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108TH CONGRESS
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S. 1248

[Report No. 108–185]

To reauthorize the Individuals with Disabilities Education Act, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 12, 2003

Mr. GREGG (for himself, Mr. KENNEDY, Mr. SESSIONS, Mr. HARKIN, Mr. BINGAMAN, Mr. ENZI, Mr. ALEXANDER, Mr. JEFFORDS, Mrs. CLINTON, Mr. DODD, Mr. REED, Mrs. MURRAY, Mr. ROBERTS, Mr. BOND, and Ms. MIKULSKI) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

NOVEMBER 3, 2003

Reported by Mr. GREGG, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To reauthorize the Individuals with Disabilities Education Act, and for other purposes.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Individuals with Disabilities Education Improvement Act of 2003''.

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.

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

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

''PART A—GENERAL PROVISIONS

''Sec. 601. Short title; table of contents; findings; purposes.
''Sec. 602. Definitions.
''Sec. 603. Office of Special Education Programs.
''Sec. 604. Abrogation of State sovereign immunity.
''Sec. 605. Acquisition of equipment; construction or alteration of facilities.
''Sec. 606. Employment of individuals with disabilities.
''Sec. 607. Requirements for prescribing regulations.
''Sec. 608. State administration.
''Sec. 609. Report to Congress

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

''Sec. 611. Authorization; allotment; use of funds; authorization of appropriations.

~~"Sec. 612. State eligibility.~~
~~"Sec. 613. Local educational agency eligibility.~~
~~"Sec. 614. Evaluations, eligibility determinations, individualized education programs, and educational placements.~~
~~"Sec. 615. Procedural safeguards.~~
~~"Sec. 616. Monitoring, technical assistance, and enforcement.~~
~~"Sec. 617. Administration.~~
~~"Sec. 618. Program information.~~
~~"Sec. 619. Preschool grants.~~

~~"PART C—INFANTS AND TODDLERS WITH DISABILITIES~~

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

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

~~"Sec. 650. Findings and purpose.~~

~~"SUBPART 1—STATE PERSONNEL PREPARATION AND PROFESSIONAL DEVELOPMENT GRANTS~~

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

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

~~"Sec. 660. Purpose.~~
~~"Sec. 661. Administrative provisions.~~
~~"Sec. 662. Research to improve results for children with disabilities.~~
~~"Sec. 663. Technical assistance, demonstration projects, dissemination of information, and implementation of scientifically based research.~~
~~"Sec. 664. Personnel development to improve services and results for children with disabilities.~~
~~"Sec. 665. Studies and evaluations.~~

~~"SUBPART 3—SUPPORTS TO IMPROVE RESULTS FOR CHILDREN WITH DISABILITIES~~

~~"Sec. 670. Purposes.~~
~~"Sec. 671. Parent training and information centers.~~
~~"Sec. 672. Community parent resource centers.~~
~~"Sec. 673. Technical assistance for parent training and information centers.~~
~~"Sec. 674. Technology development, demonstration, and utilization; and media services.~~
~~"Sec. 675. Authorization of appropriations.~~

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

~~"Sec. 681. Purpose.~~
~~"Sec. 682. Definition of eligible entity.~~
~~"Sec. 683. Program authorized.~~
~~"Sec. 684. Program evaluations.~~
~~"Sec. 685. Authorization of appropriations.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~"(C) coordinating this Act with other local, educational service agency, State, and Federal school improvement efforts, including improvement efforts under the Elementary and Secondary Education Act of 2001, in order to ensure that such children benefit from such efforts and that special education can become a~~

~~service for such children rather than a place where they are sent;~~

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

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

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

~~"(G) focusing resources on teaching and learning while reducing paperwork and require-~~

~~ments that do not assist in improving educational results; and~~

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

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

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

~~"(8)(A) The Federal Government must be responsive to the growing needs of an increasingly more diverse society.~~

~~"(B) America's ethnic profile is rapidly changing. In the year 2000, 1 of every 3 persons in the United States was a member of a minority group or was limited English proficient.~~

~~"(C) Minority children comprise an increasing percentage of public school students.~~

~~"(D) With such changing demographics, recruitment efforts for special education personnel should focus on increasing the participation of minorities in the teaching profession.~~

~~"(9)(A) The limited English proficient population is the fastest growing in our Nation, and the growth is occurring in many parts of our Nation.~~

~~"(B) Studies have documented apparent discrepancies in the levels of referral and placement of limited English proficient children in special education.~~

~~"(C) This poses a special challenge for special education in the referral of, assessment of, and services for, our Nation's students from non-English language backgrounds.~~

~~"(10)(A) Greater efforts are needed to prevent the intensification of problems connected with mislabeling and high dropout rates among minority children with disabilities.~~

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

~~"(C) African-American children are over identified as having mental retardation and emotional disturbance at rates greater than their white counterparts.~~

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

~~"(E) Studies have found that schools with predominately Caucasian students and teachers have placed disproportionately high numbers of their minority students into special education.~~

~~"(11)(A) As the number of minority students in special education increases, the number of minority teachers and related services personnel produced in colleges and universities continues to decrease.~~

~~"(B) The opportunity for minority individuals, organizations, and Historically Black Colleges and Universities to participate fully in awards for grants and contracts, boards of organizations receiving funds under this Act, and peer review panels, and in the training of professionals in the area of special education is essential if we are to obtain greater success in the education of minority children with disabilities.~~

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

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

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

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

~~"(2) to assist States in the implementation of a Statewide, 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.~~

~~"SEC. 602. DEFINITIONS.~~

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

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

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

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

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

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

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

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

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

~~"(3) CHILD WITH A DISABILITY.—~~

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

~~"(i) with mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (hereinafter referred to as 'emotional disturbance'), orthopedic impairments, autism, traumatic brain injury,~~

~~other health impairments, or specific learning disabilities; and~~

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

~~"(B) CHILD AGED 3 THROUGH 9.—The term 'child with a disability' for a child aged 3 through 9 (or any subset of that age range, including ages 3 through 5), may, at the discretion of the State and the local educational agency, include a child—~~

~~"(i) experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in 1 or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and~~

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

~~"(4) CORE ACADEMIC SUBJECT.—The term 'core academic subject' has the meaning given the term in section 9101(11) of the Elementary and Secondary Education Act of 1965.~~

~~"(5) EDUCATIONAL SERVICE AGENCY.—The term 'educational service agency'—~~

~~"(A) means a regional public multiservice agency—~~

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

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

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

~~"(6) ELEMENTARY SCHOOL.—The term 'elementary school' means a nonprofit institutional day or residential school that provides elementary education, as determined under State law.~~

~~"(7) EQUIPMENT.—The term 'equipment' includes—~~

~~"(A) machinery, utilities, and built-in equipment, and any necessary enclosures or~~

~~structures to house such machinery, utilities, or equipment; and~~

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

~~"(8) EXCESS COSTS.—The term 'excess costs' means those costs that are in excess of the average annual per-student expenditure in a local educational agency during the preceding school year for an elementary school or secondary school student, as may be appropriate, and which shall be computed after deducting—~~

~~"(A) amounts received—~~

~~"(i) under part B of this title;~~

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

~~"(iii) under parts A and B of title III of that Act; and~~

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

~~"(9) FREE APPROPRIATE PUBLIC EDUCATION.—The term 'free appropriate public education' means special education and related services that—~~

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

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

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

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

~~"(10) HIGHLY QUALIFIED; CONSULTATIVE SERVICES.—~~

~~"(A) HIGHLY QUALIFIED.—The term 'highly qualified', when used with respect to any special education teacher teaching in a State, means a teacher who—~~

~~"(i)(I) meets the definition of that term in section 9101(23) of the Elementary and Secondary Education Act of 1965, including full State certification as a special education teacher through a State approved special education teacher preparation program (including certification obtained through State or local educational agency approved alternative routes); or~~

~~"(II) has passed a State special education licensing examination and holds a license to teach special education in such State,~~

~~except that when used with respect to any teacher teaching in a public charter school, the term means that the teacher meets the requirements set forth in the State's statute on public charter schools; and~~

~~"(ii) does not have certification or licensure requirements waived on an emergency, temporary, or provisional basis;~~

~~"(iii) if the teacher provides only consultative services to a regular education teacher with respect to a core academic subject, the special education teacher shall~~

~~meet the standards for subject knowledge and teaching skills described in section 9101(23) of the Elementary and Secondary Education Act of 1965 that apply to elementary school teachers; and~~

~~"(iv) if the teacher provides instruction in a core academic subject to middle or secondary students who are performing at the elementary level, the teacher shall meet the standards for subject knowledge and teaching skills described in section 9101(23) of the Elementary and Secondary Education Act of 1965 that apply to elementary school teachers.~~

~~"(B) CONSULTATIVE SERVICES.—As used in subparagraph (A)(iii), the term 'consultative services' means—~~

~~"(i) consultation on adapting curricula, using positive behavioral supports and interventions, and selecting appropriate accommodations, and does not include direct instruction of students; or~~

~~"(ii) teaching in collaboration with a regular education teacher or teachers who~~

~~is or are highly qualified in the core academic subjects being taught.~~

~~"(11) INDIAN.—The term 'Indian' means an individual who is a member of an Indian tribe.~~

~~"(12) INDIAN TRIBE.—The term 'Indian tribe' means any Federal or State Indian tribe, band, rancheria, pueblo, colony, or community, including any Alaska Native village or regional village corporation (as defined in or established under the Alaska Native Claims Settlement Act).~~

~~"(13) INDIVIDUALIZED EDUCATION PROGRAM.—The term 'individualized education program' or 'IEP' means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with section 614(d).~~

~~"(14) INDIVIDUALIZED FAMILY SERVICE PLAN.—The term 'individualized family service plan' has the meaning given such term in section 636.~~

~~"(15) INFANT OR TODDLER WITH A DISABILITY.—The term 'infant or toddler with a disability' has the meaning given such term in section 632.~~

~~"(16) INSTITUTION OF HIGHER EDUCATION.—The term 'institution of higher education'—~~

~~"(A) has the meaning given such term in section 101 (a) and (b) of the Higher Education Act of 1965; and~~

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

~~"(17) LOCAL EDUCATIONAL AGENCY.—~~

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

~~"(B) The term includes—~~

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

~~"(ii) any other public institution or agency having administrative control and~~

direction of a public elementary school or secondary school.

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

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

"(19) NONPROFIT.—The term 'nonprofit', as applied to a school, agency, organization, or institution, means a school, agency, organization, or insti-

~~tution owned and operated by 1 or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.~~

~~"(20) OUTLYING AREA.—The term 'outlying area' means the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.~~

~~"(21) 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.~~

~~"(22) PARENT ORGANIZATION.—The term 'parent organization' has the meaning given such term in section 671(g).~~

~~"(23) PARENT TRAINING AND INFORMATION CENTER.—The term 'parent training and information center' means a center assisted under section 671 or 672.~~

~~"(24) 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, school health 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.

"(25) 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.

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

"(27) 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.~~

~~"(28) SPECIFIC LEARNING DISABILITY.—~~

~~"(A) IN GENERAL.—The term 'specific learning disability' means a disorder in 1 or more of the basic psychological processes involved in understanding or in using language, spoken or written, which disorder may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations.~~

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

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

~~"(29) 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.~~

~~"(30) STATE EDUCATIONAL AGENCY.—The term 'State educational agency' means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary schools and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law.~~

~~"(31) 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).~~

~~"(32) TRANSITION SERVICES.—The term 'transition services' means a coordinated set of activities for a child with a disability (as defined in paragraph (3)(A)) that—~~

~~"(A) is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including post-secondary education, vocational~~

~~training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;~~

~~"(B) is based on the individual child's needs, taking into account the child's capacity, preferences, and interests; and~~

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

~~"SEC. 603. OFFICE OF SPECIAL EDUCATION PROGRAMS.~~

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

~~"(b) DIRECTOR.—The Office established under subsection (a) shall be headed by a Director who shall be selected by the Secretary and shall report directly to the As-~~

~~sistant Secretary for Special Education and Rehabilitative Services.~~

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

~~"SEC. 604. ABROGATION OF STATE SOVEREIGN IMMUNITY.~~

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

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

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

~~"SEC. 605. ACQUISITION OF EQUIPMENT; CONSTRUCTION OR ALTERATION OF FACILITIES.~~

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

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

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

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

~~"SEC. 606. EMPLOYMENT OF INDIVIDUALS WITH DISABILITIES.~~

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

~~"SEC. 607. REQUIREMENTS FOR PRESCRIBING REGULATIONS.~~

~~"(a) IN GENERAL.—The Secretary may issue such regulations as are necessary to ensure that there is compliance with this Act.~~

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

~~"(1) violates or contradicts any provision of this Act; and~~

~~"(2) procedurally or substantively lessens the protections provided to children with disabilities under this Act, as embodied in regulations in effect on July 20, 1983 (particularly as such protections related to parental consent to initial evaluation or initial placement in special education, least restrictive environment, related services, timelines, attendance of evaluation personnel at individualized education program meetings, or qualifications of personnel), except to the extent that such regulation reflects the clear and unequivocal intent of the Congress in legislation.~~

~~"(c) PUBLIC COMMENT PERIOD.—The Secretary shall provide a public comment period of not less than 60 days on any regulation proposed under part B or part C~~

of this Act on which an opportunity for public comment is otherwise required by law.

"(d) POLICY LETTERS AND STATEMENTS.—The Secretary may not issue policy letters or other statements (including letters or statements regarding issues of national significance) that—

"(1) violate or contradict any provision of this Act; or

"(2) establish a rule that is required for compliance with, and eligibility under, this Act without following the requirements of section 553 of title 5, United States Code.

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

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

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

"(3) such response represents the interpretation by the Department of Education of the applicable

~~statutory or regulatory requirements in the context of the specific facts presented.~~

~~"(f) CORRESPONDENCE FROM DEPARTMENT OF EDUCATION DESCRIBING INTERPRETATIONS OF THIS ACT.—~~

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

~~"(2) ADDITIONAL INFORMATION.—For each item of correspondence published in a list under paragraph (1), the Secretary shall—~~

~~"(A) identify the topic addressed by the correspondence and shall include such other summary information as the Secretary determines to be appropriate; and~~

~~"(B) ensure that all such correspondence is issued, where applicable, in compliance with the requirements of section 553 of title 5, United States Code.~~

~~"SEC. 608. STATE ADMINISTRATION.~~

~~"(a) RULEMAKING.—Each State that receives funds under this Act shall—~~

~~"(1) ensure that any State rules, regulations, and policies relating to this Act conform to the purposes of this Act; and~~

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

~~"(b) SUPPORT AND FACILITATION.—State rules, regulations, and policies under this Act shall support and facilitate local educational agency and school-level systemic reform designed to enable children with disabilities to meet the challenging State student academic achievement standards.~~

~~"SEC. 609. REPORT TO CONGRESS.~~

~~"The Comptroller General shall conduct a review of Federal, State, and local requirements to determine which requirements result in excessive paperwork completion burdens for teachers, related services providers, and school administrators, and shall report to Congress not later than 18 months after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2003 regarding such review along with strategic proposals for reducing the paperwork burdens on teachers.~~

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

~~"SEC. 611. AUTHORIZATION; ALLOTMENT; USE OF FUNDS; AUTHORIZATION OF APPROPRIATIONS.~~

~~"(a) GRANTS TO STATES.—~~

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

~~"(2) MAXIMUM AMOUNT.—The maximum amount available for awarding grants under this part for any fiscal year is—~~

~~"(A) the total number of children with disabilities in the 2002–2003 school year in the States who received special education and related services and who were—~~

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

~~"(ii) aged 6 through 21; multiplied by~~

~~"(B) 40 percent of the average per-pupil expenditure in public elementary schools and~~

~~secondary schools in the United States; adjusted by~~

~~"(C) the rate of change in the sum of—~~

~~"(i) 85 percent of the change in the nationwide total of the population described in (d)(3)(A)(i)(II); and~~

~~"(ii) 15 percent of the change in the nationwide total of the population described in (d)(3)(A)(i)(III).~~

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

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

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

~~"(B) to provide each of the freely associated States grants that do not exceed the level each such freely associated State received for fiscal year 2003 under this part, but only if the freely associated State meets the requirements of section 611(b)(2)(C) as such section was in effect on the day before the date of enactment~~

of the Individuals with Disabilities Education Improvement Act of 2003.

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

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

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

"(d) ALLOCATIONS TO STATES.—

"(1) IN GENERAL.—After reserving funds for studies and evaluations under section 665, and for payments to the outlying areas, the freely associated States, and the Secretary of the Interior under subsections (b) and (c) for a fiscal year, the Secretary shall allocate the remaining amount among the States in accordance with this subsection.

"(2) SPECIAL RULE FOR USE OF FISCAL YEAR 1999 AMOUNT.—If a State received any funds under this section for fiscal year 1999 on the basis of children aged 3 through 5, but does not make a free appropriate public education available to all children with disabilities aged 3 through 5 in the State in any subsequent fiscal year, the Secretary shall compute the State's amount for fiscal year 1999, solely for the purpose of calculating the State's allocation in that subsequent year under paragraph (3) or (4), by subtracting the amount allocated to the State for fiscal year 1999 on the basis of those children.

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

"(A) ALLOCATION OF INCREASE.—

"(i) IN GENERAL.—Except as provided in subparagraph (B), the Secretary shall allocate for the fiscal year—

"(I) to each State the amount the State received under this section for fiscal year 1999;

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

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

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

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

~~"(i) PRECEDING YEAR ALLOCATION.—No State's allocation shall be less than its~~

~~allocation under this section for the preceding fiscal year.~~

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

~~"(I) the sum of—~~

~~"(aa) the amount the State received under this section for fiscal year 1999; and~~

~~"(bb) ⅓ of 1 percent of the amount by which the amount appropriated under subsection (i) for the fiscal year exceeds the amount appropriated for this section for fiscal year 1999;~~

~~"(II) the sum of—~~

~~"(aa) the amount the State received under this section for the preceding fiscal year; and~~

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

~~"(III) the sum of—~~

~~"(aa) the amount the State received under this section for the preceding fiscal year; and~~

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

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

~~"(I) the amount the State received under this section for the preceding fiscal year; and~~

~~"(II) that amount multiplied by the sum of 1.5 percent and the percentage increase in the amount appropriated under this section from the preceding fiscal year.~~

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

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

~~"(A) AMOUNTS GREATER THAN FISCAL YEAR 1999 ALLOCATIONS.—If the amount available for allocations is greater than the amount allocated to the States for fiscal year 1999, each State shall be allocated the sum of—~~

~~"(i) the amount the State received under this section for fiscal year 1999; and~~

~~"(ii) an amount that bears the same relation to any remaining funds as the increase the State received under this section for the preceding fiscal year over fiscal year 1999 bears to the total of all such increases for all States.~~

~~"(B) AMOUNTS EQUAL TO OR LESS THAN FISCAL YEAR 1999 ALLOCATIONS.—~~

~~"(i) IN GENERAL.—If the amount available for allocations under this paragraph is equal to or less than the amount allocated to the States for fiscal year 1999,~~

~~each State shall be allocated the amount the State received for fiscal year 1999.~~

~~"(ii) RATABLE REDUCTION.—If the amount available for allocations under this paragraph is insufficient to make the allocations described in clause (i), those allocations shall be ratably reduced.~~

~~"(e) STATE-LEVEL ACTIVITIES.—~~

~~"(1) STATE ADMINISTRATION.—~~

~~"(A) IN GENERAL.—For the purpose of administering this part, including paragraph (3), section 619, and the coordination of activities under this part with, and providing technical assistance to, other programs that provide services to children with disabilities—~~

~~"(i) each State may reserve not more than the maximum amount the State was eligible to reserve for State administration for fiscal year 2003 or $800,000 (adjusted by the cumulative rate of inflation since fiscal year 2003 as measured by the percentage increase, if any, in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statis-~~

~~ties of the Department of Labor), whichever is greater; and~~

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

~~"(B) PART C.—Funds reserved under subparagraph (A) may be used for the administration of part C, if the State educational agency is the lead agency for the State under that part.~~

~~"(C) CERTIFICATION.—Prior to expenditure of funds under this paragraph, the State shall certify to the Secretary that the arrangements to establish responsibility for services pursuant to section 612(a)(12)(A) are current.~~

~~"(2) OTHER STATE-LEVEL ACTIVITIES.—~~

~~"(A) IN GENERAL.—For the purpose of providing State-level activities, each State may reserve for each of the fiscal years 2004 and 2005, not more than 10 percent of the amount that remains after subtracting the amount reserved under paragraph (1) from the amount of the State's allocation under subsection (d) for~~

~~fiscal years 2004 and 2005, respectively. For fiscal years 2006, 2007, 2008, and 2009, the State may reserve the maximum amount the State was eligible to reserve under the preceding sentence for fiscal year 2005 (adjusted by the cumulative rate of inflation since fiscal year 2005 as measured by the percentage increase, if any, in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor).~~

~~"(B) REQUIRED ACTIVITIES.—Funds reserved under subparagraph (A) shall be used to carry out the following activities:~~

~~"(i) For monitoring, enforcement and complaint investigation.~~

~~"(ii) To establish and implement the mediation processes required by section 615(e)(1), including providing for the costs of mediators and support personnel;~~

~~"(iii) To fund the State protection and advocacy system, or other legal organizations that have expertise in—~~

~~"(I) dispute resolution and due process;~~

~~"(II) efforts to educate families regarding due process;~~

~~"(III) voluntary mediation; and~~

~~"(IV) the opportunity to resolve complaints.~~

~~"(C) AUTHORIZED ACTIVITIES.—Funds reserved under subparagraph (A) may be used to carry out the following activities:~~

~~"(i) To provide technical assistance, personnel development and training.~~

~~"(ii) To support paperwork reduction activities, including expanding the use of technology in the IEP process.~~

~~"(iii) To assist local educational agencies in providing positive behavioral interventions and supports and mental health services for children with disabilities.~~

~~"(iv) To improve the use of technology in the classroom by children with disabilities to enhance learning.~~

~~"(v) To support the development and use of technology, including universally designed technologies and assistive technology devices, to maximize accessibility to~~

~~the general curriculum for students with disabilities.~~

~~"(vi) Development and implementation of transition programs, including coordination of services with agencies involved in supporting the transition of students with disabilities to post-secondary activities.~~

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

~~"(viii) To support capacity building activities and improve the delivery of services by local educational agencies to improve results for children with disabilities.~~

~~"(ix) Alternative programming for children who have been expelled from school, and services for children in correctional facilities, children enrolled in State-operated or State-supported schools, and children in charter schools.~~

~~"(x) To support the development and provision of appropriate accommodations for children with disabilities, or the development and provision of alternate assessments that are valid and reliable for as-~~

~~sessing the performance of children with disabilities, in accordance with sections 1111(b) and 6111 of the Elementary and Secondary Education Act of 1965.~~

~~"(3) LOCAL EDUCATIONAL AGENCY RISK POOL.—~~

~~"(A) IN GENERAL.—For the purpose of assisting local educational agencies (and charter schools that are local educational agencies) in addressing the needs of high-need children and the unanticipated enrollment of other children eligible for service under this part, each State shall reserve for each of the fiscal years 2004 through 2009, 2 percent of the amount that remains after subtracting the amount reserved under paragraph (1) from the amount of the State's allocation under subsection (d) for each of the fiscal years 2004 through 2009, respectively, to—~~

~~"(i) establish a high-cost fund; and~~

~~"(ii) make disbursements from the high-cost fund to local educational agencies in accordance with this paragraph.~~

~~"(B) REQUIRED DISBURSEMENTS FROM THE FUND.—Each State educational agency~~

~~shall make disbursements from the fund established under subparagraph (A) to local educational agencies to pay the percentage, described in subparagraph (D), of the costs of providing a free appropriate public education to high-need children.~~

~~"(C) APPLICATION.—A local educational agency that desires a disbursement under this subsection shall submit an application to the State educational agency at such time, in such manner, and containing such information as the State educational agency may require. Such application shall include assurances that funds provided under this paragraph shall not be used to pay costs that otherwise would be reimbursable as medical assistance for a child with a disability under the State medicaid program under title XIX of the Social Security Act.~~

~~"(D) DISBURSEMENTS.—~~

~~"(i) IN GENERAL.—A State educational agency shall make a disbursement to a local educational agency that submits an application under subparagraph (C) in an amount that is equal to 75 percent of the costs that are in excess of 4 times the~~

average per-pupil expenditure in the United States or in the State where the child resides (whichever average per-pupil expenditure is lower) associated with educating each high need child served by such local educational agency in a fiscal year for whom such agency desires a disbursement.

"(ii) APPROPRIATE COSTS.—The costs associated with educating a high need child under clause (i) are only those costs associated with providing direct special education and related services to such child that are identified in such child's appropriately developed IEP.

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

"(F) PERMISSIBLE DISBURSEMENTS FROM REMAINING FUNDS.—A State educational agency may make disbursements to local educational agencies from any funds that are remaining in the high cost fund after making the required

~~disbursements under subparagraph (D) for a fiscal year for the following purposes:~~

~~"(i) To pay the costs associated with serving children with disabilities who moved into the areas served by such local agencies after the budget for the following school year had been finalized to assist the local educational agencies in providing a free appropriate public education for such children in such year.~~

~~"(ii) To compensate local educational agencies for extraordinary costs, as determined by the State, of any children eligible for services under this part due to—~~

~~"(I) unexpected enrollment or placement of children eligible for services under this part; or~~

~~"(II) a significant underestimate of the average cost of providing services to children eligible for services under this part.~~

~~"(G) REMAINING FUNDS.—Funds reserved under subparagraph (A) in any fiscal year but not expended in that fiscal year pursuant to subparagraph (D) or subparagraph (F) shall—~~

~~"(i) be allocated to local educational agencies pursuant to subparagraphs (D) or (F) for the next fiscal year; or~~

~~"(ii) be allocated to local educational agencies in the same manner as funds are allocated to local educational agencies under subsection (f).~~

~~"(H) ASSURANCE OF A FREE APPROPRIATE PUBLIC EDUCATION.—Nothing in this section shall be construed—~~

~~"(i) to limit or condition the right of a child with a disability who is assisted under this part to receive a free appropriate public education pursuant to section 612(a)(1) in a least restrictive environment pursuant to section 612(a)(5); or~~

~~"(ii) to authorize a State educational agency or local educational agency to indicate a limit on what is expected to be spent on the education of a child with a disability.~~

~~"(I) MEDICAID SERVICES NOT AFFECTED.—Disbursements provided under this subsection shall not be used to pay costs that otherwise would be reimbursable as medical as-~~

~~sistance for a child with a disability under the State medicaid program under title XIX of the Social Security Act.~~

~~"(J) DEFINITIONS.—In this paragraph:~~

~~"(i) AVERAGE PER-PUPIL EXPENDITURE.—The term 'average per-pupil expenditure' has the meaning given the term in section 9101 of the Elementary and Secondary Education Act of 1965.~~

~~"(ii) HIGH-NEED CHILD.—The term 'high-need', when used with respect to a child with a disability, means a child with a disability for whom a free appropriate public education in a fiscal year costs more than 4 times the average per-pupil expenditure for such fiscal year.~~

~~"(K) SPECIAL RULE FOR RISK POOL AND HIGH-NEED ASSISTANCE PROGRAMS IN EFFECT AS OF JANUARY 1, 2003.—Notwithstanding the provisions of subparagraphs (A) through (J), a State may use funds reserved pursuant to this paragraph for administering and implementing a placement neutral cost-sharing and reimbursement program of high-need, low-incidence, emergency, catastrophic, or extraordinary aid to~~

local educational agencies that provides services to students eligible under this part based on eligibility criteria for such programs that were operative on January 1, 2003.

"(4) INAPPLICABILITY OF CERTAIN PROHIBITIONS.—A State may use funds the State reserves under paragraphs (1), (2), and (3) without regard to—

"(A) the prohibition on commingling of funds in section 612(a)(17)(B); and

"(B) the prohibition on supplanting other funds in section 612(a)(17)(C).

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

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

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

"(f) SUBGRANTS TO LOCAL EDUCATIONAL AGENCIES.—

"(1) SUBGRANTS REQUIRED.—Each State that receives a grant under this section for any fiscal

~~year shall distribute any funds the State does not reserve under subsection (c) to local educational agencies (including public charter schools that operate as local educational agencies) in the State that have established their eligibility under section 613 for use in accordance with this part.~~

~~"(2) PROCEDURE FOR ALLOCATIONS TO LOCAL EDUCATIONAL AGENCIES.—~~

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

~~"(i) BASE PAYMENTS.—The State shall first award each local educational agency described in paragraph (1) the amount the local educational agency would have received under this section for fiscal year 1999, if the State had distributed 75 percent of its grant for that year under section 611(d) as section 611(d) was then in effect.~~

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

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

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

~~"(3) REALLOCATION OF FUNDS.—If a State educational agency determines that a local educational agency is adequately providing a free appropriate public education to all children with disabilities residing in the area served by that local educational agency with State and local funds, the State educational agency may reallocate any portion of the funds under this part that are not needed by that local educational agency to provide a free appropriate public education to other local educational agencies in the State that are not adequately pro-~~

~~viding special education and related services to all children with disabilities residing in the areas served by those other local educational agencies.~~

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

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

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

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

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

~~"(B) the aggregate number of children in average daily attendance to whom those local~~

educational agencies provided free public education during that preceding year; and

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

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

"(1) PROVISION OF AMOUNTS FOR ASSISTANCE.—

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

"(B) CALCULATION OF NUMBER OF CHILDREN.—In the case of Indian students aged 3 through 5 who are enrolled in programs affiliated with the Bureau of Indian Affairs (hereafter in this subsection referred to as 'BIA')

~~schools, and that are required by the States in which such schools are located to attain or maintain State accreditation, and which schools had such accreditation prior to the date of enactment of the Individuals with Disabilities Education Act Amendments of 1991, the school shall be allowed to count those children for the purpose of distribution of the funds provided under this paragraph to the Secretary of the Interior. The Secretary of the Interior shall be responsible for meeting all of the requirements of this part for these children, in accordance with paragraph (2).~~

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

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

~~"(A) demonstrates that the Department of the Interior meets the appropriate require-~~

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

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

~~the total of those children served by all tribes or tribal organizations.~~

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

~~"(D) USE OF FUNDS.—The funds received by a tribe or tribal organization shall be used to assist in child find, screening, and other procedures for the early identification of children aged 3 through 5, parent training, and the provision of direct services. These activities may be carried out directly or through contracts or cooperative agreements with the BIA, local educational agencies, and other public or private nonprofit organizations. The tribe or tribal organization is encouraged to involve Indian parents in the development and implementation of these activities. The above entities shall, as appropriate, make referrals to local, State, or~~

~~Federal entities for the provision of services or further diagnosis.~~

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

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

"(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. The plan shall be based on the needs of the children and the system best suited for meeting those needs, and may involve the establishment of cooperative agreements between the BIA, other Federal agencies, and other entities. The plan shall also be distributed upon request to States, State and local educational agencies, and other agencies providing services to infants, toddlers, and children with disabilities, to tribes, and to other interested parties.

"(5) ESTABLISHMENT OF ADVISORY BOARD.—To meet the requirements of section 612(a)(20), the Secretary of the Interior shall establish, under the BIA, an advisory board composed of individuals involved in or concerned with the education and provi-

~~sion 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 Congress an annual report containing a description of the activities of the advisory board for the preceding year.~~

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

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

~~"SEC. 612. STATE ELIGIBILITY.~~

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

~~"(1) FREE APPROPRIATE PUBLIC EDUCATION.—~~

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

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

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

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

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

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

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

~~"(3) CHILD FIND.—~~

~~"(A) IN GENERAL.—All children with disabilities residing in the State, including children with disabilities attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated~~

~~and a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services.~~

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

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

~~"(5) LEAST RESTRICTIVE ENVIRONMENT.—~~

~~"(A) IN GENERAL.—To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational~~

~~environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.~~

~~"(B) ADDITIONAL REQUIREMENT.—~~

~~"(i) IN GENERAL.—A State funding mechanism shall not result in placements that violate the requirements of subparagraph (A), and a State shall not use a funding mechanism by which the State distributes funds on the basis of the type of setting in which a child is served that will result in the failure to provide a child with a disability a free appropriate public education according to the unique needs of the child as described in the child's IEP.~~

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

"(6) PROCEDURAL SAFEGUARDS.—

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

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

"(7) EVALUATION.—Children with disabilities are evaluated in accordance with subsections (a) 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-inter-

~~vention 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 schools and secondary schools in the school district served by a local educational agency, provision is made for the participation of those children in the program assisted or carried out under this part by providing for such children special~~

~~education and related services in accordance with the following requirements, unless the Secretary has arranged for services to those children under subsection (f):~~

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

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

~~"(III) Each local educational agency shall maintain in its records and provide to the State educational agency the number of children evaluated under this paragraph, the number of children determined to be a child with a disability, and the number of children served under this subsection.~~

~~"(ii) CHILD-FIND REQUIREMENT.—~~

~~"(I) IN GENERAL.—The requirements of paragraph (3) of this subsection (relating to child find) shall apply with respect to children with disabilities in the State who are enrolled in private, including religious, elementary schools and secondary schools. Such child find process shall be conducted in a comparable time period as for other students attending public schools in the local educational agency.~~

~~"(II) EQUITABLE PARTICIPATION.—The child find process shall be designed to ensure the equitable participation of parentally placed private school children and an accurate count of such children.~~

~~"(III) ACTIVITIES.—In carrying out this clause, the local educational agency, or where applicable, the State educational agency, shall undertake activities similar to those activities undertaken for its public school children.~~

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

~~"(V) COMPLETION PERIOD.—Such child find process shall be completed in a time period comparable to that for other students attending public schools served by the local educational agency.~~

~~"(iii) CONSULTATION.—To ensure timely and meaningful consultation, a local educational agency, or where appropriate, a State educational agency, shall consult, with representatives of children with disabilities parentally placed in private schools, during the design and development of special education and related services for these children, including consultation regarding—~~

~~"(I) the child find process and how parentally placed private school children suspected of having a dis-~~

~~ability can participate equitably, including how parents, teachers, and private school officials will be informed of the process;~~

~~"(II) the determination of the proportionate share of Federal funds available to serve parentally placed private school children with disabilities under this paragraph, including the determination of how the proportionate share of those funds were calculated;~~

~~"(III) the consultation process among the school district, private school officials, and parents of parentally placed private school children with disabilities, including how such process will operate throughout the school year to ensure that parentally placed children with disabilities identified through the child find process can meaningfully participate in special education and related services;~~

~~"(IV) how, where, and by whom special education and related services~~

will be provided for parentally placed private school children, including a discussion of alternate service delivery mechanisms, how such services will be apportioned if funds are insufficient to serve all children, and how and when these decisions will be made; and

"(V) how, if the local educational agency disagrees with the views of the private school officials on the provision of services through a contract, the local educational agency shall provide to the private school officials a written explanation of the reasons why such the local educational agency chose not to use a contractor.

