIPS.—The Secretary may include funds for scholarships, with necessary stipends and allowances, in awards under subsections (b), (c), (d), and (e).

"(j) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary for each of the fiscal years 1998 through 2002.

"SEC. 674. STUDIES AND EVALUATIONS. 20 USC 1474.

"(a) STUDIES AND EVALUATIONS.—

"(1) IN GENERAL.—The Secretary shall, directly or through grants, contracts, or cooperative agreements, assess the progress in the implementation of this Act, including the effectiveness of State and local efforts to provide— Grants. Contracts.

"(A) a free appropriate public education to children with disabilities; and

"(B) early intervention services to infants and toddlers with disabilities and infants and toddlers who would be at risk of having substantial developmental delays if early intervention services were not provided to them.

"(2) AUTHORIZED ACTIVITIES.—In carrying out this subsection, the Secretary may support studies, evaluations, and assessments, including studies that—

"(A) analyze measurable impact, outcomes, and results achieved by State educational agencies and local educational agencies through their activities to reform policies, procedures, and practices designed to improve educational and transitional services and results for children with disabilities;

"(B) analyze State and local needs for professional development, parent training, and other appropriate activities that can reduce the need for disciplinary actions involving children with disabilities;

"(C) assess educational and transitional services and results for children with disabilities from minority backgrounds, including—

"(i) data on—

"(I) the number of minority children who are referred for special education evaluation;

"(II) the number of minority children who are receiving special education and related services and their educational or other service placement; and

"(III) the number of minority children who graduated from secondary and postsecondary education programs; and

"(ii) the performance of children with disabilities from minority backgrounds on State assessments and other performance indicators established for all students;

"(D) measure educational and transitional services and results of children with disabilities under this Act, including longitudinal studies that—

"(i) examine educational and transitional services and results for children with disabilities who are 3 through 17 years of age and are receiving special education and related services under this Act, using a national, representative sample of distinct age cohorts and disability categories; and

"(ii) examine educational results, postsecondary placement, and employment status of individuals with disabilities, 18 through 21 years of age, who are receiving or have received special education and related services under this Act; and

"(E) identify and report on the placement of children with disabilities by disability category.

"(b) NATIONAL ASSESSMENT.—

"(1) IN GENERAL.—The Secretary shall carry out a national assessment of activities carried out with Federal funds under this Act in order—

"(A) to determine the effectiveness of this Act in achieving its purposes;

"(B) to provide information to the President, the Congress, the States, local educational agencies, and the public on how to implement the Act more effectively; and

"(C) to provide the President and the Congress with information that will be useful in developing legislation to achieve the purposes of this Act more effectively.

"(2) CONSULTATION.—The Secretary shall plan, review, and conduct the national assessment under this subsection in consultation with researchers, State practitioners, local practitioners, parents of children with disabilities, individuals with disabilities, and other appropriate individuals.

"(3) SCOPE OF ASSESSMENT.—The national assessment shall examine how well schools, local educational agencies, States, other recipients of assistance under this Act, and the Secretary are achieving the purposes of this Act, including—

"(A) improving the performance of children with disabilities in general scholastic activities and assessments as compared to nondisabled children;

"(B) providing for the participation of children with disabilities in the general curriculum;

"(C) helping children with disabilities make successful transitions from—

"(i) early intervention services to preschool education;

"(ii) preschool education to elementary school; and

"(iii) secondary school to adult life;

"(D) placing and serving children with disabilities, including minority children, in the least restrictive environment appropriate;

"(E) preventing children with disabilities, especially children with emotional disturbances and specific learning disabilities, from dropping out of school;

"(F) addressing behavioral problems of children with disabilities as compared to nondisabled children;

"(G) coordinating services provided under this Act with each other, with other educational and pupil services (including preschool services), and with health and social services funded from other sources;

"(H) providing for the participation of parents of children with disabilities in the education of their children; and

"(I) resolving disagreements between education personnel and parents through activities such as mediation.

"(4) INTERIM AND FINAL REPORTS.—The Secretary shall submit to the President and the Congress—

"(A) an interim report that summarizes the preliminary findings of the assessment not later than October 1, 1999; and

"(B) a final report of the findings of the assessment not later than October 1, 2001.