"(iv) WRITTEN AFFIRMATION.—When timely and meaningful consultation as required by this section has occurred, the local educational agency shall obtain a written affirmation signed by the representatives of participating private schools, and if such officials do not provide such affirmations within a reasonable pe-

~~riod of time, the local educational agency shall forward the documentation of the consultation process to the State educational agency.~~

~~"(v) COMPLIANCE.—~~

~~"(I) IN GENERAL.—A private school official shall have the right to complain to the State educational agency that the local educational agency did not engage in consultation that was meaningful and timely, or did not give due consideration to the views of the private school official.~~

~~"(II) PROCEDURE.—If the private school official wishes to complain, the official shall provide the basis of the noncompliance with this section by the local educational agency to the State educational agency, and the local educational agency shall forward the appropriate documentation to the State educational agency. If the private school official is dissatisfied with the decision of the State educational agency, such official may complain to~~

~~the Secretary by providing the basis of the noncompliance with this section by the local educational agency to the Secretary, and the State educational agency shall forward the appropriate documentation to the Secretary.~~

~~"(vi) PROVISION OF EQUITABLE SERVICES.—~~

~~"(I) DIRECT SERVICES.—To the extent practicable, the local educational agency shall provide direct services to children with disabilities parentally placed in private schools.~~

~~"(II) DIRECTLY OR THROUGH CONTRACTS.—A public agency may provide special education and related services directly or through contracts with public and private agencies, organizations, and institutions.~~

~~"(III) SECULAR, NEUTRAL, NONIDEOLOGICAL.—Special education and related services provided to children with disabilities attending private schools, including materials and~~

equipment, shall be secular, neutral, and nonideological.

"(vii) PUBLIC CONTROL OF FUNDS.—The control of funds used to provide special education and related services under this section, and title to materials, equipment, and property purchased with those funds, shall be in a public agency for the uses and purposes provided in this Act, and a public agency shall administer the funds and property.

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

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

~~cial education and related services to all children with disabilities within such State.~~

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

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

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

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

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

~~"(I) if—~~

~~"(aa) at the most recent IEP meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP~~

~~Team that they were rejecting the placement proposed by the public agency to provide a free appropriate public education to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or~~

~~"(bb) 10 business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information described in division (aa);~~

~~"(II) if, prior to the parents' removal of the child from the public school, the public agency informed the parents, through the notice requirements described in section 615(b)(3), of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did~~

~~not make the child available for such evaluation; or~~

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

~~"(iv) EXCEPTION.—Notwithstanding the notice requirement in clause (iii)(I), the cost of reimbursement—~~

~~"(I) shall not be reduced or denied for failure to provide such notice if—~~

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

~~"(bb) the parents had not received notice, pursuant to section 615, of the notice requirement in clause (iii)(I); and~~

~~"(II) may, in the discretion of a court or a hearing officer, not be reduced or denied for failure to provide such notice if—~~

~~"(aa) the parent is illiterate and cannot write in English; or~~

~~"(bb) compliance with clause (iii)(I) would likely have resulted in physical or serious emotional harm to the child.~~

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

~~"(A) IN GENERAL.—The State educational agency is responsible for ensuring that—~~

~~"(i) the requirements of this part are met; and~~

~~"(ii) all educational programs for children with disabilities in the State, including all such programs administered by any other State or local agency—~~

~~"(I) are under the general supervision of individuals in the State who are responsible for educational programs for children with disabilities; and~~

~~"(II) meet the educational standards of the State educational agency.~~

~~"(B) LIMITATION.—Subparagraph (A) shall not limit the responsibility of agencies in the State other than the State educational agency to provide, or pay for some or all of the~~

~~costs of, a free appropriate public education for any child with a disability in the State.~~

~~"(C) EXCEPTION.—Notwithstanding subparagraphs (A) and (B), the Governor (or another individual pursuant to State law), consistent with State law, may assign to any public agency in the State the responsibility of ensuring that the requirements of this part are met with respect to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons.~~

~~"(12) OBLIGATIONS RELATED TO AND METHODS OF ENSURING SERVICES.—~~

~~"(A) ESTABLISHING RESPONSIBILITY FOR SERVICES.—The Chief Executive Officer of a State or designee of the officer shall ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each public agency described in subparagraph (B) and the State educational agency, in order to ensure that all services described in subparagraph (B)(i) that are needed to ensure a free appropriate public education are provided, including the provision of such services during the pendency of any dispute under~~

~~clause (iii). Such agreement or mechanism shall include the following:~~

~~"(i) AGENCY FINANCIAL RESPONSIBILITY.—An identification of, or a method for defining, the financial responsibility of each agency for providing services described in subparagraph (B)(i) to ensure a free appropriate public education to children with disabilities, provided that the financial responsibility of each public agency described in subparagraph (B), including the State Medicaid agency and other public insurers of children with disabilities, shall precede the financial responsibility of the local educational agency (or the State agency responsible for developing the child's IEP).~~

~~"(ii) CONDITIONS AND TERMS OF REIMBURSEMENT.—The conditions, terms, and procedures under which a local educational agency shall be reimbursed by other agencies.~~

~~"(iii) INTERAGENCY DISPUTES.—Procedures for resolving interagency disputes (including procedures under which local~~

educational agencies may initiate proceedings) under the agreement or other mechanism to secure reimbursement from other agencies or otherwise implement the provisions of the agreement or mechanism.

"(iv) COORDINATION OF SERVICES PROCEDURES.—Policies and procedures for agencies to determine and identify the interagency coordination responsibilities of each agency to promote the coordination and timely and appropriate delivery of services described in subparagraph (B)(i).

"(B) OBLIGATION OF PUBLIC AGENCY.—

"(i) IN GENERAL.—If any public agency other than an educational agency is otherwise obligated under Federal or State law, or assigned responsibility under State policy, pursuant to subparagraph (A), or pursuant to an agreement under paragraph (C), to provide or pay for any services that are also considered special education or related services (such as, but not limited to, services described in section 602(1) relating to assistive technology devices, 602(2) relating to assistive tech-

~~nology services, 602(24) relating to related services, 602(31) relating to supplementary aids and services, and 602(32) relating to transition services) that are necessary for ensuring a free appropriate public education to children with disabilities within the State, such public agency shall fulfill that obligation or responsibility, either directly or through contract or other arrangement pursuant to subparagraph (A).~~

~~"(ii) REIMBURSEMENT FOR SERVICES BY PUBLIC AGENCY.—If a public agency other than an educational agency fails to provide or pay for the special education and related services described in clause (i), the local educational agency (or State agency responsible for developing the child's IEP) shall provide or pay for such services to the child. Such local educational agency or State agency is authorized to claim reimbursement for the services from the public agency that failed to provide or pay for such services and such public agency shall reimburse the local educational agency or State agency pursuant to the~~

~~terms of the interagency agreement or other mechanism described in subparagraph (A)(i) according to the procedures established in such agreement pursuant to subparagraph (A)(ii).~~

~~"(C) SPECIAL RULE.—The requirements of subparagraph (A) may be met through—~~

~~"(i) State statute or regulation;~~

~~"(ii) signed agreements between respective agency officials that clearly identify the responsibilities of each agency relating to the provision of services; or~~

~~"(iii) other appropriate written methods as determined by the Chief Executive Officer of the State or designee of the officer and approved by the Secretary through the review and approval of the State's plan pursuant to this section.~~

~~"(13) PROCEDURAL REQUIREMENTS RELATING TO LOCAL EDUCATIONAL AGENCY ELIGIBILITY.—The State educational agency will not make a final determination that a local educational agency is not eligible for assistance under this part without first affording that agency reasonable notice and an opportunity for a hearing.~~

~~"(14) PERSONNEL STANDARDS.—~~

~~"(A) IN GENERAL.—The State educational agency has established and maintains standards to ensure that personnel necessary to carry out this part are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities.~~

~~"(B) RELATED SERVICES PERSONNEL AND PARAPROFESSIONALS.—The standards under subparagraph (A) include standards for related services personnel and paraprofessionals that—~~

~~"(i) are consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services; and~~

~~"(ii) allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulation, or written policy, in meeting the requirements of this part to be used to assist in the provision of special education~~

~~and related services under this part to children with disabilities.~~

~~"(C) STANDARDS FOR SPECIAL EDUCATION TEACHERS.—The standards described in subparagraph (A) shall ensure that each special education teacher in the State who teaches in an elementary, middle, or secondary school is highly qualified not later than the 2006–2007 school year.~~

~~"(D) POLICY.—In implementing this section, a State shall adopt a policy that includes a requirement that local educational agencies in the State take measurable steps to recruit, hire, train, and retain highly qualified personnel to provide special education and related services under this part to children with disabilities.~~

~~"(15) PERFORMANCE GOALS AND INDICATORS.—The State—~~

~~"(A) has established goals for the performance of children with disabilities in the State that—~~

~~"(i) promote the purposes of this Act, as stated in section 601(d);~~

~~"(ii) are the same as the State's definition of adequate yearly progress, includ-~~

~~ing the State's objectives for progress by children with disabilities, under section 1111(b)(2)(C) of the Elementary and Secondary Education Act of 1965;~~

~~"(iii) address drop out rates, as well as such other factors as the State may determine; and~~

~~"(iv) are consistent, to the extent appropriate, with any other goals and standards for children established by the State;~~

~~"(B) has established performance indicators the State will use to assess progress toward achieving the goals described in subparagraph (A), including measurable annual objectives for progress by children with disabilities under section 1111(b)(2)(C)(v)(II)(cc) of the Elementary and Secondary Education Act of 1965; and~~

~~"(C) will annually report to the Secretary and the public on the progress of the State, and of children with disabilities in the State, toward meeting the goals established under subparagraph (A).~~

~~"(16) PARTICIPATION IN ASSESSMENTS.—~~

~~"(A) IN GENERAL.— All children with disabilities are included in all general State and~~

~~districtwide assessment programs and accountability systems, including assessments and accountability systems described under section 1111 of the Elementary and Secondary Education Act of 1965, with appropriate accommodations, alternate assessments where necessary, and as indicated in their respective individualized education programs.~~

~~"(B) ACCOMMODATION GUIDELINES.—The State (or, in the case of a districtwide assessment, the local educational agency) has developed guidelines for the provision of appropriate accommodations.~~

~~"(C) ALTERNATE ASSESSMENTS.—~~

~~"(i) IN GENERAL.—The State (or, in the case of a districtwide assessment, the local educational agency) has developed and implemented guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in regular assessments under subparagraph (B) as indicated in their respective individualized education programs.~~

~~"(ii) REQUIREMENTS FOR ALTERNATE ASSESSMENTS.—The guidelines under clause (i) shall provide for alternate assessments that—~~

~~"(I) are aligned with the State's challenging academic content and academic achievement standards; or~~

~~"(II) measure the achievement of students against alternate academic achievement standards that are aligned with the State's academic content standards.~~

~~"(iii) CONDUCT OF ALTERNATIVE ASSESSMENTS.—The State conducts the alternate assessments described in this subparagraph.~~

~~"(D) REPORTS.—The State educational agency (or, in the case of a districtwide assessment, the local educational agency) makes available to the public, and reports to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled children, the following:~~

~~"(i) The number of children with disabilities participating in regular assess-~~

~~ments, and the number of those children who were provided accommodations in order to participate in those assessments.~~

~~"(ii) The number of children with disabilities participating in alternate assessments described in subparagraph (C)(ii)(I).~~

~~"(iii) The number of children with disabilities participating in alternate assessments described in subparagraph (C)(ii)(II).~~

~~"(iv) The performance of children with disabilities on regular assessments and on alternate assessments (if the number of children with disabilities participating in those assessments is sufficient to yield statistically reliable information and reporting that information will not reveal personally identifiable information about an individual student), compared with the achievement of all children, including children with disabilities, on those assessments.~~

~~"(E) UNIVERSAL DESIGN.—The State educational agency (or, in the case of a districtwide assessment, the local educational agency) shall,~~

~~to the extent possible, use universal design principles in developing and administering any assessments under this paragraph.~~

~~"(17) SUPPLEMENTATION OF STATE, LOCAL, AND OTHER FEDERAL FUNDS.—~~

~~"(A) EXPENDITURES.—Funds paid to a State under this part will be expended in accordance with all the provisions of this part.~~

~~"(B) PROHIBITION AGAINST COMMINGLING.—Funds paid to a State under this part will not be commingled with State funds.~~

~~"(C) PROHIBITION AGAINST SUPPLANTATION AND CONDITIONS FOR WAIVER BY SECRETARY.—Except as provided in section 613, funds paid to a State under this part will be used to supplement the level of Federal, State, and local funds (including funds that are not under the direct control of State or local educational agencies) expended for special education and related services provided to children with disabilities under this part and in no case to supplant such Federal, State, and local funds, except that, where the State provides clear and convincing evidence that all children with disabilities have available to them a free~~

~~appropriate public education, the Secretary may waive, in whole or in part, the requirements of this subparagraph if the Secretary concurs with the evidence provided by the State.~~

~~"(18) MAINTENANCE OF STATE FINANCIAL SUPPORT.—~~

~~"(A) IN GENERAL.—The State does not reduce the amount of State financial support for special education and related services for children with disabilities, or otherwise made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year.~~

~~"(B) REDUCTION OF FUNDS FOR FAILURE TO MAINTAIN SUPPORT.—The Secretary shall reduce the allocation of funds under section 611 for any fiscal year following the fiscal year in which the State fails to comply with the requirement of subparagraph (A) by the same amount by which the State fails to meet the requirement.~~

~~"(C) WAIVERS FOR EXCEPTIONAL OR UNCONTROLLABLE CIRCUMSTANCES.—The Secretary may waive the requirement of subpara-~~

~~graph (A) for a State, for 1 fiscal year at a time, if the Secretary determines that—~~

~~"(i) granting a waiver would be equitable due to exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State; or~~

~~"(ii) the State meets the standard in paragraph (17)(C) for a waiver of the requirement to supplement, and not to supplant, funds received under this part.~~

~~"(D) SUBSEQUENT YEARS.—If, for any year, a State fails to meet the requirement of subparagraph (A), including any year for which the State is granted a waiver under subparagraph (C), the financial support required of the State in future years under subparagraph (A) shall be the amount that would have been required in the absence of that failure and not the reduced level of the State's support.~~

~~"(E) REGULATIONS.—~~

~~"(i) IN GENERAL.—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) TIMELINE.—The Secretary shall publish proposed regulations under clause (i) not later than 6 months after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2003, and shall issue final regulations under clause (i) not later than 1 year after such date of enactment.~~

~~"(19) PUBLIC PARTICIPATION.—Prior to the adoption of any policies and procedures needed to comply with this section (including any amendments to such policies and procedures), the State ensures that there are public hearings, adequate notice of the hearings, and an opportunity for comment available to the general public, including individuals with disabilities and parents of children with disabilities.~~

~~"(20) STATE ADVISORY PANEL.—~~

~~"(A) IN GENERAL.—The State has established and maintains an advisory panel for the purpose of providing policy guidance with respect to special education and related services for children with disabilities in the State.~~

~~"(B) MEMBERSHIP.—Such advisory panel shall consist of members appointed by the Governor, or any other official authorized under State law to make such appointments, that is representative of the State population and that is composed of individuals involved in, or concerned with, the education of children with disabilities, including—~~

~~"(i) parents of children with disabilities ages birth through 26;~~

~~"(ii) individuals with disabilities;~~

~~"(iii) teachers;~~

~~"(iv) representatives of institutions of higher education that prepare special education and related services personnel;~~

~~"(v) State and local education officials;~~

~~"(vi) administrators of programs for children with disabilities;~~

~~"(vii) representatives of other State agencies involved in the financing or delivery of related services to children with disabilities;~~

~~"(viii) representatives of private schools and public charter schools;~~

~~"(ix) at least 1 representative of a vocational, community, or business organization concerned with the provision of transition services to children with disabilities; and~~

~~"(x) representatives from the State juvenile and adult corrections agencies.~~

~~"(C) SPECIAL RULE.—A majority of the members of the panel shall be individuals with disabilities ages birth through 26 or parents of such individuals.~~

~~"(D) DUTIES.—The advisory panel shall—~~

~~"(i) advise the State educational agency of unmet needs within the State in the education of children with disabilities;~~

~~"(ii) comment publicly on any rules or regulations proposed by the State regarding the education of children with disabilities;~~

~~"(iii) advise the State educational agency in developing evaluations and reporting on data to the Secretary under section 618;~~

~~"(iv) advise the State educational agency in developing corrective action~~

~~plans to address findings identified in Federal monitoring reports under this part; and~~

~~"(v) advise the State educational agency in developing and implementing policies relating to the coordination of services for children with disabilities.~~

~~"(21) SUSPENSION AND EXPULSION RATES.—~~

~~"(A) IN GENERAL.—The State educational agency examines data to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities—~~

~~"(i) among local educational agencies in the State; or~~

~~"(ii) compared to such rates for non-disabled children within such agencies.~~

~~"(B) REVIEW AND REVISION OF POLICIES.—If such discrepancies are occurring, the State educational agency reviews and, if appropriate, revises (or requires the affected State or local educational agency to revise) its policies, procedures, and practices relating to the development and implementation of IEPs, the use of behavioral interventions, and procedural safe-~~

~~guards, to ensure that such policies, procedures, and practices comply with this Act.~~

~~"(22) INSTRUCTIONAL MATERIALS.—~~

~~"(A) IN GENERAL.—The State adopts the national instructional materials accessibility standard for the purposes of providing instructional materials to blind persons or other persons with print disabilities in a timely manner after the publication of the standard by the Secretary in the Federal Register.~~

~~"(B) PURCHASE REQUIREMENT.—Not later than 2 years after the date of the enactment of the Individuals with Disabilities Education Improvement Act of 2003, the State educational agency, when purchasing instructional materials for use in public elementary and secondary schools within the State, requires the publisher of the instructional materials, as a part of any purchase agreement that is made, renewed, or revised, to prepare and supply electronic files containing the contents of the instructional materials using the national instructional materials accessibility standard.~~

~~"(C) DEFINITION.—For purposes of this paragraph, the term 'instructional materials'~~

~~means printed textbooks and related core materials that are written and published primarily for use in elementary school and secondary school instruction and are required by a State educational agency or local educational agency for use by pupils in the classroom.~~

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

~~"(1) shall comply with any additional requirements of section 613(a), as if such agency were a local educational agency; and~~

~~"(2) may use amounts that are otherwise available to such agency under this part to serve those children without regard to section 613(a)(2)(A)(i) (relating to excess costs).~~

~~"(c) EXCEPTION FOR PRIOR STATE PLANS.—~~

~~"(1) IN GENERAL.—If a State has on file with the Secretary policies and procedures that demonstrate that such State meets any requirement of subsection (a), including any policies and procedures filed under this part as in effect before the effective date of the Individuals with Disabilities Education~~

~~Improvement Act of 2003, the Secretary shall consider such State to have met such requirement for purposes of receiving a grant under this part.~~

~~"(2) MODIFICATIONS MADE BY STATE.—Subject to paragraph (3), an application submitted by a State in accordance with this section shall remain in effect until the State submits to the Secretary such modifications as the State determines necessary. This section shall apply to a modification to an application to the same extent and in the same manner as this section applies to the original plan.~~

~~"(3) MODIFICATIONS REQUIRED BY THE SECRETARY.—If, after the effective date of the Individuals with Disabilities Education Improvement Act of 2003, the provisions of this Act are amended (or the regulations developed to carry out this Act are amended), there is a new interpretation of this Act by a Federal court or a State's highest court, or there is an official finding of noncompliance with Federal law or regulations, then the Secretary may require a State to modify its application only to the extent necessary to ensure the State's compliance with this part.~~

~~"(d) APPROVAL BY THE SECRETARY.—~~

~~"(1) IN GENERAL.—If the Secretary determines that a State is eligible to receive a grant under this part, the Secretary shall notify the State of that determination.~~

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

~~"(A) with reasonable notice; and~~

~~"(B) with an opportunity for a hearing.~~

~~"(e) ASSISTANCE UNDER OTHER FEDERAL PROGRAMS.—Nothing in this title permits a State to reduce medical and other assistance available, or to alter eligibility, under titles V and XIX of the Social Security Act with respect to the provision of a free appropriate public education for children with disabilities in the State.~~

~~"(f) BY-PASS FOR CHILDREN IN PRIVATE SCHOOLS.—~~

~~"(1) IN GENERAL.—If, on the date of enactment of the Education of the Handicapped Act Amendments of 1983, a State educational agency was prohibited by law from providing for the equitable participation in special programs of children with disabilities enrolled in private elementary schools and secondary schools as required by sub-~~

~~section (a)(10)(A), or if the Secretary determines that a State educational agency, local educational agency, or other entity has substantially failed or is unwilling to provide for such equitable participation, then the Secretary shall, notwithstanding such provision of law, arrange for the provision of services to such children through arrangements which shall be subject to the requirements of such subsection.~~

~~"(2) PAYMENTS.—~~

~~"(A) DETERMINATION OF AMOUNTS.—If the Secretary arranges for services pursuant to this subsection, the Secretary, after consultation with the appropriate public and private school officials, shall pay to the provider of such services for a fiscal year an amount per child that does not exceed the amount determined by dividing—~~

~~"(i) the total amount received by the State under this part for such fiscal year; by~~

~~"(ii) the number of children with disabilities served in the prior year, as reported to the Secretary by the State under section 618.~~

~~"(B) WITHHOLDING OF CERTAIN AMOUNTS.—Pending final resolution of any investigation or complaint that may result in a determination under this subsection, the Secretary may withhold from the allocation of the affected State educational agency the amount the Secretary estimates will be necessary to pay the cost of services described in subparagraph (A).~~

~~"(C) PERIOD OF PAYMENTS.—The period under which payments are made under subparagraph (A) shall continue until the Secretary determines that there will no longer be any failure or inability on the part of the State educational agency to meet the requirements of subsection (a)(10)(A).~~

~~"(3) NOTICE AND HEARING.—~~

~~"(A) IN GENERAL.—The Secretary shall not take any final action under this subsection until the State educational agency affected by such action has had an opportunity, for at least 45 days after receiving written notice thereof, to submit written objections and to appear before the Secretary or the Secretary's designee~~

~~to show cause why such action should not be taken.~~

~~"(B) REVIEW OF ACTION.—If a State educational agency is dissatisfied with the Secretary's final action after a proceeding under subparagraph (A), such agency may, not later than 60 days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings on which the Secretary based the Secretary's action, as provided in section 2112 of title 28, United States Code.~~

~~"(C) REVIEW OF FINDINGS OF FACT.—The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive, but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify the Secretary's previous action, and shall file in the court the record of the further pro-~~

~~ceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.~~

~~"(D) JURISDICTION OF COURT OF APPEALS; REVIEW BY UNITED STATES SUPREME COURT.—Upon the filing of a petition under subparagraph (B), the United States court of appeals shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.~~

~~"SEC. 613. LOCAL EDUCATIONAL AGENCY ELIGIBILITY.~~

~~"(a) IN GENERAL.—A local educational agency is eligible for assistance under this part for a fiscal year if such agency submits a plan that provides assurances to the State educational agency that the local educational agency meets each of the following conditions:~~

~~"(1) CONSISTENCY WITH STATE POLICIES.—The local educational agency, in providing for the education of children with disabilities within its jurisdiction, has in effect policies, procedures, and pro-~~

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

~~"(2) USE OF AMOUNTS.—~~

~~"(A) IN GENERAL.—Amounts provided to the local educational agency under this part shall be expended in accordance with the applicable provisions of this part and—~~

~~"(i) shall be used only to pay the excess costs of providing special education and related services to children with disabilities;~~

~~"(ii) shall be used to supplement State, local, and other Federal funds and not to supplant such funds; and~~

~~"(iii) shall not be used, except as provided in subparagraphs (B) and (C), to reduce the level of expenditures for the education of children with disabilities made by the local educational agency from local funds below the level of those expenditures for the preceding fiscal year.~~

~~"(B) EXCEPTION.—Notwithstanding the restriction in subparagraph (A)(iii), a local educational agency may reduce the level of expenditures where such reduction is attributable to—~~

~~"(i) the voluntary departure, by retirement or otherwise, or departure for just cause, of special education personnel;~~

~~"(ii) a decrease in the enrollment of children with disabilities;~~

~~"(iii) the termination of the obligation of the agency, consistent with this part, to provide a program of special education to a particular child with a disability that is an exceptionally costly program, as determined by the State educational agency, because the child—~~

~~"(I) has left the jurisdiction of the agency;~~

~~"(II) has reached the age at which the obligation of the agency to provide a free appropriate public education to the child has terminated; or~~

~~"(III) no longer needs such program of special education; or~~

~~"(iv) the termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of school facilities.~~

~~"(C) TREATMENT OF FEDERAL FUNDS IN CERTAIN FISCAL YEARS.—~~

~~"(i) 8 PERCENT RULE.—Notwithstanding clauses (ii) and (iii) of subparagraph (A), a local educational agency may treat as local funds, for the purposes of such clauses, not more than 8 percent of the amount of funds the local educational agency receives under this part.~~

~~"(ii) 40 PERCENT RULE.—Notwithstanding clauses (ii) and (iii) of subparagraph (A), for any fiscal year for which States are allocated the maximum amount of grants pursuant to section 611(a)(2), a local educational agency may treat as local funds, for the purposes of such clauses, not more than 40 percent of the amount of funds the local educational agency receives under this part, subject to clause (iv).~~

~~"(iii) EARLY INTERVENING PREREFERRAL SERVICES.—~~

~~"(I) 8 PERCENT RULE.—If a local educational agency exercises authority pursuant to clause (i), the 8 percent funds shall be counted toward~~

the percentage and amount of funds that may be used to provide early intervening prereferral services pursuant to subsection (f).

"(II) 40 PERCENT RULE.—If a local educational agency exercises authority pursuant to clause (ii), the local educational agency shall use an amount of the 40 percent funds from clause (ii) that represents 15 percent of the total amount of funds the local educational agency receives under this part, to provide early intervening prereferral services pursuant to subsection (f).

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

"(I) clauses (ii) and (iii) of subparagraph (A); and

"(II) the provision of the local share of costs for title XIX of the Social Security Act.

~~"(v) PROHIBITION.—If a State educational agency determines that a local educational agency is unable to establish and maintain programs of free appropriate public education that meet the requirements of this subsection, then the State educational agency shall prohibit the local educational agency from treating funds received under this part as local funds under clause (i) or (ii) for that fiscal year, but only if the State educational agency is authorized to do so by the State constitution or a State statute.~~

~~"(vi) REPORT.—For each fiscal year in which a local educational agency exercises its authority pursuant to this paragraph and treats Federal funds as local funds, the local educational agency shall report to the State educational agency the amount of funds so treated and the activities that were funded with such funds.~~

~~"(D) SCHOOLWIDE PROGRAMS UNDER TITLE I OF THE ESEA.—Notwithstanding subparagraph (A) or any other provision of this part, a local educational agency may use funds~~

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

~~"(i) the number of children with disabilities participating in the schoolwide program; multiplied by~~

~~"(ii)(I) the amount received by the local educational agency under this part for that fiscal year; divided by~~

~~"(II) the number of children with disabilities in the jurisdiction of that agency.~~

~~"(3) PERSONNEL DEVELOPMENT.—The local educational agency shall ensure that all personnel necessary to carry out this part are appropriately and adequately prepared, consistent with the requirements of section 612(a)(14) of this Act and section 2122 of the Elementary and Secondary Education Act of 1965.~~

~~"(4) PERMISSIVE USE OF FUNDS.—~~

~~"(A) USES.—Notwithstanding paragraph (2)(A) or section 612(a)(17)(B) (relating to commingled funds), funds provided to the local~~

educational agency under this part may be used for the following activities:

"(i) SERVICES AND AIDS THAT ALSO BENEFIT 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 1 or more nondisabled children benefit from such services.

"(ii) EARLY INTERVENING SERVICES.—To develop and implement comprehensive, coordinated, early intervening educational services in accordance with subsection (f).

"(B) CASE MANAGEMENT AND ADMINISTRATION.—A local educational agency may use funds received under this part to purchase appropriate technology, for recordkeeping, data collection, and related case management activities of teachers and related services personnel providing services described in the individualized education program of children with disabil-

~~ities, that is necessary to the implementation of such case management activities.~~

~~"(5) TREATMENT OF CHARTER SCHOOLS AND THEIR STUDENTS.—In carrying out this part with respect to charter schools that are public schools of the local educational agency, the local educational agency—~~

~~"(A) serves children with disabilities attending those charter schools in the same manner as the local educational agency serves children with disabilities in its other schools, including providing supplementary and related services on site at the charter school to the same extent to which the local educational agency has a policy or practice of providing such services on the site to its other public schools; and~~

~~"(B) provides funds under this part to those charter schools on the same basis, including proportional distribution based on relative enrollment of children with disabilities, and at the same time, as the local educational agency distributes State, local, or a combination of State and local, funds to those charter schools under the State's charter school law.~~

~~"(6) PURCHASE OF INSTRUCTIONAL MATERIALS.—Not later than 2 years after the date of the enactment of the Individuals with Disabilities Education Improvement Act of 2003, the local educational agency, when purchasing instructional materials for use in public elementary schools or secondary schools served by the local educational agency, requires the publisher of the instructional materials, as a part of any purchase agreement that is made, renewed, or revised, to prepare and supply electronic files containing the contents of the instructional materials using the national instructional materials accessibility standard described in section 612(a)(22).~~

~~"(7) INFORMATION FOR STATE EDUCATIONAL AGENCY.—The local educational agency shall provide the State educational agency with information necessary to enable the State educational agency to carry out its duties under this part, including, with respect to paragraphs (15) and (16) of section 612(a), information relating to the performance of children with disabilities participating in programs carried out under this part.~~

~~"(8) PUBLIC INFORMATION.—The local educational agency shall make available to parents of~~

~~children with disabilities and to the general public all documents relating to the eligibility of such agency under this part.~~

~~"(b) EXCEPTION FOR PRIOR LOCAL PLANS.—~~

~~"(1) IN GENERAL.—If a local educational agency or State agency has on file with the State educational agency policies and procedures that demonstrate that such local educational agency, or such State agency, as the case may be, meets any requirement of subsection (a), including any policies and procedures filed under this part as in effect before the effective date of the Individuals with Disabilities Education Improvement Act of 2003, the State educational agency shall consider such local educational agency or State agency, as the case may be, to have met such requirement for purposes of receiving assistance under this part.~~

~~"(2) MODIFICATION MADE BY LOCAL EDUCATIONAL AGENCY.—Subject to paragraph (3), an application submitted by a local educational agency in accordance with this section shall remain in effect until the local educational agency submits to the State educational agency such modifications as the local educational agency determines necessary.~~

~~"(3) MODIFICATIONS REQUIRED BY STATE EDUCATIONAL AGENCY.—If, after the effective date of the Individuals with Disabilities Education Improvement Act of 2003, the provisions of this Act are amended (or the regulations developed to carry out this Act are amended), there is a new interpretation of this Act by Federal or State courts, or there is an official finding of noncompliance with Federal or State law or regulations, then the State educational agency may require a local educational agency to modify its application only to the extent necessary to ensure the local educational agency's compliance with this part or State law.~~

~~"(c) NOTIFICATION OF LOCAL EDUCATIONAL AGENCY OR STATE AGENCY IN CASE OF INELIGIBILITY.—If the State educational agency determines that a local educational agency or State agency is not eligible under this section, then the State educational agency shall notify the local educational agency or State agency, as the case may be, of that determination and shall provide such local educational agency or State agency with reasonable notice and an opportunity for a hearing.~~

~~"(d) LOCAL EDUCATIONAL AGENCY COMPLIANCE.—~~

~~"(1) IN GENERAL.—If the State educational agency, after reasonable notice and an opportunity~~

~~for a hearing, finds that a local educational agency or State agency that has been determined to be eligible under this section is failing to comply with any requirement described in subsection (a), the State educational agency shall reduce or shall not provide any further payments to the local educational agency or State agency until the State educational agency is satisfied that the local educational agency or State agency, as the case may be, is complying with that requirement.~~

~~"(2) ADDITIONAL REQUIREMENT.—Any State agency or local educational agency in receipt of a notice described in paragraph (1) shall, by means of public notice, take such measures as may be necessary to bring the pendency of an action pursuant to this subsection to the attention of the public within the jurisdiction of such agency.~~

~~"(3) CONSIDERATION.—In carrying out its responsibilities under paragraph (1), the State educational agency shall consider any decision made in a hearing held under section 615 that is adverse to the local educational agency or State agency involved in that decision.~~

~~"(c) JOINT ESTABLISHMENT OF ELIGIBILITY.—~~

~~"(1) JOINT ESTABLISHMENT.—~~

~~"(A) IN GENERAL.—A State educational agency may require a local educational agency to establish its eligibility jointly with another local educational agency if the State educational agency determines that the local educational agency will be ineligible under this section because the local educational agency will not be able to establish and maintain programs of sufficient size and scope to effectively meet the needs of children with disabilities.~~

~~"(B) CHARTER SCHOOL EXCEPTION.—A State educational agency may not require a charter school that is a local educational agency to jointly establish its eligibility under subparagraph (A) unless the charter school is explicitly permitted to do so under the State's charter school law.~~

~~"(2) AMOUNT OF PAYMENTS.—If a State educational agency requires the joint establishment of eligibility under paragraph (1), the total amount of funds made available to the affected local educational agencies shall be equal to the sum of the payments that each such local educational agency would have received under section 611(f) if such agencies were eligible for such payments.~~

"(3) REQUIREMENTS.—Local educational agencies that establish joint eligibility under this subsection shall—

"(A) adopt policies and procedures that are consistent with the State's policies and procedures under section 612(a); and

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

"(4) REQUIREMENTS FOR EDUCATIONAL SERVICE AGENCIES.—

"(A) IN GENERAL.—If an educational service agency is required by State law to carry out programs under this part, the joint responsibilities given to local educational agencies under this subsection shall—

"(i) not apply to the administration and disbursement of any payments received by that educational service agency; and

"(ii) be carried out only by that educational service agency.

"(B) ADDITIONAL REQUIREMENT.—Notwithstanding any other provision of this subsection, an educational service agency shall pro-

~~vide for the education of children with disabilities in the least restrictive environment, as required by section 612(a)(5).~~

~~"(f) EARLY INTERVENING SERVICES.—~~

~~"(1) IN GENERAL.—A local educational agency may not use more than 15 percent of the amount such agency receives under this part for any fiscal year, less any amount treated as local funds pursuant to subsection (a)(2)(C), if any, in combination with other amounts (which may include amounts other than education funds), to develop and implement comprehensive, coordinated, early intervening educational services, which may include interagency financing structures, for students in kindergarten through grade 12 (with a particular emphasis on students in kindergarten through grade 3) who have not been identified as needing special education or related services but who require additional academic and behavioral support to succeed in a general education environment.~~

~~"(2) ACTIVITIES.—In implementing comprehensive, coordinated, early intervening educational services under this subsection, a local educational agency may carry out activities that include—~~

~~"(A) professional development (which may be provided by entities other than local educational agencies) for teachers and other school staff to enable such personnel to deliver scientifically based academic and behavioral interventions, including scientifically based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software;~~

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

~~"(C) developing and implementing interagency financing structures for the provision of such services and supports.~~

~~"(3) CONSTRUCTION.—Nothing in this subsection shall be construed to either limit or create a right to a free appropriate public education under this part.~~

~~"(4) REPORTING.—Each local educational agency that develops and maintains comprehensive, coordinated, early intervening educational services with funds made available for this subsection, shall annually report to the State educational agency on—~~

~~"(A) the number of children served under this subsection; and~~

~~"(B) the number of children served under this subsection who are subsequently referred to special education.~~

~~"(5) COORDINATION WITH CERTAIN PROJECTS UNDER ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965.—Funds made available to carry out this subsection may be used to carry out comprehensive, coordinated, early intervening educational services aligned with activities funded by, and carried out under, the Elementary and Secondary Education Act of 1965 if such funds are used to supplement, and not supplant, funds made available under the Elementary and Secondary Education Act of 1965 for the activities and services assisted under this subsection.~~

~~"(g) DIRECT SERVICES BY THE STATE EDUCATIONAL AGENCY.—~~

~~"(1) IN GENERAL.—A State educational agency shall use the payments that would otherwise have been available to a local educational agency or to a State agency to provide special education and related services directly to children with disabilities residing in the area served by that local educational~~

~~agency, or for whom that State agency is responsible, if the State educational agency determines that the local educational agency or State agency, as the case may be—~~

~~"(A) has not provided the information needed to establish the eligibility of such agency under this section;~~

~~"(B) is unable to establish and maintain programs of free appropriate public education that meet the requirements of subsection (a);~~

~~"(C) is unable or unwilling to be consolidated with 1 or more local educational agencies in order to establish and maintain such programs; or~~

~~"(D) has 1 or more children with disabilities who can best be served by a regional or State program or service delivery system designed to meet the needs of such children.~~

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

~~services shall be provided in accordance with this part.~~

~~"(h) STATE AGENCY ELIGIBILITY.—Any State agency that desires to receive a subgrant for any fiscal year under section 611(f) shall demonstrate to the satisfaction of the State educational agency that—~~

~~"(1) all children with disabilities who are participating in programs and projects funded under this part receive a free appropriate public education, and that those children and their parents are provided all the rights and procedural safeguards described in this part; and~~

~~"(2) the agency meets such other conditions of this section as the Secretary determines to be appropriate.~~

~~"(i) DISCIPLINARY INFORMATION.—The State may require that a local educational agency include in the records of a child with a disability a statement of any current or previous disciplinary action that has been taken against the child and transmit such statement to the same extent that such disciplinary information is included in, and transmitted with, the student records of nondisabled children. The statement may include a description of any behavior engaged in by the child that required disciplinary action, a description of the disciplinary action taken, and~~

any other information that is relevant to the safety of the child and other individuals involved with the child. If the State adopts such a policy, and the child transfers from 1 school to another, the transmission of any of the child's records shall include both the child's current individualized education program and any such statement of current or previous disciplinary action that has been taken against the child.

"(j) STATE AGENCY FLEXIBILITY.—

"(1) TREATMENT OF FEDERAL FUNDS IN CERTAIN FISCAL YEARS.—If a State educational agency pays or reimburses local educational agencies within the State for not less than 80 percent of the non-Federal share of the costs of special education and related services, or the State is the sole provider of free appropriate public education or direct services pursuant to section 612(b), then the State educational agency, notwithstanding sections 612(a)(17) and (18) and 612(b), may treat funds allocated pursuant to section 611 as general funds available to support the educational purposes described in paragraph (2)(A) and (B).

"(2) CONDITIONS.—A State educational agency may use funds in accordance with paragraph (1) subject to the following conditions:

"(A) 8 PERCENT RULE.—A State educational agency may treat not more than 8 percent of the funds the State educational agency receives under this part as general funds to support any educational purpose described in the Elementary and Secondary Education Act of 1965, needs-based student or teacher higher education programs, or the non-Federal share of costs of title XIX of the Social Security Act.

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

"(C) REQUIREMENT.—A State educational agency may exercise its authority pursuant to subparagraph (B) only if the State educational

~~agency uses an amount of the 40 percent funds from subparagraph (B) that represents 15 percent of the total amount of funds the State educational agency receives under this part, to provide, or to pay or reimburse local educational agencies for providing, early intervening prereferral services pursuant to subsection (f).~~

~~"(2) PROHIBITION.—Notwithstanding subsection (a), if the Secretary determines that a State educational agency is unable to establish, maintain, or oversee programs of free appropriate public education that meet the requirements of this part, then the Secretary shall prohibit the State educational agency from treating funds allocated under this part as general funds pursuant to paragraph (1).~~

~~"(3) REPORT.—For each fiscal year for which a State educational agency exercises its authority pursuant to paragraph (1) and treats Federal funds as general funds, the State educational agency shall report to the Secretary the amount of funds so treated and the activities that were funded with such funds.~~

~~"SEC. 614. EVALUATIONS, ELIGIBILITY DETERMINATIONS, INDIVIDUALIZED EDUCATION PROGRAMS, AND EDUCATIONAL PLACEMENTS.~~

~~"(a) EVALUATIONS AND REEVALUATIONS.—~~

~~"(1) INITIAL EVALUATIONS.—~~

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

~~"(B) REQUEST FOR INITIAL EVALUATION.—Consistent with subparagraph (D), either a parent of a child, or a State educational agency, other State agency, or local educational agency may initiate a request for an initial evaluation to determine if the child is a child with a disability.~~

~~"(C) PROCEDURES.—Such initial evaluation shall consist of procedures—~~

~~"(i) to determine whether a child is a child with a disability (as defined in section 602(3)) within 60 days of receiving parental consent for the evaluation, or, if the State has established a timeframe~~

~~within which the evaluation must be conducted, within such timeframe; and~~

~~"(ii) to determine the educational needs of such child.~~

~~"(D) PARENTAL CONSENT.—~~

~~"(i) IN GENERAL.—The agency proposing to conduct an initial evaluation to determine if the child qualifies as a child with a disability as defined in section 602(3) (A) or (B) shall obtain an informed consent from the parent of such child before the evaluation is conducted. Parental consent for evaluation shall not be construed as consent for placement for receipt of special education and related services.~~

~~"(ii) REFUSAL.—If the parents of such child refuse consent for the evaluation, the agency may continue to pursue an evaluation by utilizing the mediation and due process procedures under section 615, except to the extent inconsistent with State law relating to parental consent.~~

~~"(iii) REFUSAL OR FAILURE TO CONSENT.—If the parent of a child does not provide informed consent to the receipt of~~

special education and related services, or the parent fails to respond to a request to provide the consent, the local educational agency shall not be considered to be in violation of the requirement to make available a free appropriate public education to the child.

"(2) REEVALUATIONS.—

"(A) IN GENERAL.—A local educational agency shall ensure that a reevaluation of each child with a disability is conducted in accordance with subsections (b) and (c)—

"(i) if the local educational agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or

"(ii) if the child's parents or teacher requests a reevaluation.

"(B) LIMITATION.—A reevaluation conducted under subparagraph (A) shall occur—

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

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

~~"(b) EVALUATION PROCEDURES.—~~

~~"(1) NOTICE.—The local educational agency shall provide notice to the parents of a child with a disability, in accordance with subsections (b)(3), (b)(4), and (c) of section 615, that describes any evaluation procedures such agency proposes to conduct.~~

~~"(2) CONDUCT OF EVALUATION.—In conducting the evaluation, the local educational agency shall—~~

~~"(A) use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent, that may assist in determining—~~

~~"(i) whether the child is a child with a disability; and~~

~~"(ii) the content of the child's individualized education program, including information related to enabling the child to be involved in and progress in the general~~

~~curriculum, or for preschool children, to participate in appropriate activities;~~

~~"(B) not use any single procedure, measure, or assessment as the sole criterion for determining whether a child is a child with a disability or determining an appropriate educational program for the child; and~~

~~"(C) use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.~~

~~"(3) ADDITIONAL REQUIREMENTS.—Each local educational agency shall ensure that—~~

~~"(A) tests and other evaluation materials used to assess a child under this section—~~

~~"(i) are selected and administered so as not to be discriminatory on a racial or cultural basis;~~

~~"(ii) are provided and administered, to the extent practicable, in the language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally;~~

~~"(iii) are used for purposes for which the assessments or measures are valid and reliable;~~

~~"(iv) are administered by trained and knowledgeable personnel; and~~

~~"(v) are administered in accordance with any instructions provided by the producer of such tests;~~

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

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

~~"(4) DETERMINATION OF ELIGIBILITY.—Upon completion of administration of tests and other evaluation materials—~~

~~"(A) the determination of whether the child is a child with a disability as defined in section 602(3) shall be made by a team of qualified professionals and the parent of the child in accordance with paragraph (5); and~~

~~"(B) a copy of the evaluation report and the documentation of determination of eligibility shall be given to the parent.~~

"(5) SPECIAL RULE FOR ELIGIBILITY DETERMINATION.—In making a determination of eligibility under paragraph (4)(A), a child shall not be determined to be a child with a disability if the determinant factor for such determination is—

"(A) lack of scientifically based instruction in reading;

"(B) lack of instruction in mathematics; or

"(C) limited English proficiency.

"(6) SPECIFIC LEARNING DISABILITIES.—

"(A) IN GENERAL.—Notwithstanding section 607, when determining whether a child has a specific learning disability as defined in section 602, a local educational agency shall not be required to take into consideration whether a child has a severe discrepancy between achievement and intellectual ability in oral expression, listening comprehension, written expression, basic reading skill, reading comprehension, mathematical calculation, or mathematical reasoning.

"(B) ADDITIONAL AUTHORITY.—In determining whether a child has a specific learning disability, a local educational agency may use a

~~process that determines if the child responds to scientific, research-based intervention.~~

~~"(c) ADDITIONAL REQUIREMENTS FOR EVALUATION AND REEVALUATIONS.—~~

~~"(1) REVIEW OF EXISTING EVALUATION DATA.—As part of an initial evaluation (if appropriate) and as part of any reevaluation under this section, the IEP Team described in subsection (d)(1)(B) and other qualified professionals, as appropriate, shall—~~

~~"(A) review existing evaluation data on the child, including evaluations and information provided by the parents of the child, current classroom-based assessments, and observations, and teacher and related services providers observations; and~~

~~"(B) on the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine—~~

~~"(i) whether the child has a particular category of disability, as described in section 602(3), or, in case of a reevaluation of a child, whether the child continues to have such a disability;~~

~~"(ii) the present levels of performance and educational needs of the child;~~

~~"(iii) whether the child needs special education and related services, or in the case of a reevaluation of a child, whether the child continues to need special education and related services; and~~

~~"(iv) whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the individualized education program of the child and to participate, as appropriate, in the general curriculum.~~

~~"(2) SOURCE OF DATA.—The local educational agency shall administer such tests and other evaluation materials as may be needed to produce the data identified by the IEP Team under paragraph (1)(B).~~

~~"(3) PARENTAL CONSENT.—Each local educational agency shall obtain informed parental consent, in accordance with subsection (a)(1)(D), prior to conducting any reevaluation of a child with a disability, except that such informed parental consent need not be obtained if the local educational agency can demonstrate that the local educational agency~~

had taken reasonable measures to obtain such consent and the child's parent has failed to respond.

"(4) REQUIREMENTS IF ADDITIONAL DATA ARE NOT NEEDED.—If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child is or continues to be a child with a disability the local educational agency—

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

"(i) that determination and the reasons for the determination; and

"(ii) the right of such parents to request an assessment to determine whether the child is or continues to be a child with a disability; and

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

"(5) EVALUATIONS BEFORE CHANGE IN ELIGIBILITY.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), a local educational agency shall evaluate a child with a disability in accordance with this section before determining

that the child is no longer a child with a disability.

"(B) EXCEPTION.—

"(i) IN GENERAL.—The evaluation described in subparagraph (A) shall not be required before the termination of a child's eligibility under this part due to graduation from secondary school with a regular diploma, or to exceeding the age eligibility for a free appropriate public education under State law.

"(ii) SUMMARY OF PERFORMANCE.—For a child whose eligibility under this part terminates under circumstances described in clause (i), a local educational agency shall provide the child with a summary of the child's academic achievement and functional performance, which shall include any further recommendations on how to assist the child in meeting the child's postsecondary goals.

"(d) INDIVIDUALIZED EDUCATION PROGRAMS.—

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

"(A) INDIVIDUALIZED EDUCATION PROGRAM.—

~~"(i) IN GENERAL.—The term 'individualized education program' or 'IEP' means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with this section and that includes—~~

~~"(I) a statement of the child's present levels of academic achievement and functional performance, including—~~

~~"(aa) how the child's disability affects the child's involvement and progress in the general curriculum; or~~

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

~~"(II) a statement of measurable annual goals, including academic and functional goals, designed to—~~

~~"(aa) meet the child's needs that result from the child's disability to enable the child to be~~

~~involved in and make progress in the general curriculum; and~~

~~"(bb) meet each of the child's other educational needs that result from the child's disability;~~

~~"(III) a statement of how the child's progress toward the annual goals described in subclause (II) will be measured, including through the use of quarterly or other periodic reports, concurrent with the issuance of report cards, that delineate the progress the child is making toward meeting the annual goals;~~

~~"(IV) a statement of the special education and related services, and supplementary aids and services, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child—~~

~~"(aa) to advance appropriately toward attaining the annual goals;~~

~~"(bb) to be involved in and make progress in the general curriculum in accordance with subclause (I) and to participate in extracurricular and other nonacademic activities; and~~

~~"(cc) to be educated and participate with other children with disabilities and nondisabled children in the activities described in this paragraph;~~

~~"(V) an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in subclause (IV)(cc);~~

~~"(VI)(aa) a statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and~~

~~districtwide assessments consistent with section 612(a)(16)(A); and~~

~~"(bb) if the IEP Team determines that the child shall take an alternate assessment on a particular State or districtwide assessment of student achievement, a statement of why—~~

~~"(AA) the child cannot participate in the regular assessment; and~~

~~"(BB) the particular alternate assessment selected is appropriate for the child;~~

~~"(VII) the projected date for the beginning of the services and modifications described in subclause (IV), and the anticipated frequency, location, and duration of those services and modifications; and~~

~~"(VIII) beginning not later than the first IEP to be in effect when the child is 14, and updated annually thereafter—~~

~~"(aa) appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills;~~

~~"(bb) the transition services (including courses of study) needed by the child to reach those goals, including services to be provided by other agencies when needed; and~~

~~"(cc) beginning at least 1 year before the child reaches the age of majority under State law, a statement that the child has been informed of the child's rights under this title, if any, that will transfer to the child on reaching the age of majority under section 615(m).~~

~~"(ii) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to require—~~

~~"(I) that additional information be included in a child's IEP beyond what is explicitly required in this section; and~~

~~"(II) the IEP Team to include information under 1 component of a child's IEP that is already contained under another component of such IEP.~~

~~"(B) INDIVIDUALIZED EDUCATION PROGRAM TEAM.—The term 'individualized education program team' or 'IEP Team' means a group of individuals composed of—~~

~~"(i) the parents of a child with a disability;~~

~~"(ii) at least 1 regular education teacher of such child (if the child is, or may be, participating in the regular education environment);~~

~~"(iii) at least 1 special education teacher, or where appropriate, at least 1 special education provider of such child;~~

~~"(iv) a representative of the local educational agency who—~~

~~"(I) is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;~~

~~"(II) is knowledgeable about the general curriculum; and~~

~~"(III) is knowledgeable about the availability of resources of the local educational agency;~~

~~"(v) an individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in clauses (ii) through (vi);~~

~~"(vi) at the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and~~

~~"(vii) whenever appropriate, the child with a disability.~~

~~"(C) IEP TEAM ATTENDANCE.—~~

~~"(i) ATTENDANCE NOT NECESSARY.—A member of the IEP Team shall not be required to attend an IEP meeting, in whole or in part, if the parent of a child~~

with a disability and the local educational agency agree that the attendance of such member is not necessary because no modification to the member's area of the curriculum or related services is being modified or discussed in the meeting.

"(ii) EXCUSAL.—A member of the IEP Team may be excused from attending an IEP meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if—

"(I) the parent and the local educational agency consent to the excusal; and

"(II) the member submits input into the development of the IEP prior to the meeting.

"(2) REQUIREMENT THAT PROGRAM BE IN EFFECT.—

"(A) IN GENERAL.—At the beginning of each school year, each local educational agency, State educational agency, or other State agency, as the case may be, shall have in effect, for each child with a disability in its jurisdiction,

an individualized education program, as defined in paragraph (1)(A).

"(B) PROGRAM FOR CHILD AGED 3 THROUGH 5.—In the case of a child with a disability aged 3 through 5 (or, at the discretion of the State educational agency, a 2-year-old child with a disability who will turn age 3 during the school year), an individualized family service plan that contains the material described in section 636, and that is developed in accordance with this section, may serve as the IEP of the child if using that plan as the IEP is—

"(i) consistent with State policy; and

"(ii) agreed to by the agency and the child's parents.

"(3) DEVELOPMENT OF IEP.—

"(A) IN GENERAL.—In developing each child's IEP, the IEP Team, subject to subparagraph (C), shall consider—

"(i) the strengths of the child;

"(ii) the concerns of the parents for enhancing the education of their child;

~~"(iii) the results of the initial evaluation or most recent evaluation of the child; and~~

~~"(iv) the academic, developmental, and functional needs of the child.~~

~~"(B) CONSIDERATION OF SPECIAL FACTORS.—The IEP Team shall—~~

~~"(i) in the case of a child whose behavior impedes the child's learning or that of others, provide for positive behavioral interventions and supports, and other strategies to address that behavior;~~

~~"(ii) in the case of a child with limited English proficiency, consider the language needs of the child as such needs relate to the child's IEP;~~

~~"(iii) in the case of a child who is blind or visually impaired—~~

~~"(I) provide for instruction in Braille and the use of Braille unless the IEP Team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future~~

~~needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child; and~~

~~"(II) consider, when appropriate, instructional services related to functional performance skills, orientation and mobility, and skills in the use of assistive technology devices, including low vision devices;~~

~~"(iv) 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, and access to the general curriculum and instruction at the child's academic level in the child's language and communication mode; and~~

~~"(v) consider whether the child requires assistive technology devices and services.~~

~~"(C) REQUIREMENT WITH RESPECT TO REGULAR EDUCATION TEACHER.—A regular education teacher of the child, as a member of the IEP Team shall, to the extent appropriate,~~

~~participate in the development of the IEP of the child, including the determination of appropriate positive behavioral interventions and supports, and other strategies, and the determination of supplementary aids and services, program modifications, and support for school personnel consistent with paragraph (1)(A)(i)(IV).~~

~~"(D) AGREEMENT.—In making changes to a child's IEP after the annual IEP meeting for a school year, the parent of a child with a disability and the local educational agency may agree not to convene an IEP meeting for the remainder of the school year, and instead develop a written document to amend or modify the child's current IEP.~~

~~"(E) CONSOLIDATION OF IEP TEAM MEETINGS.—To the extent possible, the local educational agency shall encourage the consolidation of reevaluations of a child with IEP Team meetings for the child.~~

~~"(4) REVIEW AND REVISION OF IEP.—~~

~~"(A) IN GENERAL.—The local educational agency shall ensure that, subject to subparagraph (B), the IEP Team—~~

~~"(i) reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and~~

~~"(ii) revise the IEP as appropriate to address—~~

~~"(I) any lack of expected progress toward the annual goals and in the general curriculum, where appropriate;~~

~~"(II) the results of any reevaluation conducted under this section;~~

~~"(III) information about the child provided to, or by, the parents, as described in subsection (c)(1)(B);~~

~~"(IV) the child's anticipated needs; or~~

~~"(V) other matters.~~

~~"(B) REQUIREMENT WITH RESPECT TO REGULAR EDUCATION TEACHER.—A regular education teacher of the child, as a member of the IEP Team, shall, consistent with paragraph (1)(C), participate in the review and revision of the IEP of the child.~~

~~"(5) THREE-YEAR IEP.—~~

~~"(A) DEVELOPMENT OF 3-YEAR IEP.—The local educational agency may offer a child with a disability who has reached the age of 18, the option of developing a comprehensive 3-year IEP. With the consent of the parent, when appropriate, the IEP Team shall develop an IEP, as described in paragraphs (1) and (3), that is designed to serve the child for the final 3-year transition period, which includes a statement of—~~

~~"(i) measurable goals that will enable the child to be involved in and make progress in the general education curriculum and that will meet the child's transitional and postsecondary needs that result from the child's disability; and~~

~~"(ii) measurable annual goals for measuring progress toward meeting the postsecondary goals described in clause (i).~~

~~"(B) REVIEW AND REVISION OF 3-YEAR IEP.—~~

~~"(i) REQUIREMENT.—Each year the local educational agency shall ensure that the IEP Team—~~

~~"(I) provides an annual review of the child's IEP to determine the child's current levels of progress and determine whether the annual goals for the child are being achieved; and~~

~~"(II) revises the IEP, as appropriate, to enable the child to continue to meet the measurable transition goals set out in the IEP.~~

~~"(ii) COMPREHENSIVE REVIEW.—If the review under clause (i) determines that the child is not making sufficient progress toward the goals described in subparagraph (A), the local educational agency shall ensure that the IEP Team provides a review, within 30 calendar days, of the IEP under paragraph (4).~~

~~"(iii) PREFERENCE.—At the request of the child, or when appropriate, the parent, the IEP Team shall conduct a review of the child's 3-year IEP under paragraph (4) rather than an annual review under subparagraph (B)(i).~~

~~"(6) FAILURE TO MEET TRANSITION OBJECTIVES.—If a participating agency, other than the~~

~~local educational agency, fails to provide the transition services described in the IEP in accordance with paragraph (1)(A)(i)(VIII), the local educational agency shall reconvene the IEP Team to identify alternative strategies to meet the transition objectives for the child set out in that program.~~

~~"(7) CHILDREN WITH DISABILITIES IN ADULT PRISONS.—~~

~~"(A) IN GENERAL.—The following requirements shall not apply to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons:~~

~~"(i) The requirements contained in section 612(a)(16) and paragraph (1)(A)(i)(V) (relating to participation of children with disabilities in general assessments).~~

~~"(ii) The requirements of items (aa) and (bb) of paragraph (1)(A)(i)(VII) (relating to transition planning and transition services), do not apply with respect to such children whose eligibility under this part will end, because of their age, before they will be released from prison.~~

~~"(B) ADDITIONAL REQUIREMENT.—If a child with a disability is convicted as an adult under State law and incarcerated in an adult prison, the child's IEP Team may modify the child's IEP or placement notwithstanding the requirements of sections 612(a)(5)(A) and 614(d)(1)(A) if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.~~

~~"(e) EDUCATIONAL PLACEMENTS.—Each local educational agency or State educational agency shall ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child.~~

~~"(f) ALTERNATIVE MEANS OF MEETING PARTICIPATION.—When conducting IEP Team meetings and placement meetings pursuant to this section, the parent of a child with a disability and a local educational agency may agree to use alternative means of meeting participation, such as video conferences and conference calls.~~

~~"SEC. 615. PROCEDURAL SAFEGUARDS.~~

~~"(a) ESTABLISHMENT OF PROCEDURES.—Any State educational agency, State agency, or local educational agency that receives assistance under this part shall establish and maintain procedures in accordance with this sec-~~

~~tion to ensure that children with disabilities and their parents are guaranteed procedural safeguards with respect to the provision of free appropriate public education by such agencies.~~

~~"(b) TYPES OF PROCEDURES.—The procedures required by this section shall include—~~

~~"(1) an opportunity for the parents of a child with a disability to examine all records relating to such child and to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to such child, and to obtain an independent educational evaluation of the child;~~

~~"(2) procedures to protect the rights of the child whenever the parents of the child are not known, the agency cannot, after reasonable efforts, locate the parents, or the child is a ward of the State, including the assignment of an individual (who shall not be an employee of the State educational agency, the local educational agency, or any other agency that is involved in the education or care of the child) to act as a surrogate for the parents;~~

~~"(3) written prior notice to the parents of the child, in accordance with subsection (c)(1), whenever the local educational agency—~~

~~"(A) proposes to initiate or change; or~~

~~"(B) refuses to initiate or change,~~

~~the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child;~~

~~"(4) procedures designed to ensure that the notice required by paragraph (3) is in the native language of the parents, unless it clearly is not feasible to do so;~~

~~"(5) an opportunity for mediation in accordance with subsection (e);~~

~~"(6) an opportunity for either party to present complaints with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child;~~

~~"(7)(A) procedures that require either party, or the attorney representing a party, to provide due process complaint notice in accordance with subsection (c)(2) (which shall remain confidential)—~~

~~"(i) to the other party, in the complaint filed under paragraph (6), and forward a copy~~

~~of such notice to the State educational agency; and~~

~~"(ii) that shall include—~~

~~"(I) the name of the child, the address of the residence of the child, and the name of the school the child is attending;~~

~~"(II) 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 party at the time; and~~

~~"(B) a requirement that a party may not have a due process hearing until the party, or the attorney representing the party, files a notice that meets the requirements of subparagraph (A)(ii);~~

~~"(8) a requirement that the local educational agency shall send a prior written notice pursuant to subsection (c)(1) in response to a parent's due process complaint notice under paragraph (7) if the local educational agency has not sent such a prior written notice to the parent regarding the subject matter contained in the parent's due process complaint notice; and~~

~~"(9) procedures that require the State educational agency to develop a model form to assist parents in filing a complaint and due process complaint notice in accordance with paragraphs (6) and (7), respectively.~~

~~"(c) NOTIFICATION REQUIREMENTS.—~~

~~"(1) CONTENT OF PRIOR WRITTEN NOTICE.—The prior written notice of the local educational agency required by subsection (b)(3) shall include—~~

~~"(A) a description of the action proposed or refused by the agency;~~

~~"(B) an explanation of why the agency proposes or refuses to take the action;~~

~~"(C) a description of any other options that the agency considered and the reasons why those options were rejected;~~

~~"(D) a description of each evaluation procedure, test, record, or report the agency used as a basis for the proposed or refused action;~~

~~"(E) a description of any other factors that are relevant to the agency's proposal or refusal;~~

~~"(F) a statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this~~

~~notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; and~~

~~"(G) sources for parents to contact to obtain assistance in understanding the provisions of this part.~~

~~"(2) DUE PROCESS COMPLAINT NOTICE.—~~

~~"(A) IN GENERAL.—The due process complaint notice required under subsection (b)(7)(A) shall be deemed to be sufficient unless the party receiving the notice notifies the hearing officer in writing that the party believes the notice has not met the requirements of that subsection.~~

~~"(B) TIMING.—The party sending a hearing officer notification under subparagraph (A) shall send the notification within 20 days of receiving the complaint.~~

~~"(C) DETERMINATION.—Within 5 days of receipt of the notification provided under subparagraph (B), the hearing officer shall make a determination on the face of the notice of whether the notification meets the requirements of subsection (b)(7)(A).~~

~~"(d) PROCEDURAL SAFEGUARDS NOTICE.—~~

1 ~~"(1) IN GENERAL.—A copy of the procedural~~
2 ~~safeguards available to the parents of a child with~~
3 ~~a disability shall be given to the parents only 1 time~~
4 ~~a year, except that a copy also shall be given to the~~
5 ~~parents—~~
6 ~~"(A) upon initial referral or parental re-~~
7 ~~quest for evaluation;~~
8 ~~"(B) upon registration of a complaint~~
9 ~~under subsection (b)(6);~~
10 ~~"(C) at any individualized education pro-~~
11 ~~gram meeting required in accordance with sub-~~
12 ~~section (k)(1); and~~
13 ~~"(D) upon request by a parent.~~
14 ~~"(2) CONTENTS.—The procedural safeguards~~
15 ~~notice shall include a full explanation of the proce-~~
16 ~~dural safeguards, written in the native language of~~
17 ~~the parents, unless it clearly is not feasible to do so,~~
18 ~~and written in an easily understandable manner,~~
19 ~~available under this section and under regulations~~
20 ~~promulgated by the Secretary relating to—~~
21 ~~"(A) independent educational evaluation;~~
22 ~~"(B) prior written notice;~~
23 ~~"(C) parental consent;~~
24 ~~"(D) access to educational records;~~

~~"(E) opportunity to present complaints, including the time period in which to make those 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, including the time period in which to file such actions; and~~

~~"(M) attorney's fees.~~

~~"(c) MEDIATION.—~~

~~"(1) IN GENERAL.—Any State educational agency or local educational agency that receives assistance under this part shall ensure that procedures are established and implemented to allow parties to~~

~~disputes involving any matter, including matters arising prior to the filing of a complaint pursuant to subsection (b)(6), to resolve such disputes through a mediation process.~~

~~"(2) REQUIREMENTS.—Such procedures shall meet the following requirements:~~

~~"(A) The procedures shall ensure that the mediation process—~~

~~"(i) is voluntary on the part of the parties;~~

~~"(ii) is not used to deny or delay a parent's right to a due process hearing under subsection (f), or to deny any other rights afforded under this part; and~~

~~"(iii) is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.~~

~~"(B) OPPORTUNITY TO MEET WITH A DISINTERESTED PARTY.—A local educational agency or a State agency may establish procedures to offer to parents who choose not to use the mediation process, an opportunity to meet, at a time and location convenient to the parents, with a disinterested party who is under contract with—~~

~~"(i) a parent training and information center or community parent resource center in the State established under section 671 or 672; or~~

~~"(ii) an appropriate alternative dispute resolution entity,~~

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

~~"(C) LIST OF QUALIFIED MEDIATORS.—The State shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.~~

~~"(D) COSTS.—The State shall bear the cost of the mediation process, including the costs of meetings described in subparagraph (B).~~

~~"(E) SCHEDULING AND LOCATION.—Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute.~~

~~"(F) WRITTEN MEDIATION AGREEMENT.—An agreement reached by the parties to the dispute in the mediation process shall be set forth~~

~~in a written mediation agreement that is enforceable in any State court of competent jurisdiction or in a district court of the United States.~~

~~"(G) MEDIATION DISCUSSIONS.—Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings, and the parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of such process.~~

~~"(f) IMPARTIAL DUE PROCESS HEARING.—~~

~~"(1) IN GENERAL.—~~

~~"(A) HEARING.—Whenever a complaint has been received under subsection (b)(6) or (k), the parents or the local educational agency involved in such complaint shall have an opportunity for an impartial due process hearing, which shall be conducted by the State educational agency or by the local educational agency, as determined by State law or by the State educational agency.~~

~~"(B) OPPORTUNITY TO RESOLVE COMPLAINT.—~~

~~"(i) PRELIMINARY MEETING.—Prior to the opportunity for an impartial due process hearing under subparagraph (A), the local educational agency shall convene a meeting with the parents and the IEP Team—~~

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

~~"(II) which shall include a representative of the public agency who has decisionmaking authority on behalf of such agency; and~~

~~"(III) which may not include an attorney of the local educational agency unless the parent is accompanied by an attorney; and~~

~~"(IV) where the parents of the child discuss their complaint, and the specific issues that form the basis of the complaint, and the local educational agency is provided the opportunity to resolve the complaint,~~

~~unless the parents and the local educational agency agree in writing to waive~~

~~such meeting, or agree to use the mediation process described in subsection (c).~~

~~"(ii) HEARING.—If the local educational agency has not resolved the complaint to the satisfaction of the parents within 15 days of the receipt of the complaint, the due process hearing may occur, and all of the applicable timelines for a due process hearing under this part shall commence.~~

~~"(iii) WRITTEN SETTLEMENT AGREEMENT.—In the case that an agreement is reached to resolve the complaint at such meeting, the agreement shall be set forth in a written settlement agreement that is enforceable in any State court of competent jurisdiction or in a district court of the United States and signed by both the parent and a representative of the public agency who has decisionmaking authority on behalf of such agency.~~

~~"(2) DISCLOSURE OF EVALUATIONS AND RECOMMENDATIONS.—~~

~~"(A) IN GENERAL.—Not less than 5 business days prior to a hearing conducted pursu-~~

~~ant to paragraph (1), each party shall disclose to all other parties all evaluations completed by that date, and recommendations based on the offering party's evaluations, that the party intends to use at the hearing.~~

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

~~"(3) LIMITATIONS ON HEARING.—~~

~~"(A) PERSON CONDUCTING HEARING.—A hearing officer conducting a hearing pursuant to paragraph (1)(A) shall, at a minimum—~~

~~"(i) not be—~~

~~"(I) an employee of the State educational agency or the local educational agency involved in the education or care of the child; or~~

~~"(II) a person having a personal or professional interest that conflicts with the person's objectivity in the hearing;~~

~~"(ii) possess a fundamental understanding of this Act, Federal and State~~

~~regulations pertaining to this Act, and interpretations of this Act by State and Federal courts;~~

~~"(iii) possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and~~

~~"(iv) possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.~~

~~"(B) SUBJECT MATTER OF HEARING.—The party requesting the due process hearing shall not be allowed to raise issues at the due process hearing that were not raised in the notice filed under subsection (b)(7), unless the other party agrees otherwise.~~

~~"(C) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to preclude a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed.~~

~~"(D) STATUTE OF LIMITATIONS.—A parent or public agency shall request an impartial due process hearing within 2 years of the date the parent or public agency knew or should~~

~~have known about the alleged action that forms the basis of the complaint, or, if the State has an explicit time limitation for requesting such a hearing under this part, in such time as the State law allows.~~

~~"(E) EXCEPTION TO THE STATUTE OF LIMITATIONS.—The statute of limitations described in subparagraph (D) shall not apply if the parent was prevented from requesting the hearing due to—~~

~~"(i) failure of the local educational agency to provide prior written or procedural safeguards notices;~~

~~"(ii) false representations that the local educational agency was attempting to resolve the problem forming the basis of the complaint; or~~

~~"(iii) the local educational agency's withholding of information from parents.~~

~~"(F) DECISION OF HEARING OFFICER.—~~

~~"(i) IN GENERAL.—Subject to clause (ii), a decision made by a hearing officer shall be made on substantive grounds based on a determination of whether the~~

child received a free appropriate public education.