"(c) ANNUAL REPORT.—The Secretary shall report annually to the Congress on—

"(1) an analysis and summary of the data reported by the States and the Secretary of the Interior under section 618;

"(2) the results of activities conducted under subsection (a);

"(3) the findings and determinations resulting from reviews of State implementation of this Act.

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Grants.
Contracts.

"(d) TECHNICAL ASSISTANCE TO LEAS.—The Secretary shall provide directly, or through grants, contracts, or cooperative agreements, technical assistance to local educational agencies to assist them in carrying out local capacity-building and improvement projects under section 611(f)(4) and other LEA systemic improvement activities under this Act.

"(e) RESERVATION FOR STUDIES AND TECHNICAL ASSISTANCE.—

"(1) IN GENERAL.—Except as provided in paragraph (2) and notwithstanding any other provision of this Act, the Secretary may reserve up to one-half of one percent of the amount appropriated under parts B and C for each fiscal year to carry out this section.

"(2) MAXIMUM AMOUNT.—For the first fiscal year in which the amount described in paragraph (1) is at least $20,000,000, the maximum amount the Secretary may reserve under paragraph (1) is $20,000,000. For each subsequent fiscal year, the maximum amount the Secretary may reserve under paragraph (1) is $20,000,000, increased by the cumulative rate of inflation since the fiscal year described in the previous sentence.

"(3) USE OF MAXIMUM AMOUNT.—In any fiscal year described in paragraph (2) for which the Secretary reserves the maximum amount described in that paragraph, the Secretary shall use at least half of the reserved amount for activities under subsection (d).

"Chapter 2—Improving Early Intervention, Educational, and Transitional Services and Results for Children With Disabilities Through Coordinated Technical Assistance, Support, and Dissemination of Information

20 USC 1481.

"SEC. 681. FINDINGS AND PURPOSES.

"(a) IN GENERAL.—The Congress finds as follows:

"(1) National technical assistance, support, and dissemination activities are necessary to ensure that parts B and C are fully implemented and achieve quality early intervention, educational, and transitional results for children with disabilities and their families.

"(2) Parents, teachers, administrators, and related services personnel need technical assistance and information in a timely, coordinated, and accessible manner in order to improve early intervention, educational, and transitional services and results at the State and local levels for children with disabilities and their families.

"(3) Parent training and information activities have taken on increased importance in efforts to assist parents of a child with a disability in dealing with the multiple pressures of rearing such a child and are of particular importance in—

"(A) ensuring the involvement of such parents in planning and decisionmaking with respect to early intervention, educational, and transitional services;

"(B) achieving quality early intervention, educational, and transitional results for children with disabilities;

"(C) providing such parents information on their rights and protections under this Act to ensure improved early

intervention, educational, and transitional results for children with disabilities;

"(D) assisting such parents in the development of skills to participate effectively in the education and development of their children and in the transitions described in section 674(b)(3)(C); and

"(E) supporting the roles of such parents as participants within partnerships seeking to improve early intervention, educational, and transitional services and results for children with disabilities and their families.

"(4) Providers of parent training and information activities need to ensure that such parents who have limited access to services and supports, due to economic, cultural, or linguistic barriers, are provided with access to appropriate parent training and information activities.

"(5) Parents of children with disabilities need information that helps the parents to understand the rights and responsibilities of their children under part B.

"(6) The provision of coordinated technical assistance and dissemination of information to State and local agencies, institutions of higher education, and other providers of services to children with disabilities is essential in—

"(A) supporting the process of achieving systemic change;

"(B) supporting actions in areas of priority specific to the improvement of early intervention, educational, and transitional results for children with disabilities;

"(C) conveying information and assistance that are—

"(i) based on current research (as of the date the information and assistance are conveyed);

"(ii) accessible and meaningful for use in supporting systemic-change activities of State and local partnerships; and

"(iii) linked directly to improving early intervention, educational, and transitional services and results for children with disabilities and their families; and

"(D) organizing systems and information networks for such information, based on modern technology related to—

"(i) storing and gaining access to information; and

"(ii) distributing information in a systematic manner to parents, students, professionals, and policymakers.