"(ii) PROCEDURAL ISSUES.—In matters alleging a procedural violation, a hearing officer may find that a child did not receive a free appropriate public education only if the procedural inadequacies—

"(I) compromised the child's right to an appropriate public education;

"(II) seriously hampered the parents' opportunity to participate in the process; or

"(III) caused a deprivation of educational benefits.

"(iii) ENFORCEABILITY.—A decision made by the hearing officer is enforceable in any State court of competent jurisdiction or in a district court of the United States, unless either party appeals such decision under the provision of subsection (g) or (i)(2).

"(G) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to affect the

~~right of a parent to file a complaint with the State educational agency.~~

~~"(g) APPEAL.—If the hearing required by subsection (f) is conducted by a local educational agency, any party aggrieved by the findings and decision rendered in such a hearing may appeal such findings and decision to the State educational agency. Such State educational agency shall conduct an impartial review of such decision. The officer conducting such review shall make an independent decision upon completion of such review.~~

~~"(h) SAFEGUARDS.—Any party to a hearing conducted pursuant to subsection (f) or (k), or an appeal conducted pursuant to subsection (g), shall be accorded—~~

~~"(1) the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;~~

~~"(2) the right to present evidence and confront, cross-examine, and compel the attendance of witnesses;~~

~~"(3) the right to a written, or, at the option of the parents, electronic verbatim record of such hearing; and~~

~~"(4) the right to a written, or, at the option of the parents, electronic findings of fact and decisions, which findings and decisions—~~

~~"(A) shall be made available to the public consistent with the requirements of section 617(c) (relating to the confidentiality of data, information, and records); and~~

~~"(B) shall be transmitted to the advisory panel established pursuant to section 612(a)(20).~~

~~"(i) ADMINISTRATIVE PROCEDURES.—~~

~~"(1) IN GENERAL.—~~

~~"(A) DECISION MADE IN HEARING.—A decision made in a hearing conducted pursuant to subsection (f) or (k) shall be final, except that any party involved in such hearing may appeal such decision under the provisions of subsection (g) and paragraph (2).~~

~~"(B) DECISION MADE AT APPEAL.—A decision made under subsection (g) shall be final, except that any party may bring an action under paragraph (2).~~

~~"(2) RIGHT TO BRING CIVIL ACTION.—~~

~~"(A) IN GENERAL.—Any party aggrieved by the findings and decision made under sub-~~

~~section (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) LIMITATION.—The party bringing the action shall have 90 days from the date of the decision of the hearing officer to bring such an action, or, if the State has an explicit time limitation for bringing such action under this part, in such time as the State law allows.~~

~~"(C) ADDITIONAL REQUIREMENTS.—In any action brought under this paragraph, the court—~~

~~"(i) shall receive the records of the administrative proceedings;~~

~~"(ii) shall hear additional evidence at the request of a party; and~~

~~"(iii) basing its decision on the preponderance of the evidence, shall grant~~

~~such relief as the court determines is appropriate.~~

~~"(3) JURISDICTION OF DISTRICT COURTS; ATTORNEYS' FEES.—~~

~~"(A) IN GENERAL.—The district courts of the United States shall have jurisdiction of actions brought under this section without regard to the amount in controversy.~~

~~"(B) AWARD OF ATTORNEYS' FEES.—In any action or proceeding brought under this section, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to the parents of a child with a disability who is the prevailing party.~~

~~"(C) DETERMINATION OF AMOUNT OF ATTORNEYS' FEES.—Fees awarded under this paragraph shall be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this subsection.~~

~~"(D) PROHIBITION OF ATTORNEYS' FEES AND RELATED COSTS FOR CERTAIN SERVICES.—~~

~~"(i) IN GENERAL.—Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under this section for services performed subsequent to the time of a written offer of settlement to a parent if—~~

~~"(I) the offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than 10 days before the proceeding begins;~~

~~"(II) the offer is not accepted within 10 days; and~~

~~"(III) the court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.~~

~~"(ii) IEP TEAM MEETINGS.—Attorneys' fees may not be awarded relating to any meeting of the IEP Team unless such meeting is convened as a result of an administrative proceeding or judicial action,~~

~~or, at the discretion of the State, for a mediation described in subsection (c).~~

~~"(iii) OPPORTUNITY TO RESOLVE COMPLAINTS.—A meeting conducted pursuant to subsection (f)(1)(B)(i) shall not be considered—~~

~~"(I) a meeting convened as a result of an administrative hearing or judicial action; or~~

~~"(II) an administrative hearing or judicial action for purposes of this paragraph.~~

~~"(E) EXCEPTION TO PROHIBITION ON ATTORNEYS' FEES AND RELATED COSTS.—Notwithstanding subparagraph (D), an award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.~~

~~"(F) REDUCTION IN AMOUNT OF ATTORNEYS' FEES.—Except as provided in subparagraph (G), whenever the court finds that—~~

~~"(i) the parent, or the parent's attorney, during the course of the action or pro-~~

~~ceeding, unreasonably protracted the final resolution of the controversy;~~

~~"(ii) the amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;~~

~~"(iii) the time spent and legal services furnished were excessive considering the nature of the action or proceeding; or~~

~~"(iv) the attorney representing the parent did not provide to the local educational agency the appropriate information in the notice of the complaint described in subsection (b)(7)(A),~~

~~the court shall reduce, accordingly, the amount of the attorneys' fees awarded under this section.~~

~~"(G) EXCEPTION TO REDUCTION IN AMOUNT OF ATTORNEYS' FEES.—The provisions of subparagraph (F) shall not apply in any action or proceeding if the court finds that the State or local educational agency unreasonably protracted the final resolution of the action~~

~~or proceeding or there was a violation of this section.~~

~~"(j) MAINTENANCE OF CURRENT EDUCATIONAL PLACEMENT.—Except as provided in subsection (k)(4), during the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents otherwise agree, the child shall remain in the then-current educational placement of such child, or, if applying for initial admission to a public school, shall, with the consent of the parents, be placed in the public school program until all such proceedings have been completed.~~

~~"(k) PLACEMENT IN ALTERNATIVE EDUCATIONAL SETTING.—~~

~~"(1) AUTHORITY OF SCHOOL PERSONNEL.—~~

~~"(A) IN GENERAL.—School personnel under this section may order a change in the placement of a child with a disability who violates a code of student conduct to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 school days (to the extent such alternatives are applied to children without disabilities).~~

~~"(B) ADDITIONAL AUTHORITY.—If school personnel seek to order a change in placement that would exceed 10 school days and the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to subparagraph (C), the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner in which the procedures would be applied to children without disabilities, except as provided in section 612(a)(1).~~

~~"(C) MANIFESTATION DETERMINATION.—~~

~~"(i) IN GENERAL.—Except as provided in subparagraphs (A) and (D), within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the IEP Team shall review all relevant information in the student's file, any information provided by the parents, and teacher observations, to determine—~~

~~"(I) if the conduct in question was the result of the child's disability; or~~

~~"(II) if the conduct in question resulted from the failure to implement the IEP or develop and implement behavioral interventions as required by section 614(d)(3)(B)(i).~~

~~"(ii) MANIFESTATION.—If the IEP Team determines that either subclause (I) or (II) of clause (i) is applicable for the child, the conduct shall be determined to be a manifestation of the child's disability.~~

~~"(D) SPECIAL CIRCUMSTANCES.—In cases where a child carries or possesses a weapon at school or a school function, possesses or uses drugs or sells or solicits the sale of drugs while at school or a school function, or has committed serious bodily injury upon another person while at school or at a school function, school personnel may remove a student to an interim alternative educational setting for not more than 45 school days, without regard to whether the behavior is determined to be a manifestation of the child's disability.~~

~~"(E) SERVICES.—A child with a disability who is removed from the child's current placement under subparagraph (B) or (D) shall—~~

~~"(i) continue to receive educational services pursuant to section 612(a)(1), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and~~

~~"(ii) receive behavioral intervention services as described in section 614(d)(3)(B)(i) designed to address the behavior violation so that the violation does not recur.~~

~~"(2) DETERMINATION OF SETTING.—The alternative educational setting shall be determined by the IEP Team.~~

~~"(3) APPEAL.—~~

~~"(A) IN GENERAL.—The parent of a child with a disability who disagrees with any decision regarding disciplinary action, placement, or the manifestation determination under this subsection may request a hearing.~~

~~"(B) AUTHORITY OF HEARING OFFICER.—~~

~~"(i) IN GENERAL.—If a parent of a child with a disability disagrees with a decision as described in subparagraph (A),~~

~~the hearing officer may determine whether the decision regarding such action was appropriate.~~

~~"(ii) CHANGE OF PLACEMENT ORDER.—A hearing officer under this section may order a change in placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of such child is substantially likely to result in injury to the child or to others.~~

~~"(4) PLACEMENT DURING APPEALS.—When a parent requests a hearing regarding a disciplinary procedure described in paragraph (1)(B) or challenges the interim alternative educational setting or manifestation determination—~~

~~"(A) the child shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period provided for in paragraph (1)(B), whichever occurs first, unless the parent and the State or local educational agency agree otherwise; and~~

~~"(B) the State or local educational agency shall arrange for an expedited hearing which shall occur within 20 school days of the date the hearing is requested.~~

~~"(5) PROTECTIONS FOR CHILDREN NOT YET ELIGIBLE FOR SPECIAL EDUCATION AND RELATED SERVICES.—~~

~~"(A) IN GENERAL.—A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violates a code of student conduct, may assert any of the protections provided for in this part if the local educational agency had knowledge (as determined in accordance with this paragraph) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.~~

~~"(B) BASIS OF KNOWLEDGE.—A local educational agency shall be deemed to have knowledge that a child is a child with a disability if, before the behavior that precipitated the disciplinary action occurred—~~

~~"(i) the parent of the child has expressed concern in writing (unless the par-~~

~~ent is illiterate or has a disability that prevents compliance with the requirements contained in this clause) to personnel of the appropriate educational agency that the child is in need of special education and related services;~~

~~"(ii) the parent of the child has requested an evaluation of the child pursuant to section 614;~~

~~"(iii) the teacher of the child, or other personnel of the local educational agency, has expressed concern about a pattern of behavior demonstrated by the child, to the director of special education of such agency or to other administrative personnel of the agency; or~~

~~"(iv) the child has engaged in a pattern of behavior that should have alerted personnel of the local educational agency that the child may be in need of special education and related services.~~

~~"(C) EXCEPTION.—A local educational agency shall not be deemed to have knowledge that the child has a disability if the parent of~~

~~the child has not agreed to allow an evaluation of the child pursuant to section 614.~~

~~"(D) CONDITIONS THAT APPLY IF NO BASIS OF KNOWLEDGE.—~~

~~"(i) IN GENERAL.—If a local educational agency does not have knowledge that a child is a child with a disability (in accordance with subparagraph (B) or (C)) prior to taking disciplinary measures against the child, the child may be subjected to disciplinary measures applied to children without disabilities who engaged in comparable behaviors consistent with clause (ii).~~

~~"(ii) LIMITATIONS.—If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under paragraph (1), the evaluation shall be conducted in an expedited manner. If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency shall provide special~~

~~education and related services in accordance with this part, except that, pending the results of the evaluation, the child shall remain in the educational placement determined by school authorities.~~

~~"(6) REFERRAL TO AND ACTION BY LAW ENFORCEMENT AND JUDICIAL AUTHORITIES.—~~

~~"(A) CONSTRUCTION.—Nothing in this part shall be construed to prohibit an agency from reporting a crime committed by a child with a disability to appropriate authorities or to prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.~~

~~"(B) TRANSMITTAL OF RECORDS.—An agency reporting a crime committed by a child with a disability shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime.~~

~~"(7) DEFINITIONS.—For purposes of this subsection, the following definitions apply:~~

1 ~~"(A) DRUG.—The term 'drug'—~~

2 ~~"(i) means a drug or other substance~~

3 ~~identified under schedules I, II, III, IV, or~~

4 ~~V in section 202(c) of the Controlled Sub-~~

5 ~~stances Act (21 U.S.C. 812(c)); and~~

6 ~~"(ii) does not include such a sub-~~

7 ~~stance that is legally possessed or used~~

8 ~~under the supervision of a licensed health-~~

9 ~~care professional or that is legally pos-~~

10 ~~sessed or used under any other authority~~

11 ~~under that Act or under any other provi-~~

12 ~~sion of Federal law.~~

13 ~~"(B) WEAPON.—The term 'weapon' has~~

14 ~~the meaning given the term 'dangerous weapon'~~

15 ~~under section 930(g)(2) of title 18, United~~

16 ~~States Code.~~

17 ~~"(C) SERIOUS BODILY INJURY.—The term~~

18 ~~'serious bodily injury' has the meaning given~~

19 ~~the term 'serious bodily injury' under para-~~

20 ~~graph (3) of subsection (h) of section 1365 of~~

21 ~~title 18, United States Code.~~

22 ~~"(l) RULE OF CONSTRUCTION.—Nothing in this title~~

23 ~~shall be construed to restrict or limit the rights, proce-~~

24 ~~dures, and remedies available under the Constitution, the~~

25 ~~Americans with Disabilities Act of 1990, title V of the Re-~~

~~habilitation 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 incarcer-~~

~~ated 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. MONITORING, TECHNICAL ASSISTANCE, AND ENFORCEMENT.~~

~~"(a) FEDERAL AND STATE MONITORING.—~~

~~"(1) IN GENERAL.—The Secretary shall—~~

~~"(A) monitor implementation of this Act through—~~

~~"(i) oversight of the States' exercise of general supervision, as required in section 612(a)(11); and~~

~~"(ii) the system of indicators, described in subsection (b)(2);~~

~~"(B) enforce this Act in accordance with subsection (c); and~~

~~"(C) require States to monitor implementation of this Act by local educational agencies and enforce this Act in accordance with paragraph (3) of this subsection and subsection (c).~~

~~"(2) FOCUSED MONITORING.—The primary focus of Federal and State monitoring activities described in paragraph (1) shall be on improving educational results and functional outcomes for all children with disabilities, while ensuring compliance with program requirements, with a particular emphasis on those requirements that are most closely related to improving educational results for children with disabilities.~~

~~"(3) MONITORING PRIORITIES.—The Secretary shall monitor, and shall require States to monitor, the following priority areas:~~

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

~~"(B) Provision of transition services, as defined in section 602(32).~~

~~"(C) State exercise of general supervisory authority, including the effective use of complaint resolution and mediation.~~

"(D) Overrepresentation of racial and ethnic groups in special education and related services, to the extent the overrepresentation is the result of inappropriate policies, procedures, and practices.

"(4) PERMISSIVE AREAS OF REVIEW.—The Secretary may examine other relevant information and data, including data provided by States under section 618, and data from the State's compliance plan under subsection (b)(2)(C).

"(b) INDICATORS.—

"(1) SYSTEM.—The Secretary shall implement and administer a system of required indicators as described in paragraph (2) that measures the progress of States in improving their performance under this Act.

"(2) INDICATORS.—

"(A) IN GENERAL.—Using the performance indicators established by States under section 612(a)(15), the Secretary shall review—

"(i) the performance of children with disabilities in the State on assessments, including alternate assessments, dropout rates, and graduation rates, which for purposes of this paragraph means the number

~~and percentage of students with disabilities who graduate with a regular diploma within the number of years specified in a student's IEP; and~~

~~"(ii) the performance of children with disabilities in the State on assessments, including alternate assessments, dropout rates, and graduation rates, as compared to the performance and rates for all children.~~

~~"(B) SECRETARY'S ASSESSMENT.—Based on that review and a review of the State's compliance plan under subparagraph (C), the Secretary shall assess the State's progress in improving educational results for children with disabilities.~~

~~"(C) STATE COMPLIANCE PLAN.—Not later than 1 year after the date of the enactment of the Individuals with Disabilities Education Improvement Act of 2003, each State shall have in place a compliance plan developed in collaboration with the Secretary. Each State's compliance plan shall—~~

~~"(i) include benchmarks to measure continuous progress on the priority areas described in subsection (a)(3);~~

~~"(ii) describe strategies the State will use to achieve the benchmarks; and~~

~~"(iii) be approved by the Secretary.~~

~~"(3) DATA COLLECTION AND ANALYSIS.—The Secretary shall—~~

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

~~"(B) provide technical assistance to improve the capacity of States to meet these data collection requirements.~~

~~"(c) COMPLIANCE AND ENFORCEMENT.—~~

~~"(1) IN GENERAL.—The Secretary shall examine relevant State information and data annually, to determine whether the State is making satisfactory progress toward improving educational results for children with disabilities using the indicators described in subsection (b)(2)(A) and the benchmarks established in the State compliance plan under sub-~~

~~section (b)(2)(C), and is in compliance with the provisions of this Act.~~

~~"(2) LACK OF SATISFACTORY PROGRESS BY A STATE.—~~

~~"(A) IN GENERAL.—If after examining data, as provided in subsection (b)(2) (A) and (C), the Secretary determines that a State failed to make satisfactory progress in meeting the indicators described in subsection (b)(2)(A) or has failed to meet the benchmarks described in subsection (b)(2)(C) for 2 consecutive years after the State has developed its compliance plan, the Secretary shall notify the State that the State has failed to make satisfactory progress, and shall take 1 or more of the following actions:~~

~~"(i) Direct the use of State level funds for technical assistance, services, or other expenditures to ensure that the State resolves the area or areas of unsatisfactory progress.~~

~~"(ii) Withhold not less than 20, but not more than 50, percent of the State's funds for State administration and activities for the fiscal year under section~~

611(e), after providing the State the opportunity to show cause why the withholding should not occur, until the Secretary determines that sufficient progress has been made in improving educational results for children with disabilities.

"(B) ADDITIONAL SECRETARIAL ACTION.—If, at the end of the 5th year after the Secretary has approved the compliance plan that the State has developed under subsection (b)(2)(C), the Secretary determines that a State failed to meet the benchmarks in the State compliance plan and make satisfactory progress in improving educational results for children with disabilities pursuant to the indicators described in subsection (b)(2)(A), the Secretary shall take 1 or more of the following actions:

"(i) Seek to recover funds under section 452 of the General Education Provisions Act.

"(ii) After providing reasonable notice and an opportunity for a hearing to the State educational agency involved, withhold, in whole or in part, any further pay-

~~ments to the State under this part pursuant to subsection (c)(5).~~

~~"(iii) After providing reasonable notice and an opportunity for a hearing to the State educational agency involved, refer the matter for appropriate enforcement action, which may include referral to the Department of Justice.~~

~~"(iv) Pending the outcome of any hearing to withhold payments under clause (ii), the Secretary may suspend payments to a recipient, suspend the authority of the recipient to obligate Federal funds, or both, after such recipient has been given reasonable notice and an opportunity to show cause why future payments or authority to obligate Federal funds should not be suspended.~~

~~"(C) SUBSTANTIAL NONCOMPLIANCE.—Notwithstanding subparagraph (B), at any time that the Secretary determines that a State is not in substantial compliance with any provision of this part or that there is a substantial failure to comply with any condition of a local agency's or State agency's eligibility under this part, the~~

~~Secretary shall take 1 or more of the following actions:~~

~~"(i) Request that the State prepare a corrective action plan or improvement plan if the Secretary determines that the State should be able to correct the problem within 1 year.~~

~~"(ii) Identify the State as a high-risk grantee and impose special conditions on the State's grant under this part.~~

~~"(iii) Require the State to enter into a compliance agreement under section 457 of the General Education Provisions Act, if the Secretary has reason to believe that the State cannot correct the problem within 1 year.~~

~~"(iv) Recovery of funds under section 452 of the General Education Provisions Act.~~

~~"(v) After providing reasonable notice and an opportunity for a hearing to the State educational agency involved, withhold, in whole or in part, any further payments to the State under this part.~~

~~"(vi) After providing reasonable notice and an opportunity for a hearing to the State educational agency involved, refer the matter for appropriate enforcement action, which may include referral to the Department of Justice.~~

~~"(vii) Pending the outcome of any hearing to withhold payments under clause (v), the Secretary may suspend payments to a recipient, suspend the authority of the recipient to obligate Federal funds, or both, after such recipient has been given reasonable notice and an opportunity to show cause why future payments or authority to obligate Federal funds should not be suspended.~~

~~"(3) EGREGIOUS NONCOMPLIANCE.—At any time that the Secretary determines that a State is in egregious noncompliance or is willfully disregarding the provisions of this Act, the Secretary shall take such additional enforcement actions as the Secretary determines to be appropriate from among those actions specified in paragraph (2)(C), and, additionally, may impose 1 or more of the following sanctions upon that State:~~

~~"(A) Institute a cease and desist action under section 456 of the General Education Provisions Act.~~

~~"(B) Refer the case to the Office of the Inspector General.~~

~~"(4) REPORT TO CONGRESS.—The Secretary shall report to Congress within 30 days of taking enforcement action pursuant to paragraph (2) (B) or (C), or (3), on the specific action taken and the reasons why enforcement action was taken.~~

~~"(5) NATURE OF WITHHOLDING.—If the Secretary withholds further payments under paragraphs (2)(B)(ii) and (2)(C)(v), the Secretary may determine that such withholding will be limited to programs or projects, or portions thereof, affected by the failure, or that the State educational agency shall not make further payments under this part to specified local educational agencies or State agencies affected by the failure. Until the Secretary is satisfied that there is no longer any failure to make satisfactory progress as specified in paragraph (2)(B), or to comply with the provisions of this part, as specified in paragraph (2)(C), payments to the State under this part shall be withheld in whole or in part, or payments by the State educational agency under~~

~~this part shall be limited to local educational agencies and State agencies whose actions did not cause or were not involved in the failure, as the case may be. Any State educational agency, State agency, or local educational agency that has received notice under paragraph (2)(B) or (2)(C) shall, by means of a public notice, take such measures as may be necessary to bring the pendency of an action pursuant to this subsection to the attention of the public within the jurisdiction of such agency.~~

~~"(6) JUDICIAL REVIEW.—~~

~~"(A) IN GENERAL.—If any State is dissatisfied with the Secretary's final action with respect to the eligibility of the State under section 612, such State may, not later than 60 days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings upon which the Secretary's action was based, as provided in section 2112 of title 28, United States Code.~~

~~"(B) JURISDICTION; REVIEW BY UNITED STATES SUPREME COURT.—Upon the filing of such petition, the court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.~~

~~"(C) STANDARD OF REVIEW.—The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive, but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify the Secretary's previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.~~

~~"(d) DIVIDED STATE AGENCY RESPONSIBILITY.—For purposes of this section, where responsibility for ensuring that the requirements of this part are met with respect to children with disabilities who are convicted as~~

~~adults under State law and incarcerated in adult prisons is assigned to a public agency other than the State educational agency pursuant to section 612(a)(11)(C), the Secretary, in instances where the Secretary finds that the failure to comply 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 that—~~

~~"(1) any reduction or withholding of payments to the State shall be proportionate to the total funds allotted under section 611 to the State as the number of eligible children with disabilities in adult prisons under the supervision of the other public agency is proportionate to the number of eligible individuals with disabilities in the State under the supervision of the State educational agency; and~~

~~"(2) any withholding of funds under paragraph (1) shall be limited to the specific agency responsible for the failure to comply with this part.~~

~~"(c) STATE AND LOCAL MONITORING.—~~

~~"(1) IN GENERAL.—The State educational agency shall monitor and enforce implementation of this Act, implement a system of monitoring the benchmarks in the State's compliance plan under subsection (b)(2)(C), and require local educational~~

agencies to monitor and enforce implementation of this Act.

"(2) ADDITIONAL ENFORCEMENT OPTIONS.—If a State educational agency determines that a local educational agency is not meeting the requirements of this part, including the benchmarks in the State's compliance plan, the State educational agency shall prohibit the local educational agency from treating funds received under this part as local funds under section 613(a)(2)(C) for any fiscal year.

"SEC. 617. ADMINISTRATION.

"(a) RESPONSIBILITIES OF SECRETARY.—The Secretary shall—

"(1) cooperate with, and (directly or by grant or contract) furnish technical assistance necessary to, a State in matters relating to—

"(A) the education of children with disabilities; and

"(B) carrying out this part; and

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

"(b) 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 regula-

~~tions 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 section 444 of the General Education Provisions Act (20 U.S.C. 1232g), to assure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by the Secretary and by State and local educational agencies pursuant to this part.~~

~~"(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 664, without regard to the provisions of title 5, United States Code, relating to appointments in the competitive service and without regard to chapter 51 and subchapter III of chapter 53 of such title relating to classification and general schedule pay rates, except that not more than 20 such personnel shall be employed at any 1 time.~~

~~"(e) MODEL FORMS.—Not later than the date that the Secretary publishes final regulations under this Act, to implement amendments made by the Individuals with Disabilities Education Improvement Act of 2003, the Secretary shall publish and disseminate widely to States, local~~

~~educational agencies, and parent and community training and information centers—~~

~~"(1) a model IEP form;~~

~~"(2) a model form of the notice of procedural safeguards described in section 615(d); and~~

~~"(3) a model form of the prior written notice described in section 615 (b)(3) and (c)(1) that is consistent with the requirements of this part and is sufficient to meet such requirements.~~

~~"SEC. 618. PROGRAM INFORMATION.~~

~~"(a) IN GENERAL.—Each State that receives assistance under this part, and the Secretary of the Interior, shall provide data each year to the Secretary of Education on—~~

~~"(1)(A) the number and percentage of children with disabilities, by race, ethnicity, limited English proficiency status, and disability category, who are receiving a free appropriate public education;~~

~~"(B) the number and percentage of children with disabilities, by race, ethnicity, and limited English proficiency status who are receiving early intervention services;~~

~~"(C) the number and percentage of children with disabilities, by race, ethnicity, limited English~~

~~proficiency status, and disability category, who are participating in regular education;~~

~~"(D) the number and percentage of children with disabilities, by race, ethnicity, limited English proficiency status, and disability category, who are in separate classes, separate schools or facilities, or public or private residential facilities;~~

~~"(E) the number and percentage of children with disabilities, by race, ethnicity, limited English proficiency status, and disability category, who, for each year of age from age 14 through 21, stopped receiving special education and related services because of program completion or other reasons, and the reasons why those children stopped receiving special education and related services;~~

~~"(F) the number and percentage of children with disabilities, by race, and ethnicity, who, from birth through age 2, stopped receiving early intervention services because of program completion or for other reasons;~~

~~"(G)(i) the number and percentage of children with disabilities, by race, ethnicity, limited English proficiency status, and disability category, who are removed to an interim alternative educational setting under section 615(k)(1);~~

~~"(ii) the acts or items precipitating those removals; and~~

~~"(iii) the number of children with disabilities who are subject to long-term suspensions or expulsions;~~

~~"(H) the incidence and duration of disciplinary actions by race, ethnicity, limited English proficiency status, and disability category, of children with disabilities, including suspensions of 1 day or more;~~

~~"(I) the number and percentage of children with disabilities who are removed to alternative educational settings or expelled as compared to children without disabilities who are removed to alternative educational settings or expelled;~~

~~"(J) the number of due process complaints filed under section 615 and the number of hearings conducted;~~

~~"(K) the number of hearings requested under section 615(k) and the number of changes in placements ordered as a result of those hearings;~~

~~"(L) the number of hearings requested under section 615(k)(3)(B) and the number of changes in placements ordered as a result of those hearings; and~~

~~"(M) the number of mediations held and the number of settlement agreements reached through such mediations;~~

~~"(2) the number and percentage of infants and toddlers, by race, and ethnicity, who are at risk of having substantial developmental delays (as defined in section 632), and who are receiving early intervention services under part C; and~~

~~"(3) any other information that may be required by the Secretary.~~

~~"(b) TECHNICAL ASSISTANCE.—The Secretary may provide technical assistance to States to ensure compliance with the data collection and reporting requirements under this Act.~~

~~"(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);~~

~~"(B) the placement in particular educational settings of such children; and~~

~~"(C) the incidence, duration, and type of disciplinary actions, including suspensions and expulsions.~~

~~"(2) REVIEW AND REVISION OF POLICIES, PRACTICES, AND PROCEDURES.—In the case of a determination of significant disproportionality with respect to the identification of children as children with disabilities, or the placement in particular educational settings of such children, in accordance with paragraph (1), the State or the Secretary of the Interior, as the case may be, shall provide for the review and, if appropriate, revision of the policies, procedures, and practices used in such identification or placement to ensure that such policies, procedures, and practices comply with the requirements of this Act.~~

~~"SEC. 619. PRESCHOOL GRANTS.~~

~~"(a) IN GENERAL.—The Secretary shall provide grants under this section to assist States to provide special education and related services, in accordance with this part—~~

~~"(1) to children with disabilities aged 3 through 5, inclusive; and~~

~~"(2) at the State's discretion, to 2-year-old children with disabilities who will turn 3 during the school year.~~

~~"(b) ELIGIBILITY.—A State shall be eligible for a grant under this section if such State—~~

~~"(1) is eligible under section 612 to receive a grant under this part; and~~

~~"(2) makes a free appropriate public education available to all children with disabilities, aged 3 through 5, residing in the State.~~

~~"(c) ALLOCATIONS TO STATES.—~~

~~"(1) IN GENERAL.—The Secretary shall allocate the amount made available to carry out this section for a fiscal year among the States in accordance with paragraph (2) or (3), as the case may be.~~

~~"(2) INCREASE IN FUNDS.—If the amount available for allocations to States under paragraph (1) is equal to or greater than the amount allocated to the States under this section for the preceding fiscal year, those allocations shall be calculated as follows:~~

~~"(A) ALLOCATION.—~~

~~"(i) IN GENERAL.—Except as provided in subparagraph (B), the Secretary shall—~~

~~"(I) allocate to each State the amount the State received under this section for fiscal year 1997;~~

~~"(II) allocate 85 percent of any remaining funds to States on the basis of the States' relative populations of children aged 3 through 5; and~~

~~"(III) allocate 15 percent of those remaining funds to States on the basis of the States' relative populations of all children aged 3 through 5 who are living in poverty.~~

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

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

~~"(i) PRECEDING YEARS.—No State's allocation shall be less than its allocation under this section for the preceding fiscal year.~~

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

~~"(I) the sum of—~~

~~"(aa) the amount the State received under this section for fiscal year 1997; and~~

~~"(bb) ⅓ of 1 percent of the amount by which the amount appropriated under subsection (j) for the fiscal year exceeds the amount appropriated for this section for fiscal year 1997;~~

~~"(II) the sum of—~~

~~"(aa) the amount the State received under this section for the preceding fiscal year; and~~

~~"(bb) that amount multiplied by the percentage by which the increase in the funds appropriated under this section from~~

~~the preceding fiscal year exceeds 1.5 percent; or~~

~~"(III) the sum of—~~

~~"(aa) the amount the State received under this section for the preceding fiscal year; and~~

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

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

~~"(I) the amount the State received under this section for the preceding fiscal year; and~~

~~"(II) that amount multiplied by the sum of 1.5 percent and the percentage increase in the amount appropriated under this section from the preceding fiscal year.~~

~~"(C) RATABLE REDUCTIONS.—If the amount available for allocations under this paragraph is insufficient to pay those alloca-~~

~~tions in full, those allocations shall be ratably reduced, subject to subparagraph (B)(i).~~

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

~~"(A) ALLOCATIONS.—If the amount available for allocations is greater than the amount allocated to the States for fiscal year 1997, each State shall be allocated the sum of—~~

~~"(i) the amount the State received under this section for fiscal year 1997; and~~

~~"(ii) an amount that bears the same relation to any remaining funds as the increase the State received under this section for the preceding fiscal year over fiscal year 1997 bears to the total of all such increases for all States.~~

~~"(B) If the amount available for allocations under this paragraph is equal to or less than the amount allocated under this section to the States for fiscal year 1997, each State shall be allocated the amount the State received for that year, ratably reduced, if necessary.~~

~~"(d) RESERVATION FOR STATE ACTIVITIES.—~~

~~"(1) IN GENERAL.—Each State may reserve not more than the amount described in paragraph (2) for administration and other State-level activities in accordance with subsections (e) and (f).~~

~~"(2) AMOUNT DESCRIBED.—For each fiscal year, the Secretary shall determine and report to the State educational agency an amount that is 25 percent of the amount the State received under this section for fiscal year 1997, cumulatively adjusted by the Secretary for each succeeding fiscal year by the lesser of—~~

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

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

~~"(e) STATE ADMINISTRATION.—~~

~~"(1) IN GENERAL.—For the purpose of administering this section (including the coordination of activities under this part with, and providing technical assistance to, other programs that provide~~

~~services to children with disabilities) a State may use not more than 20 percent of the maximum amount the State may reserve under subsection (d) for any fiscal year.~~

~~"(2) ADMINISTRATION OF PART C.—Funds described in paragraph (1) may also be used for the administration of part C of this Act, if the State educational agency is the lead agency for the State under that part.~~

~~"(f) OTHER STATE-LEVEL ACTIVITIES.—Each State shall use any funds the State reserves under subsection (d) and does not use for administration under subsection (e)—~~

~~"(1) for support services (including establishing and implementing the mediation process required by section 615(e)), which may benefit children with disabilities younger than 3 or older than 5 as long as those services also benefit children with disabilities aged 3 through 5;~~

~~"(2) for direct services for children eligible for services under this section;~~

~~"(3) for activities at the State and local levels to meet the performance goals established by the State under section 612(a)(15) and to support implementation of the State plan under subpart 1 of~~

~~part D if the State receives funds under that subpart; or~~

~~"(4) to supplement other funds used to develop and implement a statewide coordinated services system designed to improve results for children and families, including children with disabilities and their families, but not more than 1 percent of the amount received by the State under this section for a fiscal year.~~

~~"(g) SUBGRANTS TO LOCAL EDUCATIONAL AGENCIES.—~~

~~"(1) SUBGRANTS REQUIRED.—Each State that receives a grant under this section for any fiscal year shall distribute all of the grant funds that the State does not reserve under subsection (d) to local educational agencies in the State that have established their eligibility under section 613, as follows:~~

~~"(A) BASE PAYMENTS.—The State shall first award each local educational agency described in paragraph (1) the amount that agency would have received under this section for fiscal year 1997 if the State had distributed 75 percent of its grant for that year under section 619(c)(3), as such section was then in effect.~~

~~"(B) ALLOCATION OF REMAINING FUNDS.—After making allocations under subparagraph (A), the State shall—~~

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

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

~~"(2) REALLOCATION OF FUNDS.—If a State educational agency determines that a local educational agency is adequately providing a free appropriate public education to all children with disabilities aged 3 through 5 residing in the area served by that agency with State and local funds, the State educational agency may reallocate any portion of the funds under this section that are not needed by that local educational agency to provide a free appro-~~

priate public education to other local educational agencies in the State that are not adequately providing special education and related services to all children with disabilities aged 3 through 5 residing in the areas the other local educational agencies serve.

''(h) PART C INAPPLICABLE.—Part C of this Act does not apply to any child with a disability receiving a free appropriate public education, in accordance with this part, with funds received under this section.

''(i) DEFINITION.—For the purpose of this section, the term 'State' means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

''(j) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this section, there are authorized to be appropriated to the Secretary such sums as may be necessary for each of the fiscal years 2004 through 2009.

''PART C—INFANTS AND TODDLERS WITH DISABILITIES

''SEC. 631. FINDINGS AND POLICY.

''(a) FINDINGS.—Congress finds that there is an urgent and substantial need—

''(1) to enhance the development of infants and toddlers with disabilities, to minimize their potential for developmental delay, and to recognize the signifi-

~~cant brain development which occurs during a child's first 3 years of life;~~

~~"(2) to reduce the educational costs to our society, including our Nation's schools, by minimizing the need for special education and related services after infants and toddlers with disabilities reach school age;~~

~~"(3) to maximize the potential for individuals with disabilities to live independently in society;~~

~~"(4) to enhance the capacity of families to meet the special needs of their infants and toddlers with disabilities; and~~

~~"(5) to enhance the capacity of State and local agencies and service providers to identify, evaluate, and meet the needs of all children, particularly minority, low-income, inner city, and rural children.~~

~~"(b) POLICY.—It is the policy of the United States to provide financial assistance to States—~~

~~"(1) to develop and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system that provides early intervention services for infants and toddlers with disabilities and their families;~~

~~"(2) to facilitate the coordination of payment for early intervention services from Federal, State,~~

local, and private sources (including public and private insurance coverage);

"(3) to enhance State capacity to provide quality early intervention services and expand and improve existing early intervention services being provided to infants and toddlers with disabilities and their families; and

"(4) to encourage States to expand opportunities for children under 3 years of age who would be at risk of having substantial developmental delay if they did not receive early intervention services.

"SEC. 632. DEFINITIONS.

"As used in this part:

"(1) AT-RISK INFANT OR TODDLER.—The term 'at-risk infant or toddler' means an individual under 3 years of age who would be at risk of experiencing a substantial developmental delay if early intervention services were not provided to the individual.

"(2) COUNCIL.—The term 'council' means a State interagency coordinating council established under section 641.

"(3) DEVELOPMENTAL DELAY.—The term 'developmental delay', when used with respect to an individual residing in a State, has the meaning given such term by the State under section 635(a)(1).

1 ~~"(4) EARLY INTERVENTION SERVICES.—The~~
2 ~~term 'early intervention services' means develop-~~
3 ~~mental services that—~~
4 ~~"(A) are provided under public supervision;~~
5 ~~"(B) are provided at no cost except where~~
6 ~~Federal or State law provides for a system of~~
7 ~~payments by families, including a schedule of~~
8 ~~sliding fees;~~
9 ~~"(C) are designed to meet the develop-~~
10 ~~mental needs of an infant or toddler with a dis-~~
11 ~~ability in any 1 or more of the following areas:~~
12 ~~"(i) physical development;~~
13 ~~"(ii) cognitive development;~~
14 ~~"(iii) communication development;~~
15 ~~"(iv) social or emotional development;~~
16 ~~or~~
17 ~~"(v) adaptive development;~~
18 ~~"(D) meet the standards of the State in~~
19 ~~which the services are provided, including the~~
20 ~~requirements of this part;~~
21 ~~"(E) include—~~
22 ~~"(i) family training, counseling, and~~
23 ~~home visits;~~
24 ~~"(ii) special instruction;~~

~~"(iii) speech-language pathology and audiology services;~~

~~"(iv) occupational therapy;~~

~~"(v) physical therapy;~~

~~"(vi) psychological services;~~

~~"(vii) service coordination services;~~

~~"(viii) medical services only for diagnostic or evaluation purposes;~~

~~"(ix) early identification, screening, and assessment services;~~

~~"(x) health services necessary to enable the infant or toddler to benefit from the other early intervention services;~~

~~"(xi) social work services;~~

~~"(xii) vision services;~~

~~"(xiii) assistive technology devices and assistive technology services; and~~

~~"(xiv) transportation and related costs that are necessary to enable an infant or toddler and the infant's or toddler's family to receive another service described in this paragraph;~~

~~"(F) are provided by qualified personnel, including—~~

~~"(i) special educators;~~

~~"(ii) speech-language pathologists and audiologists;~~

~~"(iii) occupational therapists;~~

~~"(iv) physical therapists;~~

~~"(v) psychologists;~~

~~"(vi) social workers;~~

~~"(vii) nurses;~~

~~"(viii) nutritionists;~~

~~"(ix) family therapists;~~

~~"(x) orientation and mobility specialists; and~~

~~"(xi) pediatricians and other physicians;~~

~~"(G) to the maximum extent appropriate, are provided in natural environments, including the home, and community settings in which children without disabilities participate; and~~

~~"(H) are provided in conformity with an individualized family service plan adopted in accordance with section 636.~~

~~"(5) INFANT OR TODDLER WITH A DISABILITY.—The term 'infant or toddler with a disability'—~~

~~"(A) means an individual under 3 years of age who needs early intervention services because the individual—~~

~~"(i) is experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures in 1 or more of the areas of cognitive development, physical development, communication development, social or emotional development, and adaptive development; or~~

~~"(ii) has a diagnosed physical or mental condition which has a high probability of resulting in developmental delay; and~~

~~"(B) may also include, at a State's discretion, at-risk infants and toddlers.~~

~~"SEC. 633. GENERAL AUTHORITY.~~

~~"The Secretary shall, in accordance with this part, make grants to States (from their allotments under section 643) to assist each State to maintain and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system to provide early intervention services for infants and toddlers with disabilities and their families.~~

~~"SEC. 634. ELIGIBILITY.~~

~~"In order to be eligible for a grant under section 633, a State shall demonstrate to the Secretary that the State—~~

~~"(1) has adopted a policy that appropriate early intervention services are available to all infants and toddlers with disabilities in the State and their families, including Indian infants and toddlers with disabilities and their families residing on a reservation geographically located in the State; and~~

~~"(2) has in effect a statewide system that meets the requirements of section 635.~~

~~"SEC. 635. REQUIREMENTS FOR STATEWIDE SYSTEM.~~

~~"(a) IN GENERAL.—A statewide system described in section 633 shall include, at a minimum, the following components:~~

~~"(1) A definition of the term 'developmental delay' that—~~

~~"(A) will be used by the State in carrying out programs under this part; and~~

~~"(B) covers, at a minimum, all infants and toddlers with—~~

~~"(i) a developmental delay of 35 percent or more in 1 of the developmental areas described in section 632(5)(A)(i); or~~

~~"(ii) a developmental delay of 25 percent or more in 2 or more of the developmental areas described in section 632(5)(A)(i).~~

~~"(2) A State policy that is in effect and that ensures that appropriate early intervention services are available to all infants and toddlers with disabilities and their families, including Indian infants and toddlers and their families residing on a reservation geographically located in the State.~~

~~"(3) A timely, comprehensive, multidisciplinary evaluation of the functioning of each infant or toddler with a disability in the State, and a family-directed identification of the needs of each family of such an infant or toddler, to appropriately assist in the development of the infant or toddler.~~

~~"(4) For each infant or toddler with a disability in the State, an individualized family service plan in accordance with section 636, including service coordination services in accordance with such service plan.~~

~~"(5) A comprehensive child find system, consistent with part B, including a system for making referrals to service providers that includes timelines~~

~~and provides for participation by primary referral sources.~~

~~"(6) A public awareness program focusing on early identification of infants and toddlers with disabilities, including the preparation and dissemination by the lead agency designated or established under paragraph (10) to all primary referral sources, especially hospitals and physicians, of information for parents on the availability of early intervention services, and procedures for determining the extent to which such sources disseminate such information to parents of infants and toddlers.~~

~~"(7) A central directory that includes information on early intervention services, resources, and experts available in the State and research and demonstration projects being conducted in the State.~~

~~"(8) A comprehensive system of personnel development, including the training of paraprofessionals and the training of primary referral sources with respect to the basic components of early intervention services available in the State, which comprehensive system may include—~~

~~"(A) implementing innovative strategies and activities for the recruitment and retention of early education service providers;~~

~~"(B) promoting the preparation of early intervention providers who are fully and appropriately qualified to provide early intervention services under this part;~~

~~"(C) training personnel to work in rural and inner-city areas; and~~

~~"(D) training personnel to coordinate transition services for infants and toddlers served under this part from an early intervention program under this part to preschool or other appropriate services.~~

~~"(9) 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 the establishment and maintenance of standards which are consistent with any State-approved or recognized certification, licensing, registration, or other comparable requirements which apply to the area in which such personnel are providing early intervention services, except that nothing in this part (including this paragraph) shall be construed to prohibit the use of paraprofessionals and assistants who are appropriately trained in accordance with State~~

~~law, regulation, or written policy, to assist in the provision of early intervention services under this part to infants and toddlers with disabilities.~~

~~"(10) A single line of responsibility in a lead agency designated or established by the Governor for carrying out—~~

~~"(A) the general administration and supervision of programs and activities receiving assistance under section 633, and the monitoring of programs and activities used by the State to carry out this part, whether or not such programs or activities are receiving assistance made available under section 633, to ensure that the State complies with this part;~~

~~"(B) the identification and coordination of all available resources within the State from Federal, State, local, and private sources;~~

~~"(C) the assignment of financial responsibility in accordance with section 637(a)(2) to the appropriate agencies;~~

~~"(D) the development of procedures to ensure that services are provided to infants and toddlers with disabilities and their families under this part in a timely manner pending the~~

~~resolution of any disputes among public agencies or service providers;~~

~~"(E) the resolution of intra- and inter-agency disputes; and~~

~~"(F) the entry into formal interagency agreements that define the financial responsibility of each agency for paying for early intervention services (consistent with State law) and procedures for resolving disputes and that include all additional components necessary to ensure meaningful cooperation and coordination.~~

~~"(11) A policy pertaining to the contracting or making of other arrangements with service providers to provide early intervention services in the State, consistent with the provisions of this part, including the contents of the application used and the conditions of the contract or other arrangements.~~

~~"(12) A procedure for securing timely reimbursements of funds used under this part in accordance with section 640(a).~~

~~"(13) Procedural safeguards with respect to programs under this part, as required by section 639.~~

~~"(14) A system for compiling data requested by the Secretary under section 618 that relates to this part.~~

~~"(15) A State interagency coordinating council that meets the requirements of section 641.~~

~~"(16) Policies and procedures to ensure that, consistent with section 636(d)(5) to the maximum extent appropriate, early intervention services are provided in natural environments unless a specific outcome cannot be met satisfactorily for the infant or toddler in a natural environment.~~

~~"(b) 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 coursework necessary to meet the standards described in subsection (a)(9), consistent with State law within 3 years.~~

~~"SEC. 636. INDIVIDUALIZED FAMILY SERVICE PLAN.~~

~~"(a) ASSESSMENT AND PROGRAM DEVELOPMENT.—A statewide system described in section 633 shall provide,~~

~~at a minimum, for each infant or toddler with a disability, and the infant's or toddler's family, to receive—~~

~~"(1) a multidisciplinary assessment of the unique strengths and needs of the infant or toddler and the identification of services appropriate to meet such needs;~~

~~"(2) a family-directed assessment of the resources, priorities, and concerns of the family and the identification of the supports and services necessary to enhance the family's capacity to meet the developmental needs of the infant or toddler; and~~

~~"(3) a written individualized family service plan developed by a multidisciplinary team, including the parents, as required by subsection (c), including a description of the appropriate transition services for the child.~~

~~"(b) PERIODIC REVIEW.—The individualized family service plan shall be evaluated once a year and the family shall be provided a review of the plan at 6-month intervals (or more often where appropriate based on infant or toddler and family needs).~~

~~"(c) PROMPTNESS AFTER ASSESSMENT.—The individualized family service plan shall be developed within a reasonable time after the assessment required by subsection (a)(1) is completed. With the parents' consent,~~

early intervention services may commence prior to the completion of the assessment.

"(d) CONTENT OF PLAN.—The individualized family service plan shall be in writing and contain—

"(1) a statement of the infant's or toddler's present levels of physical development, cognitive development, communication development, social or emotional development, and adaptive development, based on objective criteria;

"(2) a statement of the family's resources, priorities, and concerns relating to enhancing the development of the family's infant or toddler with a disability;

"(3) a statement of the measurable outcomes expected to be achieved for the infant or toddler and the family, including, as appropriate, pre-literacy and language skills, and the criteria, procedures, and timelines used to determine the degree to which progress toward achieving the outcomes is being made and whether modifications or revisions of the outcomes or services are necessary;

"(4) a statement of specific early intervention services necessary to meet the unique needs of the infant or toddler and the family, including the frequency, intensity, and method of delivering services;

~~"(5) a statement of the natural environments in which early intervention services will appropriately be provided, including a justification of the extent, if any, to which the services will not be provided in a natural environment;~~

~~"(6) the projected dates for initiation of services and the anticipated length, duration, and frequency of the services;~~

~~"(7) the identification of the service coordinator from the profession most immediately relevant to the infant's or toddler's or family's needs (or who is otherwise qualified to carry out all applicable responsibilities under this part) who will be responsible for the implementation of the plan and coordination with other agencies and persons, including transition services; and~~

~~"(8) the steps to be taken to support the transition of the toddler with a disability to preschool or other appropriate services.~~

~~"(c) PARENTAL CONSENT.—The contents of the individualized family service plan shall be fully explained to the parents and informed written consent from the parents shall be obtained prior to the provision of early intervention services described in such plan. If the parents do not provide consent with respect to a particular early~~

~~intervention service, then only the early intervention services to which consent is obtained shall be provided.~~

~~"SEC. 637. STATE APPLICATION AND ASSURANCES.~~

~~"(a) APPLICATION.—A State desiring to receive a grant under section 633 shall submit an application to the Secretary at such time and in such manner as the Secretary may reasonably require. The application shall contain—~~

~~"(1) a designation of the lead agency in the State that will be responsible for the administration of funds provided under section 633;~~

~~"(2) a 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 State policies and procedures that require the referral for early intervention services of a child under the age of 3 who—~~

~~"(A) is involved in a substantiated case of child abuse or neglect; or~~

~~"(B) is identified as affected by illegal substance abuse, or withdrawal symptoms resulting from prenatal drug exposure;~~

~~"(7) a description of the procedure used to ensure that resources are made available under this part for all geographic areas within the State;~~

~~"(8) a description of State policies and procedures that ensure that, prior to the adoption by the State of any other policy or procedure necessary to meet the requirements of this part, there are public hearings, adequate notice of the hearings, and an opportunity for comment available to the general public, including individuals with disabilities and parents of infants and toddlers with disabilities;~~

~~"(9) a description of the policies and procedures to be used—~~

~~"(A) to ensure a smooth transition for toddlers receiving early intervention services under this part to preschool, other appropriate services, or exiting the program, 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, not more than 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, including, as appropriate, steps to exit from the program; and

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

1 ~~"(b) ASSURANCES.—The application described in~~
2 ~~subsection (a)—~~
3 ~~"(1) shall provide satisfactory assurance that~~
4 ~~Federal funds made available under section 643 to~~
5 ~~the State will be expended in accordance with this~~
6 ~~part;~~
7 ~~"(2) shall contain an assurance that the State~~
8 ~~will comply with the requirements of section 640;~~
9 ~~"(3) shall provide satisfactory assurance that~~
10 ~~the control of funds provided under section 643, and~~
11 ~~title to property derived from those funds, will be in~~
12 ~~a public agency for the uses and purposes provided~~
13 ~~in this part and that a public agency will administer~~
14 ~~such funds and property;~~
15 ~~"(4) shall provide for—~~
16 ~~"(A) making such reports in such form~~
17 ~~and containing such information as the Sec-~~
18 ~~retary may require to carry out the Secretary's~~
19 ~~functions under this part; and~~
20 ~~"(B) keeping such reports and affording~~
21 ~~such access to the reports as the Secretary may~~
22 ~~find necessary to ensure the correctness and~~
23 ~~verification of the reports and proper disburse-~~
24 ~~ment of Federal funds under this part;~~

~~"(5) provide satisfactory assurance that Federal funds made available under section 643 to the State—~~

~~"(A) will not be commingled with State funds; and~~

~~"(B) will be used so as to supplement the level of State and local funds expended for infants and toddlers with disabilities and their families and in no case to supplant those State and local funds;~~

~~"(6) shall provide satisfactory assurance that such fiscal control and fund accounting procedures will be adopted as may be necessary to ensure proper disbursement of, and accounting for, Federal funds paid under section 643 to the State;~~

~~"(7) shall provide satisfactory assurance that policies and procedures have been adopted to ensure meaningful involvement of underserved groups, including minority, low-income, and rural families, in the planning and implementation of all the requirements of this part; and~~

~~"(8) shall contain such other information and assurances as the Secretary may reasonably require by regulation.~~

~~"(c) STANDARD FOR DISAPPROVAL OF APPLICATION.—The Secretary may not disapprove such an application unless the Secretary determines, after notice and opportunity for a hearing, that the application fails to comply with the requirements of this section.~~

~~"(d) SUBSEQUENT STATE APPLICATION.—If a State has on file with the Secretary a policy, procedure, or assurance that demonstrates that the State meets a requirement of this section, including any policy or procedure filed under part C, as in effect before the date of enactment of the Individuals with Disabilities Education Improvement Act of 2003, the Secretary shall consider the State to have met the requirement for purposes of receiving a grant under this part.~~

~~"(e) MODIFICATION OF APPLICATION.—An application submitted by a State in accordance with this section shall remain in effect until the State submits to the Secretary such modifications as the State determines necessary. This section shall apply to a modification of an application to the same extent and in the same manner as this section applies to the original application.~~

~~"(f) MODIFICATIONS REQUIRED BY THE SECRETARY.—The Secretary may require a State to modify its application under this section, but only to the extent~~

~~necessary to ensure the State's compliance with this part, if—~~

~~"(1) an amendment is made to this Act, or a Federal regulation issued under this Act;~~

~~"(2) a new interpretation of this Act is made by a Federal court or the State's highest court; or~~

~~"(3) an official finding of noncompliance with Federal law or regulations is made with respect to the State.~~

~~"SEC. 638. USES OF FUNDS.~~

~~"In addition to using funds provided under section 633 to maintain and implement the statewide system required by such section, a State may use such funds—~~

~~"(1) for direct early intervention services for infants and toddlers with disabilities, and their families, under this part that are not otherwise funded through other public or private sources;~~

~~"(2) to expand and improve on services for infants and toddlers and their families under this part that are otherwise available;~~

~~"(3) to provide a free appropriate public education, in accordance with part B, to children with disabilities from their third birthday to the beginning of the following school year; 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.

"(a) MINIMUM PROCEDURES.—The procedural safeguards required to be included in a statewide system under section 635(a)(13) shall provide, at a minimum, the following:

"(1) The timely administrative resolution of complaints by parents. Any party aggrieved by the

~~findings and decision regarding an administrative complaint shall have the right to bring a civil action with respect to the complaint in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy. In any action brought under this paragraph, the court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and, basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.~~

~~"(2) The right to confidentiality of personally identifiable information, including the right of parents to written notice of and written consent to the exchange of such information among agencies consistent with Federal and State law.~~

~~"(3) The right of the parents to determine whether they, their infant or toddler, or other family members will accept or decline any early intervention service under this part in accordance with State law without jeopardizing other early intervention services under this part.~~

~~"(4) The opportunity for parents to examine records relating to assessment, screening, eligibility~~

~~determinations, and the development and implementation of the individualized family service plan.~~

~~"(5) Procedures to protect the rights of the infant or toddler whenever the parents of the infant or toddler are not known or cannot be found or the infant or toddler is a ward of the State, including the assignment of an individual (who shall not be an employee of the State lead agency, or other State agency, and who shall not be any person, or any employee of a person, providing early intervention services to the infant or toddler or any family member of the infant or toddler) to act as a surrogate for the parents.~~

~~"(6) Written prior notice to the parents of the infant or toddler with a disability whenever the State agency or service provider 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 clear-~~

~~ly is not feasible to do so, of all procedures available pursuant to this section.~~

~~"(8) The right of parents to use mediation in accordance with section 615, except that—~~

~~"(A) any reference in the section to a State educational agency shall be considered to be a reference to a State's lead agency established or designated under section 635(a)(10);~~

~~"(B) any reference in the section to a local educational agency shall be considered to be a reference to a local service provider or the State's lead agency under this part, as the case may be; and~~

~~"(C) any reference in the section to the provision of free appropriate public education to children with disabilities shall be considered to be a reference to the provision of appropriate early intervention services to infants and toddlers with disabilities.~~

~~"(b) SERVICES DURING PENDENCY OF PROCEEDINGS.—During the pendency of any proceeding or action involving a complaint by the parents of an infant or toddler with a disability, unless the State agency and the parents otherwise agree, the infant or toddler shall continue to receive the appropriate early intervention services~~

currently being provided or, if applying for initial services, shall receive the services not in dispute.

"SEC. 640. PAYOR OF LAST RESORT.

"(a) NONSUBSTITUTION.—Funds provided under section 643 may not be used to satisfy a financial commitment for services that would have been paid for from another public or private source, including any medical program administered by the Secretary of Defense, but for the enactment of this part, except that whenever considered necessary to prevent a delay in the receipt of appropriate early intervention services by an infant, toddler, or family in a timely fashion, funds provided under section 643 may be used to pay the provider of services pending reimbursement from the agency that has ultimate responsibility for the payment.

"(b) REDUCTION OF OTHER BENEFITS.—Nothing in this part shall be construed to permit the State to reduce medical or other assistance available or to alter eligibility under title V of the Social Security Act (relating to maternal and child health) or title XIX of the Social Security Act (relating to Medicaid for infants or toddlers with disabilities) within the State.

"SEC. 641. STATE INTERAGENCY COORDINATING COUNCIL.

"(a) ESTABLISHMENT.—

~~"(1) IN GENERAL.—A State that desires to receive financial assistance under this part shall establish a State interagency coordinating council.~~

~~"(2) APPOINTMENT.—The council shall be appointed by the Governor. In making appointments to the council, the Governor shall ensure that the membership of the council reasonably represents the population of the State.~~

~~"(3) CHAIRPERSON.—The Governor shall designate a member of the council to serve as the chairperson of the council, or shall require the council to so designate such a member. Any member of the council who is a representative of the lead agency designated under section 635(a)(10) may not serve as the chairperson of the council.~~

~~"(b) COMPOSITION.—~~

~~"(1) IN GENERAL.—The council shall be composed as follows:~~

~~"(A) PARENTS.—At least 20 percent of the members shall be parents of infants or toddlers with disabilities or children with disabilities aged 12 or younger, with knowledge of, or experience with, programs for infants and toddlers with disabilities. At least 1 such member shall be a parent of an infant or toddler with~~

~~a disability or a child with a disability aged 6 or younger.~~

~~"(B) SERVICE PROVIDERS.—At least 20 percent of the members shall be public or private providers of early intervention services.~~

~~"(C) STATE LEGISLATURE.—At least 1 member shall be from the State legislature.~~

~~"(D) PERSONNEL PREPARATION.—At least 1 member shall be involved in personnel preparation.~~

~~"(E) AGENCY FOR EARLY INTERVENTION SERVICES.—At least 1 member shall be from each of the State agencies involved in the provision of, or payment for, early intervention services to infants and toddlers with disabilities and their families and shall have sufficient authority to engage in policy planning and implementation on behalf of such agencies.~~

~~"(F) AGENCY FOR PRESCHOOL SERVICES.—At least 1 member shall be from the State educational agency responsible for preschool services to children with disabilities and shall have sufficient authority to engage in policy planning and implementation on behalf of such agency.~~

~~"(G) STATE MEDICAID AGENCY.—At least 1 member shall be from the agency responsible for the State medicaid program.~~

~~"(H) HEAD START AGENCY.—At least 1 representative from a Head Start agency or program in the State.~~

~~"(I) CHILD CARE AGENCY.—At least 1 representative from a State agency responsible for child care.~~

~~"(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.~~

~~"(e) MEETINGS.—The council shall meet at least quarterly and in such places as the council determines necessary. The meetings shall be publicly announced, and, to the extent appropriate, open and accessible to the general public.~~

~~"(d) MANAGEMENT AUTHORITY.—Subject to the approval of the Governor, the council may prepare and approve a budget using funds under this part to conduct hearings and forums, to reimburse members of the council for reasonable and necessary expenses for attending coun-~~

~~cil 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 tod-~~

~~dlers with disabilities to preschool and other appropriate services; and~~

~~"(D) prepare and submit an annual report to the Governor and to the Secretary on the status of early intervention programs for infants and toddlers with disabilities and their families operated within the State.~~

~~"(2) AUTHORIZED ACTIVITY.—The council may advise and assist the lead agency and the State educational agency regarding the provision of appropriate services for children from birth through age 5. The council may advise appropriate agencies in the State with respect to the integration of services for infants and toddlers with disabilities and at-risk infants and toddlers and their families, regardless of whether at-risk infants and toddlers are eligible for early intervention services in the State.~~

~~"(f) CONFLICT OF INTEREST.—No member of the council shall cast a vote on any matter that is likely to provide a direct financial benefit to that member or otherwise give the appearance of a conflict of interest under State law.~~

~~"SEC. 642. FEDERAL ADMINISTRATION.~~

~~"Sections 616, 617, and 618 shall, to the extent not inconsistent with this part, apply to the program authorized by this part, except that—~~

~~"(1) any reference in such sections to a State educational agency shall be considered to be a reference to a State's lead agency established or designated under section 635(a)(10);~~

~~"(2) any reference in such sections to a local educational agency, educational service agency, or a State agency shall be considered to be a reference to an early intervention service provider under this part; and~~

~~"(3) any reference to the education of children with disabilities or the education of all children with disabilities shall be considered to be a reference to the provision of appropriate early intervention services to infants and toddlers with disabilities.~~

~~"SEC. 643. ALLOCATION OF FUNDS.~~

~~"(a) RESERVATION OF FUNDS FOR OUTLYING AREAS.—~~

~~"(1) IN GENERAL.—From the sums appropriated to carry out this part for any fiscal year, the Secretary may reserve not more than 1 percent for payments to Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the~~

~~Northern Mariana Islands in accordance with their respective needs.~~

~~"(2) CONSOLIDATION OF FUNDS.—The provisions of Public Law 95–134, permitting the consolidation of grants to the outlying areas, shall not apply to funds those areas receive under this part.~~

~~"(b) PAYMENTS TO INDIANS.—~~

~~"(1) IN GENERAL.—The Secretary shall, subject to this subsection, make payments to the Secretary of the Interior to be distributed to tribes, tribal organizations (as defined under section 4 of the Indian Self-Determination and Education Assistance Act), or consortia of the above entities for the coordination of assistance in the provision of early intervention services by the States to infants and toddlers with disabilities and their families on reservations served by elementary schools and secondary schools for Indian children operated or funded by the Department of the Interior. The amount of such payment for any fiscal year shall be 1.25 percent of the aggregate of the amount available to all States under this part for such fiscal year.~~

~~"(2) ALLOCATION.—For each fiscal year, the Secretary of the Interior shall distribute the entire payment received under paragraph (1) by providing~~

~~to each tribe, tribal organization, or consortium an amount based on the number of infants and 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 Fed-~~

~~eral entities for the provision of services or further diagnosis.~~

~~"(5) REPORTS.—To be eligible to receive a grant under paragraph (2), a tribe, tribal organization, or consortium shall make a biennial report to the Secretary of the Interior of activities undertaken under this subsection, including the number of contracts and cooperative agreements entered into, the number of children contacted and receiving services for each year, and the estimated number of children needing services during the 2 years following the year in which the report is made. The Secretary of the Interior shall include a summary of this information on a biennial basis to the Secretary of Education along with such other information as required under section 611(h)(3)(E). The Secretary of Education may require any additional information from the Secretary of the Interior.~~

~~"(6) PROHIBITED USES OF FUNDS.—None of the funds under this subsection may be used by the Secretary of the Interior for administrative purposes, including child count, and the provision of technical assistance.~~

~~"(c) STATE ALLOTMENTS.—~~

~~"(1) IN GENERAL.—Except as provided in paragraphs (2) and (3) from the funds remaining for each fiscal year after the reservation and payments under subsections (a) 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 paragraph (3), no State shall receive an amount under this section for any fiscal year that is less than the greater of—~~

~~"(A) ½ of 1 percent of the remaining amount described in paragraph (1); or~~

~~"(B) $500,000.~~

~~"(3) RATABLE REDUCTION.—~~

~~"(A) IN GENERAL.—If the sums made available under this part for any fiscal year are insufficient to pay the full amounts that all States are eligible to receive under this subsection for such year, the Secretary shall ratably reduce the allotments to such States for such year.~~

~~"(B) ADDITIONAL FUNDS.—If additional funds become available for making payments~~

~~under this subsection for a fiscal year, allotments that were reduced under subparagraph (A) shall be increased on the same basis the allotments were reduced.~~

~~"(4) DEFINITIONS.—For the purpose of this subsection—~~

~~"(A) the terms 'infants' and 'toddlers' mean children under 3 years of age; and~~

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

~~"(d) REALLOTMENT OF FUNDS.—If a State elects not to receive its allotment under subsection (c), the Secretary shall reallot, among the remaining States, amounts from such State in accordance with such subsection.~~

~~"SEC. 644. AUTHORIZATION OF APPROPRIATIONS.~~

~~"For the purpose of carrying out this part, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2004 through 2009.~~

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

~~"SEC. 650. FINDINGS.~~

~~"Congress finds the following:~~

~~"(1) The Federal Government has an ongoing obligation to support activities that contribute to~~

~~positive results for children with disabilities, enabling them to lead productive and independent adult lives.~~

~~"(2) Systemic change benefiting all students, including children with disabilities, requires the involvement of States, local educational agencies, parents, individuals with disabilities and their families, teachers and other service providers, and other interested individuals and organizations to develop and implement comprehensive strategies that improve educational results for children with disabilities.~~

~~"(3) State educational agencies, in partnership with local educational agencies, parents of children with disabilities, and other individuals and organizations, are in the best position to improve education for children with disabilities and to address their special needs.~~

~~"(4) An effective educational system serving students with disabilities should—~~

~~"(A) maintain high academic achievement standards and clear performance goals for children, consistent with the standards and expectations for all students in the educational system, and provide for appropriate and effective strategies and methods to ensure that all chil-~~

~~dren with disabilities have the opportunity to achieve those standards and goals;~~

~~"(B) clearly define, in objective, measurable terms, the school and post-school results that children with disabilities are expected to achieve; and~~

~~"(C) promote transition services as described in section 602(32) and coordinate State and local education, social, health, mental health, and other services, in addressing the full range of student needs, particularly the needs of children with disabilities who need significant levels of support to participate and learn in school and the community.~~

~~"(5) The availability of an adequate number of qualified personnel is critical to serve effectively children with disabilities, to assume leadership positions in administration and direct services, to provide teacher training, and to conduct high quality research to improve special education.~~

~~"(6) High quality, comprehensive professional development programs are essential to ensure that the persons responsible for the education or transition of children with disabilities possess the skills~~