"(7) Federal support for carrying out technology research, technology development, and educational media services and activities has resulted in major innovations that have significantly improved early intervention, educational, and transitional services and results for children with disabilities and their families.

"(8) Such Federal support is needed—

"(A) to stimulate the development of software, interactive learning tools, and devices to address early intervention, educational, and transitional needs of children with disabilities who have certain disabilities;

"(B) to make information available on technology research, technology development, and educational media

services and activities to individuals involved in the provision of early intervention, educational, and transitional services to children with disabilities;

"(C) to promote the integration of technology into curricula to improve early intervention, educational, and transitional results for children with disabilities;

"(D) to provide incentives for the development of technology and media devices and tools that are not readily found or available because of the small size of potential markets;

"(E) to make resources available to pay for such devices and tools and educational media services and activities;

"(F) to promote the training of personnel—

"(i) to provide such devices, tools, services, and activities in a competent manner; and

"(ii) to assist children with disabilities and their families in using such devices, tools, services, and activities; and

"(G) to coordinate the provision of such devices, tools, services, and activities—

"(i) among State human services programs; and

"(ii) between such programs and private agencies.

"(b) PURPOSES.—The purposes of this chapter are to ensure that—

"(1) children with disabilities, and their parents, receive training and information on their rights and protections under this Act, in order to develop the skills necessary to effectively participate in planning and decisionmaking relating to early intervention, educational, and transitional services and in systemic-change activities;

"(2) parents, teachers, administrators, early intervention personnel, related services personnel, and transition personnel receive coordinated and accessible technical assistance and information to assist such persons, through systemic-change activities and other efforts, to improve early intervention, educational, and transitional services and results for children with disabilities and their families;

"(3) appropriate technology and media are researched, developed, demonstrated, and made available in timely and accessible formats to parents, teachers, and all types of personnel providing services to children with disabilities to support their roles as partners in the improvement and implementation of early intervention, educational, and transitional services and results for children with disabilities and their families;

"(4) on reaching the age of majority under State law, children with disabilities understand their rights and responsibilities under part B, if the State provides for the transfer of parental rights under section 615(m); and

"(5) the general welfare of deaf and hard-of-hearing individuals is promoted by—

"(A) bringing to such individuals understanding and appreciation of the films and television programs that play an important part in the general and cultural advancement of hearing individuals;

"(B) providing, through those films and television programs, enriched educational and cultural experiences

through which deaf and hard-of-hearing individuals can better understand the realities of their environment; and

"(C) providing wholesome and rewarding experiences that deaf and hard-of-hearing individuals may share.

"SEC. 682. PARENT TRAINING AND INFORMATION CENTERS. 20 USC 1482.

"(a) PROGRAM AUTHORIZED.—The Secretary may make grants to, and enter into contracts and cooperative agreements with, parent organizations to support parent training and information centers to carry out activities under this section.

"(b) REQUIRED ACTIVITIES.—Each parent training and information center that receives assistance under this section shall—

"(1) provide training and information that meets the training and information needs of parents of children with disabilities living in the area served by the center, particularly underserved parents and parents of children who may be inappropriately identified;

"(2) assist parents to understand the availability of, and how to effectively use, procedural safeguards under this Act, including encouraging the use, and explaining the benefits, of alternative methods of dispute resolution, such as the mediation process described in section 615(e);

"(3) serve the parents of infants, toddlers, and children with the full range of disabilities;

"(4) assist parents to—

"(A) better understand the nature of their children's disabilities and their educational and developmental needs;

"(B) communicate effectively with personnel responsible for providing special education, early intervention, and related services;

"(C) participate in decisionmaking processes and the development of individualized education programs under part B and individualized family service plans under part C;

"(D) obtain appropriate information about the range of options, programs, services, and resources available to assist children with disabilities and their families;

"(E) understand the provisions of this Act for the education of, and the provision of early intervention services to, children with disabilities; and

"(F) participate in school reform activities;

"(5) in States where the State elects to contract with the parent training and information center, contract with State educational agencies to provide, consistent with subparagraphs (B) and (D) of section 615(e)(2), individuals who meet with parents to explain the mediation process to them;

"(6) network with appropriate clearinghouses, including organizations conducting national dissemination activities under section 685(d), and with other national, State, and local organizations and agencies, such as protection and advocacy agencies, that serve parents and families of children with the full range of disabilities; and

"(7) annually report to the Secretary on— Reports.