~~and knowledge necessary to address the educational and related needs of those children.~~

~~"(7) Models of professional development should be scientifically based and reflect successful practices, including strategies for recruiting, preparing, and retaining personnel.~~

~~"(8) Continued support is essential for the development and maintenance of a coordinated and high quality program of research to inform successful teaching practices and model curricula for educating children with disabilities.~~

~~"(9) A comprehensive research agenda should be established and pursued to promote the highest quality and rigor in special education research, and to address the full range of issues facing children with disabilities, parents of children with disabilities, school personnel, and others.~~

~~"(10) Training, technical assistance, support, and dissemination activities are necessary to ensure that parts B and C are fully implemented and achieve high quality early intervention, educational, and transitional results for children with disabilities and their families.~~

~~"(11) Parents, teachers, administrators, and related services personnel need technical assistance~~

~~and information in a timely, coordinated, and accessible manner in order to improve early intervention, educational, and transitional services and results at the State and local levels for children with disabilities and their families.~~

~~"(12) Parent training and information activities assist parents of a child with a disability in dealing with the multiple pressures of parenting such a child and are of particular importance in—~~

~~"(A) playing a vital role in creating and preserving constructive relationships between parents of children with disabilities and schools by facilitating open communication between the parents and schools; encouraging dispute resolution at the earliest possible point in time; and discouraging the escalation of an adversarial process between the parents and schools;~~

~~"(B) ensuring the involvement of parents in planning and decisionmaking with respect to early intervention, educational, and transitional services;~~

~~"(C) achieving high quality early intervention, educational, and transitional results for children with disabilities;~~

~~"(D) providing such parents information on their rights, protections, and responsibilities under this Act to ensure improved early intervention, educational, and transitional results for children with disabilities;~~

~~"(E) assisting such parents in the development of skills to participate effectively in the education and development of their children and in the transitions described in section 602(32);~~

~~"(F) supporting the roles of such parents as participants within partnerships seeking to improve early intervention, educational, and transitional services and results for children with disabilities and their families; and~~

~~"(G) supporting such parents who may have limited access to services and supports, due to economic, cultural, or linguistic barriers.~~

~~"(13) Support is needed to improve technological resources and integrate technology, including universally designed technologies, into the lives of children with disabilities, parents of children with disabilities, school personnel, and others through curricula, services, and assistive technologies.~~

~~"Subpart 1—State Personnel Preparation and Professional Development Grants~~

~~"SEC. 651. PURPOSE; DEFINITION; PROGRAM AUTHORITY.~~

~~"(a) PURPOSE.—The purpose of this subpart is to assist State educational agencies in reforming and improving their systems for personnel preparation and professional development in early intervention, educational, and transition services in order to improve results for children with disabilities.~~

~~"(b) DEFINITION.—In this subpart the term 'personnel' means special education teachers, general education teachers, principals, administrators, related services personnel, paraprofessionals, and early intervention personnel serving infants, toddlers, preschoolers, or children with disabilities.~~

~~"(c) PROGRAM AUTHORITY.—~~

~~"(1) COMPETITIVE GRANTS.—~~

~~"(A) IN GENERAL.—For any fiscal year for which the amount appropriated under section 655 is less than $100,000,000, the Secretary is authorized to award grants, on a competitive basis, to State educational agencies to carry out the activities described in the State plan submitted under section 654.~~

~~"(B) PRIORITY.—The Secretary may give priority to awarding grants under subparagraph (A) to State educational agencies that—~~

~~"(i) have the greatest personnel shortages; or~~

~~"(ii) demonstrate the greatest difficulty meeting the requirements of section 615(a)(14).~~

~~"(C) MINIMUM.—The Secretary shall make a grant to each State educational agency selected under subparagraph (A) in an amount for each fiscal year that is—~~

~~"(i) 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~~

~~"(ii) not less than $80,000 in the case of an outlying area.~~

~~"(D) INCREASES.—The Secretary may increase the amount described in subparagraph (C) to account for inflation.~~

~~"(E) FACTORS.—The Secretary shall set the amount of each grant under subparagraph (A) after considering—~~

~~"(i) the amount of funds available for making the grants;~~

~~"(ii) the relative population of the State or outlying area;~~

~~"(iii) the types of activities proposed by the State or outlying area;~~

~~"(iv) the alignment of proposed activities with section 612(a)(15);~~

~~"(v) the alignment of proposed activities with the plans and applications submitted under sections 1111 and 2112, respectively, of the Elementary and Secondary Education Act of 1965; and~~

~~"(vi) the use, as appropriate, of scientifically based activities.~~

~~"(2) FORMULA GRANTS.—~~

~~"(A) IN GENERAL.—For any fiscal year for which the funds appropriated under section 655 are equal to or greater than $100,000,000, the Secretary shall—~~

~~"(i) reserve from such funds an amount sufficient to continue to make payments for the fiscal year in accordance with the terms of each multi-year grant~~

~~awarded under paragraph (1) for which the grant period has not ended; and~~

~~"(ii) use the remainder of such funds to award grants to State educational agencies, from allotments under subparagraph (B), to enable the State educational agencies to award contracts and subgrants, on a competitive basis, to carry out the authorized activities described in section 654.~~

~~"(B) ALLOTMENT.—Except as provided in subparagraph (C), from the remainder of funds described in subparagraph (A)(ii) for a fiscal year, the Secretary shall make an allotment to each State educational agency in an amount that bears the same relation to such remainder as the amount of funds the State received under section 611(d)(3) for the preceding fiscal year bears to the amount of funds received by all States under such section for the preceding fiscal year.~~

~~"(C) MINIMUM ALLOTMENT.—The amount of any State educational agency's allotment under this paragraph for any fiscal year shall not be less than ¼ of 1 percent of the amount made available under this part for such year.~~

~~"SEC. 652. ELIGIBILITY AND COLLABORATIVE PROCESS.~~

~~"(a) ELIGIBLE APPLICANTS.—A State educational agency may apply for a grant under this subpart for a grant period of not less than 1 year and not more than 5 years.~~

~~"(b) PARTNERS.—~~

~~"(1) IN GENERAL.—In order to be considered for a grant under this subpart, a State educational agency shall establish a partnership with local educational agencies and other State agencies involved in, or concerned with, the education of children with disabilities, including institutions of higher education and the State agencies responsible for administering part C, child care, and vocational rehabilitation.~~

~~"(2) OTHER PARTNERS.—In order to be considered for a grant under this subpart, a State educational agency shall work in partnership with other persons and organizations involved in, and concerned with, the education of children with disabilities, which may include—~~

~~"(A) the Governor;~~

~~"(B) parents of children with disabilities ages birth through 26;~~

~~"(C) parents of nondisabled children ages birth through 26;~~

~~"(D) individuals with disabilities;~~

~~"(E) parent training and information centers or community parent resource centers;~~

~~"(F) community based and other nonprofit organizations involved in the education and employment of individuals with disabilities;~~

~~"(G) general and special education teachers, paraprofessionals, related services personnel, and early intervention personnel;~~

~~"(H) the State advisory panel established under part B;~~

~~"(I) the State interagency coordinating council established under part C;~~

~~"(J) institutions of higher education within the State;~~

~~"(K) individuals knowledgeable about vocational education;~~

~~"(L) the State agency for higher education;~~

~~"(M) the State vocational rehabilitation agency;~~

~~"(N) public agencies with jurisdiction in the areas of health, mental health, social services, and juvenile justice;~~

"(O) other providers of professional development that work with infants, toddlers, preschoolers, and children with disabilities; and

"(P) other individuals.

"SEC. 653. APPLICATIONS.

"(a) IN GENERAL.—

"(1) SUBMISSION.—A State educational agency that desires to receive a grant under this subpart shall submit to the Secretary an application at such time, in such manner, and including such information as the Secretary may require.

"(2) STATE PLAN.—The application shall include a plan that identifies and addresses the State and local needs for the professional development of administrators, principals, and teachers, as well as individuals who provide direct supplementary aids and services to children with disabilities, and that—

"(A) is designed to enable the State to meet the requirements of section 612(a)(14);

"(B) is based on an assessment of State and local needs that identifies critical aspects and areas in need of improvement related to the preparation, ongoing training, and professional development of personnel that serve infants,

toddlers, preschoolers, and children with disabilities within the State, including—

"(i) current and anticipated personnel vacancies and shortages; and

"(ii) the number of preservice programs; and

"(C) is integrated and aligned, to the maximum extent possible, with State plans and activities under the Elementary and Secondary Education Act of 1965, the Rehabilitation Act of 1973, and the Higher Education Act of 1965, as appropriate.

"(3) REQUIREMENT.—The State application shall contain an assurance that the State educational agency shall carry out each of the strategies described in subsection (b)(4).

"(b) ELEMENTS OF STATE PERSONNEL PREPARATION AND PROFESSIONAL DEVELOPMENT PLAN.—Each professional development plan shall—

"(1) describe a partnership agreement that is in effect for the period of the grant, which agreement shall specify—

"(A) the nature and extent of the partnership described in section 652(b) and the respec-

~~tive roles of each member of the partnership; and~~

~~"(B) how the State 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 the persons and organizations;~~

~~"(2) describe how the strategies and activities described in paragraph (4) will be coordinated with other public resources (including part B and part C funds retained for use at the State level for personnel and professional development purposes) and private resources;~~

~~"(3) describe how the State will align its professional development plan under this subpart with the plan and application submitted under sections 1111 and 2112, respectively, of the Elementary and Secondary Education Act of 1965;~~

~~"(4) describe what strategies the State will use to address the professional development and personnel needs identified under subsection (a)(2) and how those strategies will be implemented, including—~~

~~"(A) a description of the preservice and in-service programs and activities to be supported under this subpart that will provide personnel with the knowledge and skills to meet the needs of, and improve the performance and achievement of, infants, toddlers, preschoolers, and children with disabilities; and~~

~~"(B) how such strategies shall be integrated, to the maximum extent possible, with other activities supported by grants funded under this part, including those under section 664;~~

~~"(5) provide an assurance that the State will provide technical assistance to local educational agencies to improve the quality of professional development available to meet the needs of personnel who serve children with disabilities;~~

~~"(6) provide an assurance that the State will provide technical assistance to entities that provide services to infants and toddlers with disabilities to improve the quality of professional development available to meet the needs of personnel serving such children;~~

~~"(7) describe how the State will recruit and retain highly qualified teachers and other qualified personnel in geographic areas of greatest need;~~

~~"(8) describe the steps the State will take to ensure that poor and minority children are not taught at higher rates by teachers who are not highly qualified; and~~

~~"(9) describe how the State will assess, on a regular basis, the extent to which the strategies implemented under this subpart have been effective in meeting the performance goals described in section 612(a)(15).~~

~~"(c) PEER REVIEW.—~~

~~"(1) IN GENERAL.—The Secretary shall use a panel of experts who are competent, by virtue of their training, expertise, or experience, to evaluate applications for grants under section 651(c)(1).~~

~~"(2) COMPOSITION OF PANEL.—A majority of a panel described in paragraph (1) shall be composed of individuals who are not employees of the Federal Government.~~

~~"(3) PAYMENT OF FEES AND EXPENSES OF CERTAIN MEMBERS.—The Secretary may use available funds appropriated to carry out this subpart to~~

pay the expenses and fees of panel members who are not employees of the Federal Government.

"(d) REPORTING PROCEDURES.—Each State educational agency that receives a grant under this subpart shall submit annual performance reports to the Secretary. The reports shall describe the progress of the State in implementing its plan and analyzing the effectiveness of the State's activities under this subpart.

"SEC. 654. USE OF FUNDS.

"(a) PROFESSIONAL DEVELOPMENT ACTIVITIES.—A State educational agency that receives a grant under this subpart shall use the grant funds to support activities in accordance with the State's plan described in section 653, including 1 or more of the following:

"(1) Carrying out programs that provide support to both special education and regular education teachers of children with disabilities, such as programs that—

"(A) provide teacher mentoring, team teaching, reduced class schedules and case loads, and intensive professional development; and

"(B) use standards or assessments for guiding beginning teachers that are consistent with challenging State student academic

~~achievement and functional standards and with the requirements for professional development as defined in section 9101(34) of the Elementary and Secondary Education Act of 1965.~~

~~"(2) Encouraging and supporting the training of special education and regular education teachers and administrators to effectively utilize and integrate technology—~~

~~"(A) into curricula and instruction, including training to improve the ability to collect, manage, and analyze data to improve teaching, decisionmaking, school improvement efforts, and accountability;~~

~~"(B) to enhance learning by children with disabilities; and~~

~~"(C) to effectively communicate with parents.~~

~~"(3) Providing professional development activities that—~~

~~"(A) improve the knowledge of special education and regular education teachers concerning—~~

~~"(i) the academic and developmental or functional needs of students with disabilities; or~~

~~"(ii) effective instructional strategies, methods, and skills, and the use of State academic content standards and student academic achievement and functional standards, and State assessments, to improve teaching practices and student academic achievement; and~~

~~"(B) improve the knowledge of special education and regular education teachers and principals and, in appropriate cases, paraprofessionals, concerning effective instructional practices and that—~~

~~"(i) provide training in how to teach and address the needs of students with different learning styles;~~

~~"(ii) involve collaborative groups of teachers and administrators;~~

~~"(iii) provide training in methods of—~~

~~"(I) positive behavior interventions and supports to improve student behavior in the classroom;~~

~~"(II) scientifically based reading instruction, including early literacy instruction;~~

~~"(III) early and appropriate interventions to identify and help children with disabilities;~~

~~"(IV) effective instruction for children with low incidence disabilities;~~

~~"(V) successful transitioning to postsecondary opportunities; and~~

~~"(VI) using classroom-based techniques to assist children prior to referral for special education;~~

~~"(iv) provide training to enable special education and regular education teachers and principals to work with and involve parents in their child's education, including parents of low income and limited English proficient children with disabilities;~~

~~"(v) provide training for special education, regular education, principals, and related services personnel in planning, developing, and implementing effective and appropriate IEPs; and~~

~~"(vi) providing training to meet the needs of students with significant health,~~

~~mobility, or behavioral needs prior to serving such students;~~

~~"(C) train administrators, principals, and other relevant school personnel in conducting effective IEP meetings; and~~

~~"(D) develop and enhance instructional leadership skills of principals.~~

~~"(4) Developing and implementing initiatives to promote the recruitment and retention of highly qualified special education teachers, particularly initiatives that have been proven effective in recruitment and retaining highly qualified teachers, including programs that provide—~~

~~"(A) teacher mentoring from exemplary special education teachers, principals, or superintendents;~~

~~"(B) induction and support for special education teachers during their first 3 years of employment as teachers, respectively; or~~

~~"(C) incentives, including financial incentives, to retain special education teachers who have a record of success in helping students with disabilities.~~

~~"(5) Carrying out programs and activities that are designed to improve the quality of personnel who serve children with disabilities, such as—~~

~~"(A) innovative professional development programs (which may be provided through partnerships that include institutions of higher education), including programs that train teachers and principals to integrate technology into curricula and instruction to improve teaching, learning, and technology literacy, which professional development shall be consistent with the definition of professional development described in section 9101(34) of the Elementary and Secondary Education Act of 1965; and~~

~~"(B) development and use of proven, cost effective strategies for the implementation of professional development activities, such as through the use of technology and distance learning.~~

~~"(b) OTHER ACTIVITIES.—A State educational agency that receives a grant under this subpart shall use the grant funds to support activities in accordance with the State's plan described in section 653, including 1 or more of the following:~~

~~"(1) Reforming special education and regular education teacher certification (including recertification) or licensing requirements to ensure that—~~

~~"(A) special education and regular education teachers have—~~

~~"(i) the training and information necessary to address the full range of needs of children with disabilities across disability categories; and~~

~~"(ii) the necessary subject matter knowledge and teaching skills in the academic subjects that they teach;~~

~~"(B) special education and regular education teacher certification (including recertification) or licensing requirements are aligned with challenging State academic content standards; and~~

~~"(C) special education and regular education teachers have the subject matter knowledge and teaching skills, including technology literacy, necessary to help students meet challenging State student academic achievement and functional standards.~~

~~"(2) Programs that establish, expand, or improve alternative routes for State certification of~~

special education teachers for highly qualified individuals with a baccalaureate or master's degree, including mid-career professionals from other occupations, paraprofessionals, and recent college or university graduates with records of academic distinction who demonstrate the potential to become highly effective special education teachers.

"(3) Teacher advancement initiatives for special education teachers that promote professional growth and emphasize multiple career paths (such as paths to becoming a career teacher, mentor teacher, or exemplary teacher) and pay differentiation.

"(4) Developing and implementing mechanisms to assist local educational agencies and schools in effectively recruiting and retaining highly qualified special education teachers.

"(5) Reforming tenure systems, implementing teacher testing for subject matter knowledge, and implementing teacher testing for State certification or licensing, consistent with title II of the Higher Education Act of 1965.

"(6) Funding projects to promote reciprocity of teacher certification or licensing between or among States for special education teachers, except that no reciprocity agreement developed under this para-

~~graph or developed using funds provided under this subpart may lead to the weakening of any State teaching certification or licensing requirement.~~

~~"(7) Developing or assisting local educational agencies to serve children with disabilities through the development and use of proven, innovative strategies to deliver intensive professional development programs that are both cost effective and easily accessible, such as strategies that involve delivery through the use of technology, peer networks, and distance learning.~~

~~"(8) Developing, or assisting local educational agencies in developing, merit based performance systems, and strategies that provide differential and bonus pay for special education teachers.~~

~~"(9) Supporting activities that ensure that teachers are able to use challenging State academic content standards and student academic and functional achievement standards, and State assessments for all children with disabilities, to improve instructional practices and improve the academic achievement of children with disabilities.~~

~~"(10) Coordinating with, and expanding centers established under, section 2113(c)(18) of the Ele-~~

mentary and Secondary Education Act of 1965 to benefit special education teachers.

"(c) CONTRACTS AND SUBGRANTS.—Each such State educational agency—

"(1) shall award contracts or subgrants to local educational agencies, institutions of higher education, parent training and information centers, or community parent resource centers, as appropriate, to carry out its State plan under this subpart; and

"(2) may award contracts and subgrants to other public and private entities, including the lead agency under part C, to carry out such plan.

"(d) USE OF FUNDS FOR PROFESSIONAL DEVELOPMENT.—A State educational agency that receives a grant under this subpart shall use—

"(1) not less than 75 percent of the funds the State educational agency receives under the grant for any fiscal year for activities under subsection (a); and

"(2) not more than 25 percent of the funds the State educational agency receives under the grant for any fiscal year for activities under subsection (b).

"(e) GRANTS TO OUTLYING AREAS.—Public Law 95–134, permitting the consolidation of grants to the outlying areas, shall not apply to funds received under this subpart.

~~"SEC. 655. AUTHORIZATION OF APPROPRIATIONS.~~

~~"There are authorized to be appropriated to carry out this subpart such sums as may be necessary for each of the fiscal years 2004 through 2009.~~

~~"Subpart 2—Scientifically Based Research, Technical Assistance, Model Demonstration Projects, and Dissemination of Information~~

~~"SEC. 660. PURPOSE.~~

~~"The purpose of this subpart is—~~

~~"(1) to provide Federal funding for scientifically based research, technical assistance, model demonstration projects, and information dissemination to improve early intervention, educational, and transitional results for children with disabilities; and~~

~~"(2) to assist State educational agencies and local educational agencies in improving their education systems.~~

~~"SEC. 661. ADMINISTRATIVE PROVISIONS.~~

~~"(a) COMPREHENSIVE PLAN.—~~

~~"(1) IN GENERAL.—After receiving input from interested individuals with relevant expertise, the Secretary shall develop and implement a comprehensive plan for activities carried out under this subpart (other than activities assisted under sections 662 and 665) in order to enhance the provision of early intervention, educational, related and transitional~~

~~services to children with disabilities under parts B and C. The plan shall be coordinated with the agenda developed pursuant to section 662(d) and shall include mechanisms to address early intervention, educational, related service and transitional needs identified by State educational agencies in applications submitted for State program improvement grants under subpart 1.~~

~~"(2) PUBLIC COMMENT.—The Secretary shall provide a public comment period of at least 60 days on the plan.~~

~~"(3) DISTRIBUTION OF FUNDS.—In implementing the plan, the Secretary shall, to the extent appropriate, ensure that funds are awarded to recipients under this subpart to carry out activities that benefit, directly or indirectly, children with the full range of disabilities and of all ages.~~

~~"(4) REPORTS TO CONGRESS.—The Secretary shall annually report to Congress on the Secretary's activities under this subpart, including an initial report not later than 12 months after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2003.~~

~~"(b) ELIGIBLE APPLICANTS.—~~

~~"(1) IN GENERAL.—Except as otherwise provided in this subpart, the following entities are eligible to apply for a grant, contract, or cooperative agreement under this subpart:~~

~~"(A) A State educational agency.~~

~~"(B) A local educational agency.~~

~~"(C) A public charter school that is a local educational agency under State law.~~

~~"(D) An institution of higher education.~~

~~"(E) Any other public agency.~~

~~"(F) A private nonprofit organization.~~

~~"(G) An outlying area.~~

~~"(H) An Indian tribe or a tribal organization (as defined under section 4 of the Indian Self-Determination and Education Assistance Act).~~

~~"(I) A for-profit organization.~~

~~"(2) SPECIAL RULE.—The Secretary may limit the entities eligible for an award of a grant, contract, or cooperative agreement to 1 or more categories of eligible entities described in paragraph (1).~~

~~"(c) SPECIAL POPULATIONS.—~~

~~"(1) APPLICATION REQUIREMENT.—In making an award of a grant, contract, or cooperative agree-~~

~~ment under this subpart, the Secretary shall, as appropriate, require an applicant to meet the criteria set forth by the Secretary under this subpart and demonstrate how the applicant will address the needs of children with disabilities from minority backgrounds.~~

~~"(2) REQUIRED OUTREACH AND TECHNICAL ASSISTANCE.—Notwithstanding any other provision of this Act other than paragraph (1), the Secretary shall reserve at least 1 percent of the total amount of funds made available to carry out this subpart for 1 or both of the following activities:~~

~~"(A) To provide outreach and technical assistance to Historically Black Colleges and Universities, and to institutions of higher education with minority enrollments of at least 25 percent, to promote the participation of such colleges, universities, and institutions in activities under this subpart.~~

~~"(B) To enable Historically Black Colleges and Universities, and the institutions described in subparagraph (A), to assist other colleges, universities, institutions, and agencies in improving educational and transitional results for children with disabilities.~~

~~"(C) RESERVATION OF FUNDS.—The Secretary may reserve funds made available under this subpart to satisfy the requirements of subparagraphs (A) and (B).~~

~~"(d) PRIORITIES.—The Secretary, in making an award of a grant, contract, or cooperative agreement under this subpart, may, without regard to the rulemaking procedures under section 553(a) of title 5, United States Code, limit competitions to, or otherwise give priority to—~~

~~"(1) projects that address 1 or more—~~

~~"(A) age ranges;~~

~~"(B) disabilities;~~

~~"(C) school grades;~~

~~"(D) types of educational placements or early intervention environments;~~

~~"(E) types of services;~~

~~"(F) content areas, such as reading; or~~

~~"(G) effective strategies for helping children with disabilities learn appropriate behavior in the school and other community based educational settings;~~

~~"(2) projects that address the needs of children based on the severity or incidence of their disability;~~

~~"(3) projects that address the needs of—~~

~~"(A) low achieving students;~~

1 ~~"(B) underserved populations;~~

2 ~~"(C) children from low income families;~~

3 ~~"(D) limited English proficient children;~~

4 ~~"(E) unserved and underserved areas;~~

5 ~~"(F) rural or urban areas;~~

6 ~~"(G) children whose behavior interferes~~

7 ~~with their learning and socialization;~~

8 ~~"(H) children with reading difficulties; or~~

9 ~~"(I) children in charter schools;~~

10 ~~"(4) projects to reduce inappropriate identifica-~~

11 ~~tion of children as children with disabilities, particu-~~

12 ~~larly among minority children;~~

13 ~~"(5) projects that are carried out in particular~~

14 ~~areas of the country, to ensure broad geographic~~

15 ~~coverage;~~

16 ~~"(6) projects that promote the development and~~

17 ~~use of universally designed technologies, assistive~~

18 ~~technology devices, and assistive technology services~~

19 ~~to maximize children with disabilities' access to and~~

20 ~~participation in the general curriculum; and~~

21 ~~"(7) any activity that is authorized in this sub-~~

22 ~~part or subpart 3.~~

23 ~~"(e) APPLICANT AND RECIPIENT RESPONSIBIL-~~

24 ~~ITIES.—~~

~~"(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 ages birth through 26 in planning, implementing, and evaluating the project; and~~

~~"(B) where appropriate, determine whether the project has any potential for replication and adoption by other entities.~~

~~"(2) ADDITIONAL RESPONSIBILITIES.—The Secretary may require a recipient of a grant, contract, or cooperative agreement under this subpart to—~~

~~"(A) share in the cost of the project;~~

~~"(B) 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) disseminate such findings and products; and~~

~~"(D) collaborate with other such recipients in carrying out subparagraphs (B) and (C).~~

~~"(f) APPLICATION MANAGEMENT.—~~

~~"(1) STANDING PANEL.—~~

~~"(A) IN GENERAL.—The Secretary shall establish and use a standing panel of experts who are competent, by virtue of their training, expertise, or experience, to evaluate applications under this subpart (other than applications for assistance under sections 662 and 665) 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 high quality programs of personnel preparation;~~

~~"(ii) individuals who design and carry out scientifically based research targeted to the improvement of special education programs and services;~~

~~"(iii) individuals who have recognized experience and knowledge necessary to integrate and apply scientifically based re-~~

~~search findings to improve educational and transitional results for children with disabilities;~~

~~"(iv) individuals who administer programs at the State or local level in which children with disabilities participate;~~

~~"(v) individuals who prepare parents of children with disabilities to participate in making decisions about the education of their children;~~

~~"(vi) individuals who establish policies that affect the delivery of services to children with disabilities;~~

~~"(vii) parents of children with disabilities ages birth through 26 who are benefiting, or have benefited, from coordinated research, personnel preparation, and technical assistance; and~~

~~"(viii) individuals with disabilities.~~

~~"(C) TERM.—Unless approved by the Secretary due to extenuating circumstances related to shortages of experts in a particular area of expertise or for a specific competition, no individual shall serve on the standing panel for more than 3 consecutive years.~~

"(2) PEER REVIEW PANELS FOR PARTICULAR COMPETITIONS.—

"(A) COMPOSITION.—The Secretary shall ensure that each sub panel selected from the standing panel that reviews applications under this subpart (other than sections 662 and 665) includes—

"(i) individuals with knowledge and expertise on the issues addressed by the activities authorized by this subpart; and

"(ii) to the extent practicable, parents of children with disabilities ages birth through 26, individuals with disabilities, and persons from diverse backgrounds.

"(B) FEDERAL EMPLOYMENT LIMITATION.—A majority of the individuals on each sub panel that reviews an application under this subpart (other than an application under sections 662 and 665) shall be individuals who are not employees of the Federal Government.

"(3) USE OF DISCRETIONARY FUNDS FOR ADMINISTRATIVE PURPOSES.—

"(A) EXPENSES AND FEES OF NON-FEDERAL PANEL MEMBERS.—The Secretary may use funds made available under this subpart to

~~pay the expenses and fees of the panel members who are not officers or employees of the Federal Government.~~

~~"(B) ADMINISTRATIVE SUPPORT.—The Secretary may use not more than 1 percent of the funds made available to carry out this subpart to pay non-Federal entities for administrative support related to management of applications submitted under this subpart.~~

~~"(4) AVAILABILITY OF CERTAIN PRODUCTS.—The Secretary shall ensure that recipients of grants, cooperative agreements, or contracts under this subpart and subpart 3 make available in formats that are accessible to individuals with disabilities any products developed under such grants, cooperative agreements, or contracts that the recipient is making available to the public.~~

~~"(g) PROGRAM EVALUATION.—The Secretary may use funds made available to carry out this subpart to evaluate activities carried out under this subpart.~~

~~"(h) MINIMUM FUNDING REQUIRED.—~~

~~"(1) IN GENERAL.—Subject to paragraph (2), the Secretary shall ensure that, for each fiscal year, at least the following amounts are provided under this subpart 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 662, 664, and 674 for any fiscal year is less than $130,000,000, the amounts listed in paragraph (1) shall be ratably reduced.~~

~~"(i) ELIGIBILITY FOR FINANCIAL ASSISTANCE.—No State or local educational agency, or other public institution or agency, may receive a grant or enter into a contract or cooperative agreement under this subpart that relates exclusively to programs, projects, and activities pertaining to children aged 3 through 5, inclusive, unless the State is eligible to receive a grant under section 619(b).~~

~~"SEC. 662. RESEARCH TO IMPROVE RESULTS FOR CHILDREN WITH DISABILITIES.~~

~~"(a) NATIONAL CENTER FOR SPECIAL EDUCATION RESEARCH.—~~

~~"(1) ESTABLISHMENT.—~~

~~"(A) IN GENERAL.—There is established, in the Institute of Education Sciences established under section 111 of the Education Sciences Reform Act of 2002 (hereinafter in this section referred to as 'the Institute'), the National Center for Special Education Research.~~

~~"(B) MISSION.—The mission of the National Center for Special Education Research (hereafter in this section referred to as the 'Center') shall be to—~~

~~"(i) sponsor research to expand knowledge and understanding of the needs of infants, toddlers, and children with disabilities in order to improve the developmental, educational, and transitional results of such individuals;~~

~~"(ii) sponsor research to improve services provided under, and support the implementation of, this Act; and~~

~~"(iii) evaluate the implementation and effectiveness of this Act in coordination with the National Center for Education Evaluation.~~

~~"(2) COMMISSIONER.—The Center shall be headed by a Commissioner for Special Education Research (hereinafter in this section referred to as 'the Commissioner'). The Commissioner shall be appointed by the Director of the Institute (hereinafter in this section referred to as 'the Director') in accordance with section 117 of the Education Sciences Reform Act of 2002. The Commissioner shall have substantial knowledge of the Center's activities, including a high level of expertise in the fields of research, research management, and the education of children with disabilities.~~

~~"(3) APPLICABILITY OF EDUCATION SCIENCES REFORM ACT OF 2002.—Parts A and E of the Education Sciences Reform Act of 2002, and the standards for peer review of applications and for the conduct and evaluation of research under sections 133(a) and 134 of such Act, respectively, shall apply to the Secretary, the Director, and the Commissioner in carrying out this section.~~

~~"(4) GRANTS, CONTRACTS, AND COOPERATIVE AGREEMENTS.—In carrying out the duties under this part, the Director may award grants to, or enter into contracts or cooperative agreements with, eligible entities.~~

~~"(b) AUTHORIZED ACTIVITIES.—Activities that may be carried out under this section include research activities to—~~

~~"(1) improve services provided under this Act in order to improve academic achievement, functional outcomes, and educational results for children with disabilities;~~

~~"(2) identify scientifically based educational practices that support learning and improve academic achievement, functional outcomes, and educational results for all students with disabilities;~~

~~"(3) examine the special needs of preschool aged children, infants, and toddlers with disabilities, including factors that may result in developmental delays;~~

~~"(4) identify scientifically based related services and interventions that promote participation and progress in the general education curriculum and general education settings;~~

~~"(5) improve the alignment, compatibility, and development of valid and reliable assessments, including alternate assessments as described in section 1111(b) of the Elementary and Secondary Education Act of 1965;~~

~~"(6) examine State content standards and alternate assessments for students with significant cognitive impairment in terms of academic achievement, individualized instructional need, appropriate education settings, and improved post-school results;~~

~~"(7) examine the educational, developmental, and transitional needs of children with high incidence and low incidence disabilities;~~

~~"(8) examine the extent to which overidentification and underidentification of children with disabilities occurs, and the causes thereof;~~

~~"(9) improve reading and literacy skills of children with disabilities;~~

~~"(10) examine and improve secondary and post-secondary education and transitional outcomes and results for children with disabilities;~~

~~"(11) examine methods of early intervention for children with disabilities who need significant levels of support;~~

~~"(12) examine and incorporate universal design concepts in the development of standards, assessments, curricula, and instructional methods as a method to improve educational and transitional results for children with disabilities;~~

~~"(13) improve the preparation of personnel who provide educational and related services to children with disabilities to increase the academic achievement of students with disabilities;~~

~~"(14) examine the excess costs of educating a child with a disability and expenses associated with high cost special education and related services; and~~

~~"(15) help parents improve educational results for their children, particularly related to transition issues.~~

~~"(c) STANDARDS.—The Commissioner shall ensure that activities assisted under this section—~~

~~"(1) conform to high standards of quality, integrity, accuracy, validity, and reliability;~~

~~"(2) are carried out in conjunction with the standards for the conduct and evaluation of all research and development established by the National Center for Education Research; and~~

~~"(3) are objective, secular, neutral, and nonideological, and are free of partisan political influ-~~

~~ence, and racial, cultural, gender, regional, or disability bias.~~

~~"(d) PLAN.—The Commissioner shall propose to the Director a research plan, developed in collaboration with the Assistant Secretary for Special Education and Rehabilitative Services, that—~~

~~"(1) is consistent with the priorities and mission of the Institute of Education Sciences and the mission of the Special Education Research Center;~~

~~"(2) shall be carried out, updated, and modified, as appropriate;~~

~~"(3) is consistent with the purpose of this Act;~~

~~"(4) contains an appropriate balance across all age ranges and types of children with disabilities;~~

~~"(5) provides for research that is objective and uses measurable indicators to assess its progress and results;~~

~~"(6) is coordinated with the comprehensive plan developed under section 661; and~~

~~"(7) provides that the research conducted under this part is relevant to special education practice and policy.~~

~~"(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 Director at such time, in such manner, and containing such information as the Director may require.~~

~~"(f) DISSEMINATION.—The Center shall—~~

~~"(1) synthesize and disseminate, through the National Center for Education Evaluation and Regional Assistance, the findings and results of special education research conducted or supported by the Center; and~~

~~"(2) assist the Director in the preparation of a biennial report, as described in section 119 of the Education Sciences Reform Act of 2003.~~

~~"(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary for each of fiscal years 2004 through 2009.~~

~~"SEC. 663. TECHNICAL ASSISTANCE, DEMONSTRATION PROJECTS, DISSEMINATION OF INFORMATION, AND IMPLEMENTATION OF SCIENTIFICALLY BASED RESEARCH.~~

~~"(a) IN GENERAL.—From amounts made available under section 675, the Secretary, on a competitive basis, shall award grants to, or enter into contracts or cooperative agreements with, eligible entities to provide technical assistance, carry out model demonstration projects, dis-~~

~~seminate useful information, and implement activities that are supported by scientifically based research.~~

~~"(b) REQUIRED ACTIVITIES.—The Secretary shall support activities to improve services provided under this Act, including the practices of professionals and others involved in providing such services to children with disabilities, that promote academic achievement and functional performance to improve educational results and functional outcomes for children with disabilities through—~~

~~"(1) implementing effective strategies that are conducive to learning and for addressing inappropriate behavior of students with disabilities in schools, including strategies to prevent children with emotional and behavioral problems from developing emotional disturbances that require the provision of special education and related services;~~

~~"(2) improving the alignment, compatibility, and development of valid and reliable assessment methods, including alternate assessment methods and evaluation methods, for assessing adequately yearly progress as described in section 1111(b)(2)(B) of the Elementary and Secondary Education Act of 1965;~~

~~"(3) providing information to both regular education teachers and special education teachers to ad-~~

~~dress the different learning styles and disabilities of students;~~

~~"(4) disseminating innovative, effective, and efficient curricula, materials (including those that are universally designed), instructional approaches, and strategies that—~~

~~"(A) support effective transitions between educational settings or from school to post-school settings;~~

~~"(B) support effective inclusion of students with disabilities in general education settings, especially students with low-incidence disabilities; and~~

~~"(C) improve educational and transitional results at all levels of the educational system in which the activities are carried out and, in particular, that improve the progress of children with disabilities, as measured by assessments within the general education curriculum involved; and~~

~~"(5) demonstrating and applying scientifically-based findings to facilitate systematic changes related to the provision of services to children with disabilities.~~

~~"(c) AUTHORIZED ACTIVITIES.—Activities that may be carried out under this section include activities to improve services provided under this Act, including the practices of professionals and others involved in providing such services to children with disabilities, that promote academic achievement and functional outcomes to improve results for children with disabilities through—~~

~~"(1) applying and testing research findings in typical service settings to determine the usability, effectiveness, and general applicability of those findings in such areas as improving instructional methods, curricula, and tools, such as textbooks and media;~~

~~"(2) demonstrating and applying scientifically-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;~~

~~"(3) supporting and promoting the coordination of early intervention, education, and transitional services for children with disabilities with services provided by health, rehabilitation, and social service agencies;~~

~~"(4) promoting improved alignment and compatibility of general and special education reforms~~

~~concerned with curriculum and instructional reform, and evaluating of such reforms;~~

~~"(5) enabling professionals, parents of children with disabilities, and other persons, to learn about, and implement, the findings of scientifically based research and effective practices developed in model demonstration projects, relating to the provision of services to children with disabilities;~~

~~"(6) 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;~~

~~"(7) assisting States and local educational agencies with the process of planning systemic changes that will promote improved early intervention, educational, and transitional results for children with disabilities;~~

~~"(8) promoting change through a multi-State or regional framework that benefits States, local educational agencies, and other participants in partnerships that are in the process of achieving systemic-change outcomes;~~

~~"(9) focusing on the needs and issues that are specific to a population of children with disabilities, such as providing single-State and multi-State technical assistance and in-service training—~~

~~"(A) to schools and agencies serving deaf-blind children and their families;~~

~~"(B) to programs and agencies serving other groups of children with low-incidence disabilities and their families; and~~

~~"(C) to address the postsecondary education needs of individuals who are deaf or hard-of-hearing;~~

~~"(10) demonstrating models of personnel preparation to ensure appropriate placements and services for all students with disabilities and to reduce disproportionality in eligibility, placement, and disciplinary actions for minority and limited English proficient children; and~~

~~"(11) disseminating information on how to reduce racial and ethnic disproportionalities.~~

~~"(d) BALANCE AMONG DISABILITIES AND AGE RANGES.—In carrying out this section, the Secretary shall ensure that there is an appropriate balance across all age ranges and disabilities.~~

~~"(e) LINKING STATES TO INFORMATION SOURCES.—In carrying out this section, the Secretary may support projects that link States to technical assistance resources, including special education and general education resources, and may make research and related products available through libraries, electronic networks, parent training projects, and other information sources.~~

~~"(f) APPLICATIONS.—~~

~~"(1) IN GENERAL.—An eligible entity that desires to receive a grant, or to enter into a contract or cooperative agreement, under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.~~

~~"(2) CONTENTS.—The Secretary may, as appropriate, require eligible entities to demonstrate that the projects described in their applications are supported by scientifically based research that has been carried out in conjunction with the standards for the conduct and evaluation of all research and development established by the National Center for Education Research.~~

~~"(3) PRIORITY.—As appropriate, the Secretary shall give priority to applications that propose to serve teachers and school personnel directly in the~~

school environment or that strengthen State and local agency capacity to improve instructional practices of personnel to improve educational results for children with disabilities in the school environment.

"SEC. 664. PERSONNEL DEVELOPMENT TO IMPROVE SERVICES AND RESULTS FOR CHILDREN WITH DISABILITIES.

"(a) IN GENERAL.—The Secretary, on a competitive basis, shall award grants to, or enter into contracts or cooperative agreements with, eligible entities—

"(1) to help address State identified needs for highly qualified personnel in special education, related services, early intervention, transition, and regular education, to work with children with disabilities, consistent with the needs identified in the State plan described in section 653(a)(2) and the standards described in section 612(a)(14);

"(2) to ensure that those personnel have the necessary skills and knowledge, derived from practices that have been determined, through scientifically based research, to be successful in serving those children;

"(3) to encourage increased focus on academics and core content areas in special education personnel preparation programs;

~~"(4) to ensure that regular education teachers have the necessary skills and knowledge to provide instruction to students with disabilities in the regular education classroom;~~

~~"(5) to ensure that all special education teachers teaching in core academic subjects are highly qualified;~~

~~"(6) to ensure that preservice and in-service personnel preparation programs include training in—~~

~~"(A) the use of new technologies;~~

~~"(B) the area of early intervention, educational, and transition services;~~

~~"(C) effectively involving parents; and~~

~~"(D) positive behavior supports; and~~

~~"(7) to provide high-quality professional development for principals, superintendents, and other administrators, including training in—~~

~~"(A) instructional leadership;~~

~~"(B) behavioral supports in the school and classroom;~~

~~"(C) paperwork reduction;~~

~~"(D) promoting improved collaboration between special education and general education teachers;~~

~~"(E) assessment and accountability;~~

~~"(F) ensuring effective learning environments; and~~

~~"(G) fostering positive relationships with parents.~~

~~"(b) PERSONNEL DEVELOPMENT; AUTHORIZED ACTIVITIES.—~~

~~"(1) IN GENERAL.—In carrying out this section, the Secretary shall support activities to prepare personnel, including activities for the preparation of personnel who will serve children with high-incidence and low-incidence disabilities, consistent with the objectives described in subsection (a).~~

~~"(2) AUTHORIZED ACTIVITIES.—Activities that may be carried out under this subsection include the following:~~

~~"(A) Supporting collaborative personnel preparation activities undertaken by institutions of higher education, local educational agencies, and other local entities—~~

~~"(i) to improve and reform their existing programs, to support effective existing programs, to support the development of new programs, and to prepare teachers and related services personnel—~~

~~"(I) to meet the diverse needs of children with disabilities for early intervention, educational, and transitional services; and~~

~~"(II) to work collaboratively in regular classroom settings; and~~

~~"(ii) to incorporate best practices and scientifically based research about preparing personnel—~~

~~"(I) so the personnel will have the knowledge and skills to improve educational results for children with disabilities; and~~

~~"(II) to implement effective teaching strategies and interventions to prevent the misidentification, overidentification, or underidentification of children as having a disability, especially minority and limited English proficient children.~~

~~"(B) Developing, evaluating, and disseminating innovative models for the recruitment, induction, retention, and assessment of highly qualified teachers to reduce shortages in personnel.~~

~~"(C) Providing continuous personnel preparation, training, and professional development designed to provide support and ensure retention of teachers and personnel who teach and provide related services to children with disabilities.~~

~~"(D) Developing and improving programs for paraprofessionals to become special education teachers, related services personnel, and early intervention personnel, including interdisciplinary training to enable the paraprofessionals to improve early intervention, educational, and transitional results for children with disabilities.~~

~~"(E) Demonstrating models for the preparation of, and interdisciplinary training of, early intervention, special education, and general education personnel, to enable the personnel to acquire the collaboration skills necessary to work within teams and to improve results for children with disabilities, particularly within the general education curriculum.~~

~~"(F) Promoting effective parental involvement practices to enable the personnel to work~~

with parents and involve parents in the education of such parents' children.

"(G) Promoting the transferability, across State and local jurisdictions, of licensure and certification of teachers and administrators working with such children.

"(H) Developing and disseminating models that prepare teachers with strategies, including positive behavioral interventions, for addressing the conduct of children with disabilities that impedes their learning and that of others in the classroom.

"(I) Developing and improving programs to enhance the ability of general education teachers, principals, school administrators, and school board members to improve results for children with disabilities.

"(J) Supporting institutions of higher education with minority enrollments of at least 25 percent for the purpose of preparing personnel to work with children with disabilities.

"(K) Preparing personnel to work in high need elementary schools and secondary schools, including urban schools, rural schools, and schools operated by an entity described in sec-

~~tion 7113(d)(1)(A)(ii) of the Elementary and Secondary Education Act of 1965, and schools that serve high numbers or percentages of limited English proficient children.~~

~~"(L) Developing, evaluating, and disseminating innovative models for the recruitment, induction, retention, and assessment of new, qualified teachers, especially from groups that are underrepresented in the teaching profession, including individuals with disabilities.~~

~~"(c) LOW INCIDENCE DISABILITIES; AUTHORIZED ACTIVITIES.—~~

~~"(1) IN GENERAL.—In carrying out this section, the Secretary shall support activities, consistent with the objectives described in subsection (a), that benefit children with low incidence disabilities.~~

~~"(2) AUTHORIZED ACTIVITIES.—Activities that may be carried out under this subsection include activities such as the following:~~

~~"(A) Preparing persons who—~~

~~"(i) have prior training in educational and other related service fields; and~~

~~"(ii) are studying to obtain degrees, certificates, or licensure that will enable the persons to assist children with low inci-~~

~~dence disabilities to achieve the objectives set out in their individualized education programs described in section 614(d), or to assist infants and toddlers with low incidence disabilities to achieve the outcomes described in their individualized family service plans described in section 636.~~

~~"(B) Providing personnel from various disciplines with interdisciplinary training that will contribute to improvement in early intervention, educational, and transitional results for children with low incidence disabilities.~~

~~"(C) Preparing personnel in the innovative uses and application of technology, including universally designed technologies, assistive technology devices, and assistive technology services—~~

~~"(i) to enhance learning by children with low incidence disabilities through early intervention, educational, and transitional services; and~~

~~"(ii) to improve communication with parents.~~

~~"(D) Preparing personnel who provide services to visually impaired or blind children to~~

~~teach and use Braille in the provision of services to such children.~~

~~"(E) Preparing personnel to be qualified educational interpreters, to assist children with low incidence disabilities, particularly deaf and hard of hearing children in school and school related activities, and deaf and hard of hearing infants and toddlers and preschool children in early intervention and preschool programs.~~

~~"(F) Preparing personnel who provide services to children with significant cognitive disabilities and children with multiple disabilities.~~

~~"(3) DEFINITION.—As used in this section, the term 'low incidence disability' means—~~

~~"(A) a visual or hearing impairment, or simultaneous visual and hearing impairments;~~

~~"(B) a significant cognitive impairment; or~~

~~"(C) any impairment for which a small number of personnel with highly specialized skills and knowledge are needed in order for children with that impairment to receive early intervention services or a free appropriate public education.~~

1 ~~"(4) SELECTION OF RECIPIENTS.—In selecting~~
2 ~~recipients under this subsection, the Secretary may~~
3 ~~give preference to eligible entities submitting appli-~~
4 ~~cations that include 1 or more of the following:~~
5 ~~"(A) A proposal to prepare personnel in~~
6 ~~more than 1 low incidence disability, such as~~
7 ~~deaf and blindness.~~
8 ~~"(B) A demonstration of an effective col-~~
9 ~~laboration with an eligible entity and a local~~
10 ~~educational agency that ensures recruitment~~
11 ~~and subsequent retention of highly qualified~~
12 ~~personnel to serve children with disabilities.~~
13 ~~"(C) A proposal to address the personnel~~
14 ~~and professional development needs in the~~
15 ~~State, as identified in section 653(a)(2).~~
16 ~~"(5) PREPARATION IN USE OF BRAILLE.—The~~
17 ~~Secretary shall ensure that all recipients of assist-~~
18 ~~ance under this subsection who will use that assist-~~
19 ~~ance to prepare personnel to provide services to vis-~~
20 ~~ually impaired or blind children that can appro-~~
21 ~~priately be provided in Braille will prepare those in-~~
22 ~~dividuals to provide those services in Braille.~~
23 ~~"(d) LEADERSHIP PREPARATION; AUTHORIZED AC-~~
24 ~~TIVITIES.—~~

~~"(1) IN GENERAL.—In carrying out this section, the Secretary shall support leadership preparation activities that are consistent with the objectives described in subsection (a).~~

~~"(2) AUTHORIZED ACTIVITIES.—Activities that may be carried out under this subsection include activities such as the following:~~

~~"(A) Preparing personnel at the graduate, doctoral, and postdoctoral levels of training to administer, enhance, or provide services to improve results for children with disabilities.~~

~~"(B) Providing interdisciplinary training for various types of leadership personnel, including teacher preparation faculty, administrators, researchers, supervisors, principals, related services personnel, and other persons whose work affects early intervention, educational, and transitional services for children with disabilities.~~

~~"(c) ENHANCED SUPPORT AND TRAINING FOR BEGINNING SPECIAL EDUCATORS; AUTHORIZED ACTIVITIES.—~~

~~"(1) IN GENERAL.—In carrying out this section, the Secretary shall support personnel prepara-~~

~~tion activities that are consistent with the objectives described in subsection (a).~~

~~"(2) AUTHORIZED ACTIVITIES.—Activities that may be carried out under this subsection include—~~

~~"(A) enhancing and restructuring an existing program or developing a preservice teacher education program, to prepare special education teachers, at colleges or departments of education within the institution of higher education, by incorporating an additional 5th year clinical learning opportunity, field experience, or supervised practicum into a program of preparation and coursework for special education teachers; or~~

~~"(B) Creating or supporting professional development schools that provide—~~

~~"(i) high quality mentoring and induction opportunities with ongoing support for beginning special education teachers; or~~

~~"(ii) inservice professional development to veteran special education teachers through the ongoing exchange of information and instructional strategies.~~

1 ~~"(3) ELIGIBLE PARTNERSHIPS.—Eligible recipi-~~
2 ~~ents of assistance under this subsection are partner-~~
3 ~~ships—~~
4 ~~"(A) that shall consist of—~~
5 ~~"(i) 1 or more institutions of higher~~
6 ~~education with special education personnel~~
7 ~~preparation programs;~~
8 ~~"(ii) 1 or more local educational agen-~~
9 ~~cies; and~~
10 ~~"(iii) in the case of activities assisted~~
11 ~~under paragraph (2)(B), an elementary~~
12 ~~school or secondary school; and~~
13 ~~"(B) that may consist of other entities eli-~~
14 ~~gible for assistance under this part, such as a~~
15 ~~State educational agency.~~
16 ~~"(4) PRIORITY.—In awarding grants or enter-~~
17 ~~ing into contracts or cooperative agreements under~~
18 ~~this subsection, the Secretary shall give priority to~~
19 ~~partnerships that include local educational agencies~~
20 ~~that serve—~~
21 ~~"(A) high numbers or percentages of low-~~
22 ~~income students; or~~
23 ~~"(B) schools that have failed to make ade-~~
24 ~~quate yearly progress toward enabling children~~

~~with disabilities to meet academic achievement standards.~~

~~"(f) TRAINING TO SUPPORT GENERAL EDUCATORS; AUTHORIZED ACTIVITIES.—~~

~~"(1) IN GENERAL.—In carrying out this section, the Secretary shall support personnel preparation activities that are consistent with the objectives described in subsection (a).~~

~~"(2) AUTHORIZED ACTIVITIES.—Activities that may be carried out under this subsection include—~~

~~"(A) high quality professional development for general educators that develops the knowledge and skills, and enhances the ability, of general educators to—~~

~~"(i) utilize classroom-based techniques to identify students who may be eligible for special education services, and deliver instruction in a way that meets the individualized needs of children with disabilities through appropriate supports, accommodations, and curriculum modifications;~~

~~"(ii) utilize classroom-based techniques, such as scientifically based reading instruction;~~

~~"(iii) work collaboratively with special education teachers and related services personnel;~~

~~"(iv) implement strategies, such as positive behavioral interventions—~~

~~"(I) to address the behavior of children with disabilities that impedes the learning of such children and others; or~~

~~"(II) to prevent children from being misidentified as children with disabilities;~~

~~"(v) prepare children with disabilities to participate in statewide assessments (with and without accommodations) and alternative assessment, as appropriate;~~

~~"(vi) develop effective practices for ensuring that all children with disabilities are a part of all accountability systems under the Elementary and Secondary Education Act of 1965;~~

~~"(vii) work with and involve parents of children with disabilities in their child's education;~~

1 ~~"(viii) understand how to effectively~~
2 ~~construct IEPs, participate in IEP meet-~~
3 ~~ings, and implement IEPs; and~~
4 ~~"(ix) in the case of principals and su-~~
5 ~~perintendents, be instructional leaders and~~
6 ~~promote improved collaboration between~~
7 ~~general educators, special education teach-~~
8 ~~ers, and related services personnel; and~~
9 ~~"(B) release and planning time for the ac-~~
10 ~~tivities described in this subsection.~~
11 ~~"(3) ELIGIBLE PARTNERSHIPS.—Eligible recipi-~~
12 ~~ents of assistance under this subsection are partner-~~
13 ~~ships—~~
14 ~~"(A) that shall consist of—~~
15 ~~"(i) 1 or more institutions of higher~~
16 ~~education with special education personnel~~
17 ~~preparation programs;~~
18 ~~"(ii) 1 or more local educational agen-~~
19 ~~cies; and~~
20 ~~"(B) that may consist of other entities eli-~~
21 ~~gible for assistance under this part, such as a~~
22 ~~State educational agency.~~
23 ~~"(g) APPLICATIONS.—~~
24 ~~"(1) IN GENERAL.—Any eligible entity that de-~~
25 ~~sires to receive a grant, or enter into a contract or~~

~~cooperative agreement, under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.~~

~~"(2) IDENTIFIED STATE NEEDS.—~~

~~"(A) REQUIREMENT TO ADDRESS IDENTIFIED NEEDS.—Any application under subsection (b), (c), (d), (e), or (f) shall include information demonstrating to the satisfaction of the Secretary that the activities described in the application will address needs identified by the State or States the applicant proposes to serve, consistent with the needs identified in the State plan described in section 653(a)(2).~~

~~"(B) COOPERATION WITH STATE EDUCATIONAL AGENCIES.—Any applicant that is not a local educational agency or a State educational agency shall include in the application information demonstrating to the satisfaction of the Secretary that the applicant and 1 or more State educational agencies have engaged in a cooperative effort to carry out and monitor the project to be assisted.~~

~~"(3) ACCEPTANCE BY STATES OF PERSONNEL PREPARATION REQUIREMENTS.—The Secretary may~~

~~require applicants to provide assurances from 1 or more States that such States—~~

~~"(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.~~

~~"(h) SELECTION OF RECIPIENTS.—~~

~~"(1) IMPACT OF PROJECT.—In selecting award recipients under this section, the Secretary shall consider the impact of the proposed project described in the application in meeting the need for personnel identified by the States.~~

~~"(2) REQUIREMENT FOR APPLICANTS TO MEET STATE AND PROFESSIONAL STANDARDS.—The Secretary shall make grants and enter into contracts and cooperative agreements under this section only to eligible applicants that meet State and professionally recognized standards for the preparation of special education and related services personnel, if~~

~~the purpose of the project is to assist personnel in obtaining degrees.~~

~~"(3) PREFERENCES.—In selecting recipients under this section, the Secretary may give preference to institutions of higher education that are—~~

~~"(A) educating regular education personnel to meet the needs of children with disabilities in integrated settings;~~

~~"(B) educating special education personnel to work in collaboration with regular educators in integrated settings; and~~

~~"(C) successfully recruiting and preparing individuals with disabilities and individuals from groups that are underrepresented in the profession for which the institution of higher education is preparing individuals.~~

~~"(i) SERVICE OBLIGATION.—Each application for funds under subsections (b), (c), (d), and (e) shall include an assurance that the applicant will ensure that individuals who receive a scholarship under the proposed project will subsequently provide special education and related services to children with disabilities for a period of 1 year for every year for which assistance was received, or repay all or part of the cost of that assistance, in accordance with regulations issued by the Secretary.~~

1 ~~"(j) SCHOLARSHIPS.—The Secretary may include~~
2 ~~funds for scholarships, with necessary stipends and allow-~~
3 ~~ances, in awards under subsections (b), (c), (d), and (e).~~
4 ~~"(k) DEFINITIONS.—In this section the term 'per-~~
5 ~~sonnel' means special education teachers, general edu-~~
6 ~~cation teachers, principals, administrators, related services~~
7 ~~personnel, paraprofessionals, and early intervention per-~~
8 ~~sonnel serving infants, toddlers, preschoolers, or children~~
9 ~~with disabilities.~~
10 ~~"(l) AUTHORIZATION OF APPROPRIATIONS.—There~~
11 ~~are authorized to be appropriated to carry out this section~~
12 ~~such sums as may be necessary for each of the fiscal years~~
13 ~~2004 through 2010.~~
14 ~~**"SEC. 665. STUDIES AND EVALUATIONS.**~~
15 ~~"(a) STUDIES AND EVALUATIONS.—~~
16 ~~"(1) DELEGATION.—The Secretary shall dele-~~
17 ~~gate to the Director of the Institute for Education~~
18 ~~Sciences responsibility to carry out this section.~~
19 ~~"(2) ASSESSMENT.—The Secretary shall, di-~~
20 ~~rectly or through grants, contracts, or cooperative~~
21 ~~agreements awarded on a competitive basis, assess~~
22 ~~the progress in the implementation of this Act, in-~~
23 ~~cluding the effectiveness of State and local efforts to~~
24 ~~provide—~~

~~"(A) a free appropriate public education to children with disabilities; and~~

~~"(B) early intervention services to infants and toddlers with disabilities, and infants and toddlers who would be at risk of having substantial developmental delays if early intervention services were not provided to them.~~

~~"(b) NATIONAL ASSESSMENT.—~~

~~"(1) IN GENERAL.—The Secretary shall carry out a national assessment of activities carried out with Federal funds under this Act in order—~~

~~"(A) to determine the effectiveness of this Act in achieving its purposes;~~

~~"(B) to provide timely information to the President, Congress, the States, local educational agencies, and the public on how to implement this Act more effectively; and~~

~~"(C) to provide the President and Congress with information that will be useful in developing legislation to achieve the purposes of this Act more effectively.~~

~~"(2) CONSULTATION.—The Secretary shall plan, review, and conduct the national assessment under this subsection in consultation with researchers, State practitioners, local practitioners, parents~~

~~of children with disabilities, and other appropriate individuals.~~

~~"(3) SCOPE OF ASSESSMENT.—The national assessment shall assess the—~~

~~"(A) implementation of programs assisted under this Act and the impact of those programs on addressing the developmental, educational, and transitional needs of, and improving the academic achievement and functional outcomes of, children with disabilities to enable the children to reach challenging developmental goals and challenging State academic content standards based on State academic assessments, including alternative assessments;~~

~~"(B) types of programs and services that have demonstrated the greatest likelihood of helping students reach the challenging State academic content standards and developmental goals;~~

~~"(C) implementation of the personal preparation professional development activities assisted under this Act and the impact on instruction, student academic achievement, and teacher qualifications to enhance the ability of special education teachers and regular education~~

~~teachers to improve results for children with disabilities; and~~

~~"(D) effectiveness of schools, local educational agencies, States, and other recipients of assistance under this Act, in achieving the purposes of this Act in—~~

~~"(i) improving the academic achievement of children with disabilities and their performance on regular statewide assessments, and the performance of children with disabilities on alternate assessments;~~

~~"(ii) improving the participation rate of children with disabilities in the general education curriculum;~~

~~"(iii) improving the transitions of children with disabilities at natural transition points;~~

~~"(iv) placing and serving children with disabilities, including minority children, in the least restrictive environment appropriate;~~

~~"(v) preventing children with disabilities, especially children with emotional disturbances and specific learning disabilities, from dropping out of school;~~

~~"(vi) addressing the reading and literacy needs of children with disabilities;~~

~~"(vii) coordinating services provided under this Act with each other, with other educational and pupil services (including preschool services), and with health and social services funded from other sources;~~

~~"(viii) improving the participation of parents of children with disabilities in the education of their children;~~

~~"(ix) resolving disagreements between education personnel and parents through alternate dispute resolution activities including mediation and voluntary binding arbitration; and~~

~~"(x) reducing the misidentification of children, especially minority and limited English proficient children.~~

~~"(4) INTERIM AND FINAL REPORTS.—The Secretary shall submit to the President and Congress—~~

~~"(A) an interim report that summarizes the preliminary findings of the national assessment not later than 3 years after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2003; and~~

~~"(B) a final report of the findings of the assessment not later than 5 years after the date of enactment of the Individual with Disabilities Education Improvement Act of 2003.~~

~~"(c) STUDY ON ENSURING ACCOUNTABILITY FOR STUDENTS WITH SIGNIFICANT DISABILITIES.—The Secretary shall carry out a national study or studies to examine—~~

~~"(1) the criteria that States use to determine eligibility for alternate assessments and the number and type of children who take those assessments;~~

~~"(2) the validity and reliability of alternate assessment instruments and procedures;~~

~~"(3) the alignment of alternate assessments with State academic content and achievement standards or with alternate academic achievement standards; and~~

~~"(4) the use and effectiveness of alternate assessments in appropriately measuring student progress and outcomes specific to individualized instructional need.~~

~~"(d) ANNUAL REPORT.—The Secretary shall provide an annual report to Congress that—~~

~~"(1) summarizes the research conducted under section 662;~~

~~"(2) analyzes and summarizes the data reported by the States and the Secretary of the Interior under section 618;~~

~~"(3) summarizes the studies and evaluations conducted under this section and the timeline for their completion;~~

~~"(4) describes the extent and progress of the national assessment; and~~

~~"(5) describes the findings and determinations resulting from reviews of State implementation of this Act.~~

~~"(c) AUTHORIZED ACTIVITIES.—In carrying out this subsection, the Secretary may support objective studies, evaluations, and assessments, including studies that—~~

~~"(1) analyze measurable impact, outcomes, and results achieved by State educational agencies and local educational agencies through their activities to reform policies, procedures, and practices designed to improve educational and transitional services and results for children with disabilities;~~

~~"(2) analyze State and local needs for professional development, parent training, and other appropriate activities that can reduce the need for disciplinary actions involving children with disabilities;~~

~~"(3) assess educational and transitional services and results for children with disabilities from minority backgrounds, including—~~

~~"(A) data on—~~

~~"(i) the number of minority children who are referred for special education evaluation;~~

~~"(ii) the number of minority children who are receiving special education and related services and their educational or other service placement;~~

~~"(iii) the number of minority children who graduated from secondary programs with a regular diploma in the standard number of years; and~~

~~"(iv) the number of minority children who drop out of the educational system; and~~

~~"(B) the performance of children with disabilities from minority backgrounds on State assessments and other performance indicators established for all students;~~

~~"(4) measure educational and transitional services and results of children with disabilities served under this Act, including longitudinal studies that—~~

~~"(A) examine educational and transitional services and results for children with disabilities who are 3 through 17 years of age and are receiving special education and related services under this Act, using a national, representative sample of distinct age cohorts and disability categories; and~~

~~"(B) examine educational results, transition services, 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~~

~~"(5) identify and report on the placement of children with disabilities by disability category.~~

~~"(f) 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 not more than ½ of 1 percent of the amount appropriated under parts B and C for each fiscal year to carry out this section, of which $3,000,000 shall be available to carry out subsection (c).~~

~~"(2) MAXIMUM AMOUNT.—For the first fiscal year for which the amount described in paragraph (1) is at least $40,000,000, the maximum amount the Secretary may reserve under paragraph (1), is $40,000,000. For each subsequent fiscal year, the maximum amount the Secretary may reserve under paragraph (1) is $40,000,000, 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 ½ of the reserved amount for activities under subsection (d).~~

~~"Subpart 3—Supports To Improve Results for Children With Disabilities~~

~~"SEC. 670. PURPOSES.~~

~~"The purposes of this subpart are to ensure that—~~

~~"(1) children with disabilities and their parents receive training and information on their rights, responsibilities, and protections under this Act, in order to develop the skills necessary to cooperatively and effectively participate in planning and decision~~

making relating to early intervention, educational, and transitional services;

"(2) parents, teachers, administrators, early intervention personnel, related services personnel, and transition personnel receive coordinated and accessible technical assistance and information to assist them in improving early intervention, educational, and transitional services and results for children with disabilities and their families; and

"(3) appropriate technology and media are researched, developed, and demonstrated, to improve and implement early intervention, educational, and transitional services and results for children with disabilities and their families.

"SEC. 671. PARENT TRAINING AND INFORMATION CENTERS.

"(a) PROGRAM AUTHORIZED.—The Secretary may award grants to, and enter into contracts and cooperative agreements with, parent organizations to support parent training and information centers to carry out activities under this section.

"(b) REQUIRED ACTIVITIES.—Each parent training and information center that receives assistance under this section shall—

"(1) provide training and information that meets the needs of parents of children with disabil-

~~ities living in the area served by the center, particularly underserved parents and parents of children who may be inappropriately identified, to enable their children with disabilities to—~~

~~"(A) meet developmental and functional goals, and challenging academic achievement goals that have been established for all children; and~~

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

~~"(2) serve the parents of infants, toddlers, and children with the full range of disabilities described in section 602(3);~~

~~"(3) assist parents to—~~

~~"(A) better understand the nature of their children's disabilities and their educational, developmental, and transitional needs;~~

~~"(B) communicate effectively and work collaboratively with personnel responsible for providing special education, early intervention, transition services, and related services;~~

~~"(C) participate in decisionmaking processes and the development of individualized~~

education programs under part B and individualized family service plans under part C;

"(D) obtain appropriate information about the range, type, and quality of options, programs, services, technologies, and research based practices and interventions, and resources available to assist children with disabilities and their families in school and at home;

"(E) understand the provisions of this Act for the education of, and the provision of early intervention services to, children with disabilities; and

"(F) participate in school reform activities;

"(4) in States where the State elects to contract with the parent training and information center, contract with State educational agencies to provide, consistent with subparagraphs (B) and (D) of section 615(c)(2), individuals who meet with parents to explain the mediation process to the parents;

"(5) assist parents in resolving disputes in the most expeditious and effective way possible, including encouraging the use, and explaining the benefits, of alternative methods of dispute resolution, such as the mediation process described in section 615(c);

~~"(6) assist parents and students with disabilities to understand their rights and responsibilities under this Act, including those under section 615(m) on the student's reaching the age of majority;~~

~~"(7) assist parents to understand the availability of, and how to effectively use, procedural safeguards under this Act;~~

~~"(8) assist parents in understanding, preparing for, and participating in, the process described in section 615(f)(1)(B);~~

~~"(9) network with appropriate clearinghouses, including organizations conducting national dissemination activities under section 663, and with other national, State, and local organizations and agencies, such as protection and advocacy agencies, that serve parents and families of children with the full range of disabilities described in section 602(3); and~~

~~"(10) annually report to the Secretary on—~~

~~"(A) the number and demographics of parents to whom the center provided information and training in the most recently concluded fiscal year;~~

~~"(B) the effectiveness of strategies used to reach and serve parents, including underserved parents of children with disabilities; and~~

~~"(C) the number of parents served who have resolved disputes through alternative methods of dispute resolution.~~

~~"(c) OPTIONAL ACTIVITIES.—A parent training and information center that receives assistance under this section may provide information to teachers and other professionals to assist the teachers and professionals in improving results for children with disabilities.~~

~~"(d) APPLICATION REQUIREMENTS.—Each application for assistance under this section shall identify with specificity the special efforts that the parent organization will undertake—~~

~~"(1) to ensure that the needs for training and information of underserved parents of children with disabilities in the area to be served are effectively met; and~~

~~"(2) to work with community based organizations.~~

~~"(e) DISTRIBUTION OF FUNDS.—~~

~~"(1) IN GENERAL.—The Secretary shall—~~

~~"(A) make at least 1 award to a parent organization in each State for a parent training and information center which is designated as the statewide parent training and information center; or~~

~~"(B) in the case of a large State, make awards to multiple parent training and information centers, but only if the centers demonstrate that coordinated services and supports will occur among the multiple centers.~~

~~"(2) SELECTION REQUIREMENT.—The Secretary shall select among applications submitted by parent organizations in a State in a manner that ensures the most effective assistance to parents, including parents in urban and rural areas, in the State.~~

~~"(f) QUARTERLY REVIEW.—~~

~~"(1) MEETINGS.—The board of directors of each parent organization that receives an award under this section shall meet at least once in each calendar quarter to review the activities for which the award was made.~~

~~"(2) CONTINUATION AWARD.—When an organization requests a continuation award under this section, the board of directors shall submit to the Secretary a written review of the parent training and information program conducted by the organization during the preceding fiscal year.~~

~~"(g) DEFINITION OF PARENT ORGANIZATION.—As used in this section, the term 'parent organization' means~~

a private nonprofit organization (other than an institution of higher education) that has a board of directors—

"(1) the majority of whom are parents of children with disabilities ages birth through 26;

"(2) that includes—

"(A) individuals working in the fields of special education, related services, and early intervention; and

"(B) individuals with disabilities;

"(3) the parent and professional members of which are broadly representative of the population to be served; and

"(4) has as its mission serving families of children and youth with disabilities who—

"(A) are ages birth through 26; and

"(B) have the full range of disabilities described in section 602(3).