"(A) the number of parents to whom it provided information and training in the most recently concluded fiscal year; and

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"(B) the effectiveness of strategies used to reach and serve parents, including underserved parents of children with disabilities.

"(c) OPTIONAL ACTIVITIES.—A parent training and information center that receives assistance under this section may—

"(1) provide information to teachers and other professionals who provide special education and related services to children with disabilities;

"(2) assist students with disabilities to understand their rights and responsibilities under section 615(m) on reaching the age of majority; and

"(3) assist parents of children with disabilities to be informed participants in the development and implementation of the State's State improvement plan under subpart 1.

"(d) APPLICATION REQUIREMENTS.—Each application for assistance under this section shall identify with specificity the special efforts that the applicant will undertake—

"(1) to ensure that the needs for training and information of underserved parents of children with disabilities in the area to be served are effectively met; and

"(2) to work with community-based organizations.

"(e) DISTRIBUTION OF FUNDS.—

"(1) IN GENERAL.—The Secretary shall make at least 1 award to a parent organization in each State, unless the Secretary does not receive an application from such an organization in each State of sufficient quality to warrant approval.

"(2) SELECTION REQUIREMENT.—The Secretary shall select among applications submitted by parent organizations in a State in a manner that ensures the most effective assistance to parents, including parents in urban and rural areas, in the State.

"(f) QUARTERLY REVIEW.—

"(1) REQUIREMENTS.—

"(A) MEETINGS.—The board of directors or special governing committee of each organization that receives an award under this section shall meet at least once in each calendar quarter to review the activities for which the award was made.

"(B) ADVISING BOARD.—Each special governing committee shall directly advise the organization's governing board of its views and recommendations.

"(2) CONTINUATION AWARD.—When an organization requests a continuation award under this section, the board of directors or special governing committee shall submit to the Secretary a written review of the parent training and information program conducted by the organization during the preceding fiscal year.

"(g) DEFINITION OF PARENT ORGANIZATION.—As used in this section, the term 'parent organization' means a private nonprofit organization (other than an institution of higher education) that—

"(1) has a board of directors—

"(A) the majority of whom are parents of children with disabilities;

"(B) that includes—

"(i) individuals working in the fields of special education, related services, and early intervention; and

"(ii) individuals with disabilities; and

"(C) the parent and professional members of which are broadly representative of the population to be served; or

"(2) has—

"(A) a membership that represents the interests of individuals with disabilities and has established a special governing committee that meets the requirements of paragraph (1); and

"(B) a memorandum of understanding between the special governing committee and the board of directors of the organization that clearly outlines the relationship between the board and the committee and the decisionmaking responsibilities and authority of each.

"SEC. 683. COMMUNITY PARENT RESOURCE CENTERS. 20 USC 1483.

"(a) IN GENERAL.—The Secretary may make grants to, and enter into contracts and cooperative agreements with, local parent organizations to support parent training and information centers that will help ensure that underserved parents of children with disabilities, including low-income parents, parents of children with limited English proficiency, and parents with disabilities, have the training and information they need to enable them to participate effectively in helping their children with disabilities—

"(1) to meet developmental goals and, to the maximum extent possible, those challenging standards that have been established for all children; and

"(2) to be prepared to lead productive independent adult lives, to the maximum extent possible.

"(b) REQUIRED ACTIVITIES.—Each parent training and information center assisted under this section shall—

"(1) provide training and information that meets the training and information needs of parents of children with disabilities proposed to be served by the grant, contract, or cooperative agreement;

"(2) carry out the activities required of parent training and information centers under paragraphs (2) through (7) of section 682(b);

"(3) establish cooperative partnerships with the parent training and information centers funded under section 682; and

"(4) be designed to meet the specific needs of families who experience significant isolation from available sources of information and support.

"(c) DEFINITION.—As used is this section, the term 'local parent organization' means a parent organization, as defined in section 682(g), that either—

"(1) has a board of directors the majority of whom are from the community to be served; or

"(2) has—

"(A) as a part of its mission, serving the interests of individuals with disabilities from such community; and

"(B) a special governing committee to administer the grant, contract, or cooperative agreement, a majority of the members of which are individuals from such community.

"SEC. 684. TECHNICAL ASSISTANCE FOR PARENT TRAINING AND INFORMATION CENTERS.

"(a) IN GENERAL.—The Secretary may, directly or through awards to eligible entities, provide technical assistance for developing, assisting, and coordinating parent training and information programs carried out by parent training and information centers receiving assistance under sections 682 and 683.

"(b) AUTHORIZED ACTIVITIES.—The Secretary may provide technical assistance to a parent training and information center under this section in areas such as—

"(1) effective coordination of parent training efforts;

"(2) dissemination of information;

"(3) evaluation by the center of itself;

"(4) promotion of the use of technology, including assistive technology devices and assistive technology services;

"(5) reaching underserved populations;

"(6) including children with disabilities in general education programs;

"(7) facilitation of transitions from—

"(A) early intervention services to preschool;

"(B) preschool to school; and

"(C) secondary school to postsecondary environments; and

"(8) promotion of alternative methods of dispute resolution.

20 USC 1485.

"SEC. 685. COORDINATED TECHNICAL ASSISTANCE AND DISSEMINATION.

"(a) IN GENERAL.—The Secretary shall, by competitively making grants or entering into contracts and cooperative agreements with eligible entities, provide technical assistance and information, through such mechanisms as institutes, Regional Resource Centers, clearinghouses, and programs that support States and local entities in building capacity, to improve early intervention, educational, and transitional services and results for children with disabilities and their families, and address systemic-change goals and priorities.

"(b) SYSTEMIC TECHNICAL ASSISTANCE; AUTHORIZED ACTIVITIES.—

"(1) IN GENERAL.—In carrying out this section, the Secretary shall carry out or support technical assistance activities, consistent with the objectives described in subsection (a), relating to systemic change.

"(2) AUTHORIZED ACTIVITIES.—Activities that may be carried out under this subsection include activities such as the following:

"(A) Assisting States, local educational agencies, and other participants in partnerships established under subpart 1 with the process of planning systemic changes that will promote improved early intervention, educational, and transitional results for children with disabilities.

"(B) Promoting change through a multistate or regional framework that benefits States, local educational agencies, and other participants in partnerships that are in the process of achieving systemic-change outcomes.

"(C) Increasing the depth and utility of information in ongoing and emerging areas of priority need identified by States, local educational agencies, and other participants

in partnerships that are in the process of achieving systemic-change outcomes.

"(D) Promoting communication and information exchange among States, local educational agencies, and other participants in partnerships, based on the needs and concerns identified by the participants in the partnerships, rather than on externally imposed criteria or topics, regarding—

"(i) the practices, procedures, and policies of the States, local educational agencies, and other participants in partnerships; and

"(ii) accountability of the States, local educational agencies, and other participants in partnerships for improved early intervention, educational, and transitional results for children with disabilities.

"(c) SPECIALIZED TECHNICAL ASSISTANCE; AUTHORIZED ACTIVITIES.—

"(1) IN GENERAL.—In carrying out this section, the Secretary shall carry out or support activities, consistent with the objectives described in subsection (a), relating to areas of priority or specific populations.

"(2) AUTHORIZED ACTIVITIES.—Examples of activities that may be carried out under this subsection include activities that—

"(A) focus on specific areas of high-priority need that—

"(i) are identified by States, local educational agencies, and other participants in partnerships;

"(ii) require the development of new knowledge, or the analysis and synthesis of substantial bodies of information not readily available to the States, agencies, and other participants in partnerships; and

"(iii) will contribute significantly to the improvement of early intervention, educational, and transitional services and results for children with disabilities and their families;

"(B) focus on needs and issues that are specific to a population of children with disabilities, such as the provision of single-State and multi-State technical assistance and in-service training—

"(i) to schools and agencies serving deaf-blind children and their families; and

"(ii) to programs and agencies serving other groups of children with low-incidence disabilities and their families; or

"(C) address the postsecondary education needs of individuals who are deaf or hard-of-hearing.

"(d) NATIONAL INFORMATION DISSEMINATION; AUTHORIZED ACTIVITIES.—

"(1) IN GENERAL.—In carrying out this section, the Secretary shall carry out or support information dissemination activities that are consistent with the objectives described in subsection (a), including activities that address national needs for the preparation and dissemination of information relating to eliminating barriers to systemic-change and improving early intervention, educational, and transitional results for children with disabilities.

"(2) AUTHORIZED ACTIVITIES.—Examples of activities that may be carried out under this subsection include activities relating to—

"(A) infants and toddlers with disabilities and their families, and children with disabilities and their families;

"(B) services for populations of children with low-incidence disabilities, including deaf-blind children, and targeted age groupings;

"(C) the provision of postsecondary services to individuals with disabilities;

"(D) the need for and use of personnel to provide services to children with disabilities, and personnel recruitment, retention, and preparation;

"(E) issues that are of critical interest to State educational agencies and local educational agencies, other agency personnel, parents of children with disabilities, and individuals with disabilities;

"(F) educational reform and systemic change within States; and

"(G) promoting schools that are safe and conducive to learning.

"(3) LINKING STATES TO INFORMATION SOURCES.—In carrying out this subsection, the Secretary may support projects that link States to technical assistance resources, including special education and general education resources, and may make research and related products available through libraries, electronic networks, parent training projects, and other information sources.

"(e) APPLICATIONS.—An eligible entity that wishes to receive a grant, or enter into a contract or cooperative agreement, under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

20 USC 1486.

"SEC. 686. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated to carry out sections 681 through 685 such sums as may be necessary for each of the fiscal years 1998 through 2002.

20 USC 1487.

"SEC. 687. TECHNOLOGY DEVELOPMENT, DEMONSTRATION, AND UTILIZATION; AND MEDIA SERVICES.

Grants.
Contracts.

"(a) IN GENERAL.—The Secretary shall competitively make grants to, and enter into contracts and cooperative agreements with, eligible entities to support activities described in subsections (b) and (c).

"(b) TECHNOLOGY DEVELOPMENT, DEMONSTRATION, AND UTILIZATION; AUTHORIZED ACTIVITIES.—

"(1) IN GENERAL.—In carrying out this section, the Secretary shall support activities to promote the development, demonstration, and utilization of technology.

"(2) AUTHORIZED ACTIVITIES.—Activities that may be carried out under this subsection include activities such as the following:

"(A) Conducting research and development activities on the use of innovative and emerging technologies for children with disabilities.

"(B) Promoting the demonstration and use of innovative and emerging technologies for children with disabilities

by improving and expanding the transfer of technology from research and development to practice.

"(C) Providing technical assistance to recipients of other assistance under this section, concerning the development of accessible, effective, and usable products.

"(D) Communicating information on available technology and the uses of such technology to assist children with disabilities.

"(E) Supporting the implementation of research programs on captioning or video description.

"(F) Supporting research, development, and dissemination of technology with universal-design features, so that the technology is accessible to individuals with disabilities without further modification or adaptation.

"(G) Demonstrating the use of publicly-funded telecommunications systems to provide parents and teachers with information and training concerning early diagnosis of, intervention for, and effective teaching strategies for, young children with reading disabilities.

"(c) EDUCATIONAL MEDIA SERVICES; AUTHORIZED ACTIVITIES.—In carrying out this section, the Secretary shall support—

"(1) educational media activities that are designed to be of educational value to children with disabilities;

"(2) providing video description, open captioning, or closed captioning of television programs, videos, or educational materials through September 30, 2001; and after fiscal year 2001, providing video description, open captioning, or closed captioning of educational, news, and informational television, videos, or materials;

"(3) distributing captioned and described videos or educational materials through such mechanisms as a loan service;

"(4) providing free educational materials, including textbooks, in accessible media for visually impaired and print-disabled students in elementary, secondary, postsecondary, and graduate schools;

"(5) providing cultural experiences through appropriate nonprofit organizations, such as the National Theater of the Deaf, that—

"(A) enrich the lives of deaf and hard-of-hearing children and adults;

"(B) increase public awareness and understanding of deafness and of the artistic and intellectual achievements of deaf and hard-of-hearing persons; or

"(C) promote the integration of hearing, deaf, and hard-of-hearing persons through shared cultural, educational, and social experiences; and

"(6) compiling and analyzing appropriate data relating to the activities described in paragraphs (1) through (5).

"(d) APPLICATIONS.—Any eligible entity that wishes to receive a grant, or enter into a contract or cooperative agreement, under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

"(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary for each of the fiscal years 1998 through 2002.".

TITLE II—MISCELLANEOUS PROVISIONS

20 USC 1400 note.

SEC. 201. EFFECTIVE DATES.

(a) PARTS A AND B.—

(1) IN GENERAL.—Except as provided in paragraph (2), parts A and B of the Individuals with Disabilities Education Act, as amended by title I, shall take effect upon the enactment of this Act.

(2) EXCEPTIONS.—

(A) IN GENERAL.—Sections 612(a)(4), 612(a)(14), 612(a)(16), 614(d) (except for paragraph (6)), and 618 of the Individuals with Disabilities Education Act, as amended by title I, shall take effect on July 1, 1998.

(B) SECTION 617.—Section 617 of the Individuals with Disabilities Education Act, as amended by title I, shall take effect on October 1, 1997.

(C) INDIVIDUALIZED EDUCATION PROGRAMS AND COMPREHENSIVE SYSTEM OF PERSONNEL DEVELOPMENT.—Section 618 of the Individuals with Disabilities Education Act, as in effect on the day before the date of the enactment of this Act, and the provisions of parts A and B of the Individuals with Disabilities Education Act relating to individualized education programs and the State's comprehensive system of personnel development, as so in effect, shall remain in effect until July 1, 1998.

(D) SECTIONS 611 AND 619.—Sections 611 and 619, as amended by title I, shall take effect beginning with funds appropriated for fiscal year 1998.

20 USC 1431 note.

(b) PART C.—Part C of the Individuals with Disabilities Education Act, as amended by title I, shall take effect on July 1, 1998.

20 USC 1451 note.

(c) PART D.—

(1) IN GENERAL.—Except as provided in paragraph (2), part D of the Individuals with Disabilities Education Act, as amended by title I, shall take effect on October 1, 1997.

(2) EXCEPTION.—Paragraphs (1) and (2) of section 661(g) of the Individuals with Disabilities Education Act, as amended by title I, shall take effect on January 1, 1998.

20 USC 1451 note.

SEC. 202. TRANSITION.

Notwithstanding any other provision of law, beginning on October 1, 1997, the Secretary of Education may use funds appropriated under part D of the Individuals with Disabilities Education Act to make continuation awards for projects that were funded under section 618 and parts C through G of such Act (as in effect on September 30, 1997).

SEC. 203. REPEALERS.

Effective dates.

(a) PART I.—Effective October 1, 1998, part I of the Individuals with Disabilities Education Act is hereby repealed. 20 USC 1491 *et seq.*

(b) PART H.—Effective July 1, 1998, part H of such Act is hereby repealed. 20 USC 1471 *et seq.*

(c) PARTS C, E, F, AND G.—Effective October 1, 1997, parts C, E, F, and G of such Act are hereby repealed. 20 USC 1421 *et seq.*

Approved June 4, 1997.

LEGISLATIVE HISTORY—H.R. 5 (S. 717):

HOUSE REPORTS: No. 105–95 (Comm. on Education and the Workforce).
CONGRESSIONAL RECORD, Vol. 143 (1997):
May 13, considered and passed House.
May 14, considered and passed Senate.
WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 33 (1997):
June 4, Presidential remarks and statement.

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