"SEC. 672. COMMUNITY PARENT RESOURCE CENTERS.

"(a) IN GENERAL.—The Secretary may award grants to, and enter into contracts and cooperative agreements with, local parent organizations to support parent training and information centers that will help ensure that underserved parents of children with disabilities, including low income parents, parents of children with limited English proficiency, and parents with disabilities, have the training

~~and information the parents need to enable the parents to participate effectively in helping their children with disabilities—~~

~~"(1) to meet developmental and functional goals, and challenging academic achievement goals that have been established for all children; and~~

~~"(2) to be prepared to lead productive independent adult lives, to the maximum extent possible.~~

~~"(b) REQUIRED ACTIVITIES.—Each community parent resource center assisted under this section shall—~~

~~"(1) provide training and information that meets the training and information needs of parents of children with disabilities proposed to be served by the grant, contract, or cooperative agreement;~~

~~"(2) carry out the activities required of parent training and information centers under paragraphs (2) through (9) of section 671(b);~~

~~"(3) establish cooperative partnerships with the parent training and information centers funded under section 671; and~~

~~"(4) be designed to meet the specific needs of families who experience significant isolation from available sources of information and support.~~

1 ~~"(c) DEFINITION.—As used in this section, the term~~
2 ~~'local parent organization' means a parent organization,~~
3 ~~as defined in section 671(g), that—~~
4 ~~"(1) has a board of directors the majority of~~
5 ~~whom are parents of children with disabilities ages~~
6 ~~birth through 26 from the community to be served;~~
7 ~~and~~
8 ~~"(2) has as its mission serving parents of chil-~~
9 ~~dren with disabilities who—~~
10 ~~"(A) are ages birth through 26; and~~
11 ~~"(B) have the full range of disabilities de-~~
12 ~~scribed in section 602(3).~~
13 **~~"SEC. 673. TECHNICAL ASSISTANCE FOR PARENT TRAINING~~**
14 **~~AND INFORMATION CENTERS.~~**
15 ~~"(a) IN GENERAL.—The Secretary may, directly or~~
16 ~~through awards to eligible entities, provide technical as-~~
17 ~~sistance for developing, assisting, and coordinating parent~~
18 ~~training and information programs carried out by parent~~
19 ~~training and information centers receiving assistance~~
20 ~~under sections 671 and 672.~~
21 ~~"(b) AUTHORIZED ACTIVITIES.—The Secretary may~~
22 ~~provide technical assistance to a parent training and infor-~~
23 ~~mation center under this section in areas such as—~~
24 ~~"(1) effective national coordination of parent~~
25 ~~training efforts, which includes encouraging collabo-~~

~~rative efforts among award recipients under sections 671 and 672;~~

~~"(2) dissemination of information, scientifically based research, and research based practices and interventions;~~

~~"(3) promotion of the use of technology, including universal designed technologies, assistive technology devices, and assistive technology services;~~

~~"(4) reaching underserved populations;~~

~~"(5) including children with disabilities in general education programs;~~

~~"(6) facilitation of transitions from—~~

~~"(A) early intervention services to preschool;~~

~~"(B) preschool to elementary school;~~

~~"(C) elementary school to secondary school; and~~

~~"(D) secondary school to postsecondary environments; and~~

~~"(7) promotion of alternative methods of dispute resolution, including mediation.~~

~~"SEC. 674. TECHNOLOGY DEVELOPMENT, DEMONSTRATION, AND UTILIZATION; AND MEDIA SERVICES.~~

~~"(a) IN GENERAL.—The Secretary, on a competitive basis, shall award grants to, and enter into contracts and~~

~~cooperative agreements with, eligible entities to support activities described in subsections (b) and (c).~~

~~"(b) TECHNOLOGY DEVELOPMENT, DEMONSTRATION, AND USE.—~~

~~"(1) IN GENERAL.—In carrying out this section, the Secretary shall support activities to promote the development, demonstration, and use of technology.~~

~~"(2) AUTHORIZED ACTIVITIES.—The following activities may be carried out under this subsection:~~

~~"(A) Conducting research on and promoting the demonstration and use of innovative, emerging, and universally designed technologies for children with disabilities, by improving the transfer of technology from research and development to practice.~~

~~"(B) Supporting research, development, and dissemination of technology with universal design features, so that the technology is accessible to the broadest range of individuals with disabilities without further modification or adaptation.~~

~~"(C) Demonstrating the use of systems to provide parents and teachers with information and training concerning early diagnosis of,~~

~~intervention for, and effective teaching strategies for, young children with reading disabilities.~~

~~"(D) Supporting the use of Internet-based communications for students with cognitive disabilities in order to maximize their academic and functional skills.~~

~~"(c) EDUCATIONAL MEDIA SERVICES; OPTIONAL ACTIVITIES.—In carrying out this section, the Secretary may support—~~

~~"(1) educational media activities that are designed to be of educational value in the classroom setting to children with disabilities;~~

~~"(2) providing (A) video description, (B) open captioning, (C) closed captioning of television programs, videos, or other materials appropriate for use in the classroom setting, or (D) news (but news only until September 30, 2006), when such services are not provided by the producer or distributor of such information, materials, or news, including programs and materials associated with new and emerging technologies, such as CDs, DVDs, video streaming, and other forms of multimedia;~~

~~"(3) distributing materials described in paragraphs (1) and (2) through such mechanisms as a loan service; and~~

~~"(4) providing free educational materials, including textbooks, in accessible media for visually impaired and print disabled students in elementary schools and secondary schools.~~

~~"(d) APPLICATIONS.—Any eligible entity that wishes to receive a grant, or enter into a contract or cooperative agreement, under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.~~

~~"(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary for each of the fiscal years 2004 through 2009.~~

~~"SEC. 675. AUTHORIZATION OF APPROPRIATIONS.~~

~~"There are authorized to be appropriated to carry out sections 671, 672, 673, and 663 such sums as may be necessary for each of the fiscal years 2004 through 2009.~~

~~"Subpart 4—Interim Alternative Educational Settings, Behavioral Supports, and Whole School Interventions~~

~~"SEC. 681. PURPOSE.~~

~~''The purpose of this subpart is to authorize resources to foster a safe learning environment that supports academic achievement for all students by improving the quality of interim alternative educational settings, providing more behavioral supports in schools, and supporting whole school interventions.~~

~~"SEC. 682. DEFINITION OF ELIGIBLE ENTITY.~~

~~''In this subpart, the term 'eligible entity' means—~~

~~''(1) a local educational agency; or~~

~~''(2) a consortium consisting of a local educational agency and 1 or more of the following entities:~~

~~''(A) another local educational agency;~~

~~''(B) a community-based organization with a demonstrated record of effectiveness in helping special needs students with behavioral challenges succeed;~~

~~''(C) an institution of higher education;~~

~~''(D) a mental health provider; or~~

~~''(E) an educational service agency.~~

~~"SEC. 683. PROGRAM AUTHORIZED.~~

~~"The Secretary is authorized to award grants, on a competitive basis, to eligible entities to enable the eligible entities—~~

~~"(1) to establish or expand behavioral supports and whole school behavioral interventions by providing for effective, research-based practices, including—~~

~~"(A) comprehensive, early screening efforts for students at risk for emotional and behavioral difficulties;~~

~~"(B) training for school staff on early identification, prereferral, and referral procedures;~~

~~"(C) training for administrators, teachers, related services personnel, behavioral specialists, and other school staff in whole school positive behavioral interventions and supports, behavioral intervention planning, and classroom and student management techniques;~~

~~"(D) joint training for administrators, parents, teachers, related services personnel, behavioral specialists, and other school staff on effective strategies for positive behavioral interventions and behavior management strategies that focus on the prevention of behavior problems;~~

~~"(E) developing or implementing specific curricula, programs, or interventions aimed at addressing behavioral problems;~~

~~"(F) stronger linkages between school-based services and community-based resources, such as community mental health and primary care providers; or~~

~~"(G) using behavioral specialists, related services personnel, and other staff necessary to implement behavioral supports; or~~

~~"(2) to improve interim alternative educational settings by—~~

~~"(A) improving the training of administrators, teachers, related services personnel, behavioral specialists, and other school staff (including ongoing mentoring of new teachers);~~

~~"(B) attracting and retaining a high quality, diverse staff;~~

~~"(C) providing for on-site counseling services;~~

~~"(D) utilizing research-based interventions, curriculum, and practices;~~

~~"(E) allowing students to use instructional technology that provides individualized instruction;~~

~~"(F) ensuring that the services are fully consistent with the goals of the individual student's IEP;~~

~~"(G) promoting effective case management and collaboration among parents, teachers, physicians, related services personnel, behavioral specialists, principals, administrators, and other school staff;~~

~~"(H) promoting interagency coordination and coordinated service delivery among schools, juvenile courts, child welfare agencies, community mental health providers, primary care providers, public recreation agencies, and community-based organizations; or~~

~~"(I) providing for behavioral specialists to help students transitioning from interim alternative educational settings reintegrate into their regular classrooms.~~

~~"SEC. 684. PROGRAM EVALUATIONS.~~

~~"(a) REPORT AND EVALUATION.—Each eligible entity receiving a grant under this subpart shall prepare and submit annually to the Secretary a report on the outcomes of the activities assisted under the grant.~~

~~"(b) BEST PRACTICES ON WEB SITE.—The Secretary shall make available on the Department's web site~~

information for parents, teachers, and school administrators on best practices for interim alternative educational settings, behavior supports, and whole school intervention.

"SEC. 685. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated to carry out this subpart $50,000,000 for fiscal year 2004 and such sums as may be necessary for each of the 5 succeeding fiscal years.".

TITLE II—REHABILITATION ACT OF 1973

SEC. 201. FINDINGS.

Section 2(a) of the Rehabilitation Act of 1973 (29 U.S.C. 701(a)) is amended—

(1) in paragraph (5), by striking "and" at the end;

(2) in paragraph (6), by striking the period and inserting "; and"; and

(3) by adding at the end the following:

"(7) there is a substantial need to improve and expand services for students with disabilities under this Act.".

SEC. 202. DEFINITIONS.

Section 7 of the Rehabilitation Act of 1973 (29 U.S.C. 705) is amended—

~~(1) by redesignating paragraphs (35) through (39) as paragraphs (36) through (40), respectively;~~

~~(2) in subparagraph (A)(ii) of paragraph (36) (as redesignated in paragraph (1)), by striking "paragraph (36)(C)" and inserting "paragraph (37)(C)"; and~~

~~(3) by inserting after paragraph (34) the following:~~

~~"(35)(A) The term 'student with a disability' means an individual with a disability who—~~

~~"(i) is not younger than 14 and not older than 21;~~

~~"(ii) has been determined to be eligible under section 102(a) for assistance under this title; and~~

~~"(iii)(I) is eligible for, and is receiving, special education under part B of the Individuals with Disabilities Education Act (29 U.S.C. 1411 et seq.); or~~

~~"(II) is an individual with a disability, for purposes of section 504.~~

~~"(B) The term 'students with disabilities' means more than 1 student with a disability.".~~

SEC. 203. ADDITIONAL AUTHORIZATION OF APPROPRIATIONS.

Section 100 of the Rehabilitation Act of 1973 (29 U.S.C. 720) is amended—

(1) by redesignating subsection (d) as subsection (e); and

(2) by inserting after subsection (c) the following:

"(d) ADDITIONAL AUTHORIZATION OF APPROPRIATIONS FOR SERVICES TO STUDENTS WITH DISABILITIES.—In addition to any funds appropriated under subsection (b)(1), there are authorized to be appropriated such sums as may be necessary for fiscal years 2004 through 2009 to carry out programs and activities under sections 101(a)(25)(B) and 103(b)(6).".

SEC. 204. STATE PLAN.

(a) ASSESSMENT AND STRATEGIES.—Section 101(a)(15) of the Rehabilitation Act of 1973 (29 U.S.C. 721(a)(15)) is amended—

(1) in subparagraph (A)(i)—

(A) in subclause (II), by striking "and" at the end;

(B) in subclause (III), by adding "and" at the end; and

(C) by adding at the end the following:

~~"(IV) students with disabilities, including their need for transition services;"; and~~

~~(2) in subparagraph (D)—~~

~~(A) by redesignating clauses (iii), (iv), and (v) as clauses (iv), (v), and (vi), respectively; and~~

~~(B) by inserting after clause (ii) the following:~~

~~"(iii) the methods to be used to improve and expand vocational rehabilitation services for students with disabilities, including the coordination of services designed to facilitate the transition of such students from the receipt of educational services in school to the receipt of vocational rehabilitation services under this title.".~~

~~(b) SERVICES FOR STUDENTS WITH DISABILITIES.—Section 101(a) of the Rehabilitation Act of 1973 (29 U.S.C. 721(a)) is amended by adding at the end the following:~~

~~"(25) SERVICES FOR STUDENTS WITH DISABILITIES.—The State plan shall provide an assurance satisfactory to the Secretary that the State—~~

~~"(A) has developed and implemented strategies to address the needs identified in the assessment described in paragraph (15), and achieve the goals and priorities identified by the State, to improve and expand vocational rehabilitation services for students with disabilities on a statewide basis in accordance with paragraph (15); and~~

~~"(B) will use funds appropriated under section 100(d) to carry out programs or activities designed to improve and expand vocational rehabilitation services for students with disabilities that—~~

~~"(i) facilitate the transition of the students with disabilities from the receipt of educational services in school, to the receipt of vocational rehabilitation services under this title, including, at a minimum, those services specified in the interagency agreement required in paragraph (11)(D);~~

~~"(ii) improve the achievement of post-school goals of students with disabilities, including improving the achievement through attendance at meetings regarding individualized education programs devel-~~

~~oped under section 614 of the Individuals with Disabilities Education Act (20 U.S.C. 1414);~~

~~"(iii) provide vocational guidance, career exploration services, and job search skills and strategies and technical assistance to students with disabilities;~~

~~"(iv) support the provision of training and technical assistance to State and local educational agency and designated State agency personnel responsible for the planning and provision of services to students with disabilities; and~~

~~"(v) support outreach activities to students with disabilities who are eligible for, and need, services under this title.".~~

~~SEC. 205. SCOPE OF SERVICES.~~

~~Section 103 of the Rehabilitation Act of 1973 (29 U.S.C. 723) is amended—~~

~~(1) in subsection (a)(15), by inserting ", including services described in clauses (i) through (iii) of section 101(a)(25)(B)" before the semicolon; and~~

~~(2) in subsection (b), by striking paragraph (6) and inserting the following:~~

~~"(6)(A)(i) Consultation and technical assistance services to assist State and local educational agencies in planning for the transition of students with disabilities from school to post-school activities, including employment.~~

~~"(ii) Training and technical assistance described in section 101(a)(25)(B)(iv).~~

~~"(B) Services for groups of individuals with disabilities who meet the requirements of clauses (i) and (iii) of section 7(35)(A), including services described in clauses (i), (ii), (iii), and (v) of section 101(a)(25)(B), to assist in the transition from school to post-school activities.".~~

~~SEC. 206. STANDARDS AND INDICATORS.~~

~~Section 106(a) of the Rehabilitation Act of 1973 (29 U.S.C. 726(a)) is amended by striking paragraph (1)(C) and all that follows through paragraph (2) and inserting the following:~~

~~"(2) MEASURES.—The standards and indicators shall include outcome and related measures of program performance that—~~

~~"(A) facilitate the accomplishment of the purpose and policy of this title;~~

~~"(B) to the maximum extent practicable, are consistent with the core indicators of per-~~

~~formance, and corresponding State adjusted levels of performance, established under section 136(b) of the Workforce Investment Act of 1998 (29 U.S.C. 2871(b)); and~~

~~"(C) include measures of the program's performance with respect to the transition to post-school activities, and achievement of the post-school goals, of students with disabilities served under the program.".~~

SECTION 1. SHORT TITLE.

This Act may be cited as the "Individuals with Disabilities Education Improvement Act of 2003".

SEC. 2. ORGANIZATION OF THE ACT.

This Act is organized into the following titles:

TITLE I—AMENDMENTS TO THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT

TITLE II—AMENDMENTS TO THE REHABILITATION ACT OF 1973

TITLE III—NATIONAL CENTER FOR SPECIAL EDUCATION RESEARCH

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

TITLE 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.

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

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

"PART A—GENERAL PROVISIONS

"Sec. 601. Short title; table of contents; findings; purposes.
"Sec. 602. Definitions.
"Sec. 603. Office of Special Education Programs.
"Sec. 604. Abrogation of State sovereign immunity.
"Sec. 605. Acquisition of equipment; construction or alteration of facilities.
"Sec. 606. Employment of individuals with disabilities.
"Sec. 607. Requirements for prescribing regulations.
"Sec. 608. State administration.
"Sec. 609. Report to Congress.

"Part B—Assistance for Education of All Children With Disabilities

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

"Part C—Infants and Toddlers With Disabilities

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

"Part D—National Activities To Improve Education of Children With Disabilities

"Sec. 650. Findings.

"Subpart 1—State Personnel Preparation and Professional Development Grants

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

"Subpart 2—Scientifically Based Research, Technical Assistance, Model Demonstration Projects, and Dissemination of Information

"Sec. 660. Purpose.
"Sec. 661. Administrative provisions.
"Sec. 662. Research to improve results for children with disabilities.
"Sec. 663. Technical assistance, demonstration projects, dissemination of information, and implementation of scientifically based research.
"Sec. 664. Personnel development to improve services and results for children with disabilities.

"Sec. 665. Studies and evaluations.

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

"Sec. 670. Purposes.
"Sec. 671. Parent training and information centers.
"Sec. 672. Community parent resource centers.
"Sec. 673. Technical assistance for parent training and information centers.
"Sec. 674. Technology development, demonstration, and utilization; and media services.
"Sec. 675. Accessibility of instructional materials.
"Sec. 676. Authorization of appropriations.

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

"Sec. 681. Purpose.
"Sec. 682. Definition of eligible entity.
"Sec. 683. Program authorized.
"Sec. 684. Program evaluations.
"Sec. 685. Authorization of appropriations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"(C) coordinating this Act with other local, educational service agency, State, and Federal school improvement efforts, including improvement efforts under the Elementary and Secondary Education Act of 1965, in order to ensure that such children benefit from such efforts

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

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

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

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

"(G) focusing resources on teaching and learning while reducing paperwork and require-

ments that do not assist in improving educational results; and

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

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

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

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

"(9) Teachers, schools, local educational agencies, and States should be relieved of irrelevant and unnecessary paperwork burdens that do not lead to improved educational outcomes.

"(10)(A) The Federal Government must be responsive to the growing needs of an increasingly more diverse society.

"(B) America's ethnic profile is rapidly changing. In the year 2000, 1 of every 3 persons in the United States was a member of a minority group or was limited English proficient.

"(C) Minority children comprise an increasing percentage of public school students.

"(D) With such changing demographics, recruitment efforts for special education personnel should focus on increasing the participation of minorities in the teaching profession.

"(11)(A) The limited English proficient population is the fastest growing in our Nation, and the growth is occurring in many parts of our Nation.

"(B) Studies have documented apparent discrepancies in the levels of referral and placement of limited English proficient children in special education.

"(C) This poses a special challenge for special education in the referral of, assessment of, and services for, our Nation's students from non-English language backgrounds.

"(12)(A) Greater efforts are needed to prevent the intensification of problems connected with mislabeling

and high dropout rates among minority children with disabilities.

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

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

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

"(E) Studies have found that schools with predominately Caucasian students and teachers have placed disproportionately high numbers of their minority students into special education.

"(13)(A) As the number of minority students in special education increases, the number of minority teachers and related services personnel produced in colleges and universities continues to decrease.

"(B) The opportunity for minority individuals, organizations, and Historically Black Colleges and Universities to participate fully in awards for grants and contracts, boards of organizations receiving funds

under this Act, and peer review panels, and in the training of professionals in the area of special education is essential if we are to obtain greater success in the education of minority children with disabilities.

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

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

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

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

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

"(2) to assist States in the implementation of a Statewide, coordinated, multidisciplinary, inter-

agency system of early intervention services for infants and toddlers with disabilities and their families;

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

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

"SEC. 602. DEFINITIONS.

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

"(1) ASSISTIVE TECHNOLOGY DEVICE.—The term 'assistive technology device' means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of a child with a disability. The term does not include a medical device that is surgically implanted, or the post-surgical maintenance, programming, or replacement of such device, or an external device connected with the use of a surgically implanted medical device (other than the costs of performing routine maintenance and monitoring of such

external device at the same time the child is receiving other services under this Act).

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

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

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

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

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

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

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

"(3) CHILD WITH A DISABILITY.—

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

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

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

"(B) CHILD AGED 3 THROUGH 9.—The term 'child with a disability' for a child aged 3 through 9 (or any subset of that age range, including ages 3 through 5), may, at the discretion

of the State and the local educational agency, include a child—

"(i) experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in 1 or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and

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

"(4) CORE ACADEMIC SUBJECT.—The term 'core academic subject' has the meaning given the term in section 9101(11) of the Elementary and Secondary Education Act of 1965.

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

"(A) means a regional public multiservice agency—

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

"(ii) recognized as an administrative agency for purposes of the provision of spe-

cial education and related services provided within public elementary schools and secondary schools of the State; and

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

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

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

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

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

and devices; and books, periodicals, documents, and other related materials.

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

"(A) amounts received—

"(i) under part B of this title;

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

"(iii) under parts A and B of title III of that Act; and

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

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

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

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

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

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

"(10) HIGHLY QUALIFIED.—The term 'highly qualified' means the following:

"(A) ALL SPECIAL EDUCATION TEACHERS.—When used with respect to any public elementary school or secondary school special education teacher teaching in a State, means that the teacher holds at least a bachelor's degree and that—

"(i) the teacher has obtained full State certification as a special education teacher through a State-approved special education teacher preparation program (including certification obtained through alternative routes to certification) or other comparably rigorous methods, or passed the State teacher special education licensing examination, and holds a license to teach in the State as

a special education teacher, except that when used with respect to any teacher teaching in a public charter school, the term means that the teacher meets the requirements set forth in the State's public charter school law;

"(ii) the teacher has not had certification or licensure requirements waived on an emergency, temporary, or provisional basis; and

"(iii) the teacher demonstrates knowledge of special education and the teaching skills necessary to teach children with disabilities.

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

writing, mathematics, and other areas of the basic elementary school curriculum).

"(C) NEW MIDDLE SCHOOL AND SECONDARY SCHOOL SPECIAL EDUCATION TEACHERS.—When used with respect to a special education middle school or secondary school teacher who is new to the profession, means that the teacher has demonstrated a high level of competency in each of the academic subjects in which the teacher teaches by—

"(i) passing a rigorous State academic subject test in each of the academic subjects in which the teacher teaches (which may consist of a passing level of performance on a State-required certification or licensing test or tests in each of the academic subjects in which the teacher teaches); or

"(ii) successful completion, in each of the academic subjects in which the teacher teaches, of an academic major, graduate degree, coursework equivalent to an undergraduate academic major, or advanced certification or credentialing.

"(D) VETERAN SPECIAL EDUCATION TEACHERS.—When used with respect to an elementary

school, middle school, or secondary school special education teacher who is not new to the profession, means that the teacher has—

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

"(ii) has demonstrated competence in all the academic subjects in which the teacher teaches based on a high objective uniform State standard of evaluation for special education teachers that—

"(I) is set by the State for both grade-appropriate academic subject matter knowledge and special education teaching skills;

"(II) is aligned with challenging State academic content and student academic achievement standards and developed in consultation with special education teachers, core content specialists, teachers, principals, and school administrators;

"(III) provides objective, coherent information about the teachers' attainment of knowledge of core content

knowledge in the academic subjects in which a teacher teaches;

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

"(V) takes into consideration, but is not based primarily on, the time the teacher has been teaching in the academic subject;

"(VI) is made available to the public on request; and

"(VII) may involve multiple objective measures of teacher competency.

"(E) TEACHERS PROVIDING CONSULTATIVE SERVICES.—

"(i) IN GENERAL.—Notwithstanding subparagraphs (B) through (D), when used with respect to a special education teacher who provides only consultative services to a highly qualified regular education teacher (as the term highly qualified is defined in section 9101(23) of the Elementary and Secondary Education Act of 1965), means

that the teacher meets the requirements of subparagraph (A).

"(ii) CONSULTATIVE SERVICES.—As used in clause (i), the term 'consultative services' means services that adjust the learning environment, modify instructional methods, adapt curricula, use positive behavior supports and interventions, and select and implement appropriate accommodations to meet the needs of individual children.

"(F) EXCEPTION.—Notwithstanding subparagraphs (B) through (D), when used with respect to a special education teacher who teaches more than 1 subject, primarily to middle school and secondary school-aged children with significant cognitive disabilities, means that the teacher has demonstrated subject knowledge and teaching skills in reading, mathematics, and other areas of the basic elementary school curriculum by—

"(i) passing a rigorous State test (which may consist of passing a State-required certification or licensing test or tests in those areas); or

"(ii) demonstrating competency in all the academic subjects in which the teacher teaches, based on a high objective uniform State standard as described in subparagraph (D)(ii).

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

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

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

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

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

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

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

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

"(17) LIMITED ENGLISH PROFICIENT.—The term 'limited English proficient' has the meaning given the term in section 9101(25) of the Elementary and Secondary Education Act of 1965.

"(18) LOCAL EDUCATIONAL AGENCY.—

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

its public elementary schools or secondary schools.

"(B) The term includes—

"(i) an educational service agency, as defined in paragraph (5); and

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

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

"(19) NATIVE LANGUAGE.—The term 'native language', when used with respect to an individual of

limited English proficiency, means the language normally used by the individual, or in the case of a child, the language normally used by the parents of the child.

"(20) NONPROFIT.—The term 'nonprofit', as applied to a school, agency, organization, or institution, means a school, agency, organization, or institution owned and operated by 1 or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

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

"(22) PARENT.—The term 'parent'—

"(A) includes a legal guardian; and

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

"(23) PARENT ORGANIZATION.—The term 'parent organization' has the meaning given such term in section 671(g).

"(24) PARENT TRAINING AND INFORMATION CENTER.—The term 'parent training and information center' means a center assisted under section 671 or 672.

"(25) RELATED SERVICES.—The term 'related services' means transportation, and such developmental, corrective, and other supportive services (including speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, school health services, counseling services, including rehabilitation counseling, orientation and mobility services, travel training instruction, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions in children. The term does not include a medical device that is surgically implanted, or the post-surgical maintenance, programming, or replacement of such device, or an external device connected with the use of a surgically implanted medical device (other than the costs of performing routine maintenance and

monitoring of such external device at the same time the child is receiving other services under this Act).

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

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

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

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

"(B) instruction in physical education.

"(29) SPECIFIC LEARNING DISABILITY.—

"(A) IN GENERAL.—The term 'specific learning disability' means a disorder in 1 or more of the basic psychological processes involved in understanding or in using language, spoken or written, which disorder may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations.

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

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

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

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

"(32) SUPPLEMENTARY AIDS AND SERVICES.—The term 'supplementary aids and services' means aids, services, and other supports that are provided in regular education classes or other education-related settings to enable children with disabilities to be edu-

cated with nondisabled children to the maximum extent appropriate in accordance with section 612(a)(5).

"(33) TRANSITION SERVICES.—The term 'transition services' means a coordinated set of activities for a child with a disability (as defined in paragraph (3)(A)) that—

"(A) is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

"(B) is based on the individual child's needs, taking into account the child's strengths, preferences, and interests; and

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

daily living skills and functional vocational evaluation.

"SEC. 603. OFFICE OF SPECIAL EDUCATION PROGRAMS.

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

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

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

"SEC. 604. ABROGATION OF STATE SOVEREIGN IMMUNITY.

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

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

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

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

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

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

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

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

"SEC. 606. EMPLOYMENT OF INDIVIDUALS WITH DISABILITIES.

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

"SEC. 607. REQUIREMENTS FOR PRESCRIBING REGULATIONS.

"(a) IN GENERAL.—In carrying out the provisions of this Act, the Secretary shall issue regulations under this Act only to the extent that such regulations are necessary to ensure that there is compliance with the specific requirements of this Act.

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

"(1) violates or contradicts any provision of this Act; and

"(2) procedurally or substantively lessens the protections provided to children with disabilities under this Act, as embodied in regulations in effect on July 20, 1983 (particularly as such protections re-

lated to parental consent to initial evaluation or initial placement in special education, least restrictive environment, related services, timelines, attendance of evaluation personnel at individualized education program meetings, or qualifications of personnel), except to the extent that such regulation reflects the clear and unequivocal intent of the Congress in legislation.

"(c) PUBLIC COMMENT PERIOD.—The Secretary shall provide a public comment period of not more than 90 days on any regulation proposed under part B or part C of this Act on which an opportunity for public comment is otherwise required by law.

"(d) POLICY LETTERS AND STATEMENTS.—The Secretary may not issue policy letters or other statements (including letters or statements regarding issues of national significance) that—

"(1) violate or contradict any provision of this Act; or

"(2) establish a rule that is required for compliance with, and eligibility under, this Act without following the requirements of section 553 of title 5, United States Code.

"(e) EXPLANATION AND ASSURANCES.—Any written response by the Secretary under subsection (d) regarding a policy, question, or interpretation under part B of this

Act shall include an explanation in the written response that—

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

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

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

"(f) CORRESPONDENCE FROM DEPARTMENT OF EDUCATION DESCRIBING INTERPRETATIONS OF THIS ACT.—

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

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

"(A) identify the topic addressed by the correspondence and shall include such other summary information as the Secretary determines to be appropriate; and

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

"SEC. 608. STATE ADMINISTRATION.

"(a) RULEMAKING.—Each State that receives funds under this Act shall—

"(1) ensure that any State rules, regulations, and policies relating to this Act conform to the purposes of this Act; and

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

"(b) SUPPORT AND FACILITATION.—State rules, regulations, and policies under this Act shall support and facilitate local educational agency and school-level systemic reform designed to enable children with disabilities to meet the challenging State student academic achievement standards.

"SEC. 609. REPORT TO CONGRESS.

"The Comptroller General shall conduct a review of Federal, State, and local requirements relating to the education of children with disabilities to determine which requirements result in excessive paperwork completion burdens for teachers, related services providers, and school administrators, and shall report to Congress not later than 18 months after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2003 regarding such review along with strategic proposals for reducing the paperwork burdens on teachers.

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

"SEC. 611. AUTHORIZATION; ALLOTMENT; USE OF FUNDS; AUTHORIZATION OF APPROPRIATIONS.

"(a) GRANTS TO STATES.—

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

"(2) MAXIMUM AMOUNT.—The maximum amount available for awarding grants under this section for any fiscal year is—

"(A) the total number of children with disabilities in the 2002–2003 school year in the States who received special education and related services and who were—

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

"(ii) aged 6 through 21; multiplied by

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

"(C) the rate of change in the sum of—

"(i) 85 percent of the change in the nationwide total of the population described in subsection (d)(3)(A)(i)(II); and

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

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

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

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

"(B) to provide each freely associated State a grant in the amount that such freely associated State received for fiscal year 2003 under this part, but only if the freely associated State meets the applicable requirements of this part, as well as the requirements of section 611(b)(2)(C) as such section was in effect on the day before the date of enactment of the Individuals with Disabilities Education Improvement Act of 2003.

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

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

"(c) SECRETARY OF THE INTERIOR.—From the amount appropriated for any fiscal year under subsection (i), the Secretary shall reserve 1.226 percent to provide as-

sistance to the Secretary of the Interior in accordance with subsection (i).

"(d) ALLOCATIONS TO STATES.—

"(1) IN GENERAL.—After reserving funds for studies and evaluations under section 665, and for payments to the outlying areas, the freely associated States, and the Secretary of the Interior under subsections (b) and (c) for a fiscal year, the Secretary shall allocate the remaining amount among the States in accordance with this subsection.

"(2) SPECIAL RULE FOR USE OF FISCAL YEAR 1999 AMOUNT.—If a State received any funds under this section for fiscal year 1999 on the basis of children aged 3 through 5, but does not make a free appropriate public education available to all children with disabilities aged 3 through 5 in the State in any subsequent fiscal year, the Secretary shall compute the State's amount for fiscal year 1999, solely for the purpose of calculating the State's allocation in that subsequent year under paragraph (3) or (4), by subtracting the amount allocated to the State for fiscal year 1999 on the basis of those children.

"(3) INCREASE IN FUNDS.—If the amount available for allocations to States under paragraph (1) for a fiscal year is equal to or greater than the amount

allocated to the States under this paragraph for the preceding fiscal year, those allocations shall be calculated as follows:

"(A) ALLOCATION OF INCREASE.—

"(i) IN GENERAL.—Except as provided in subparagraph (B), the Secretary shall allocate for the fiscal year—

"(I) to each State the amount the State received under this section for fiscal year 1999;

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

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

"(ii) DATA.—For the purpose of making grants under this paragraph, the Sec-

retary shall use the most recent population data, including data on children living in poverty, that are available and satisfactory to the Secretary.

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

"(i) PRECEDING YEAR ALLOCATION.—No State's allocation shall be less than its allocation under this section for the preceding fiscal year.

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

"(I) the sum of—

"(aa) the amount the State received under this section for fiscal year 1999; and

"(bb) 1/3 of 1 percent of the amount by which the amount appropriated under subsection (i) for the fiscal year exceeds the amount appropriated for this section for fiscal year 1999;

"(II) the sum of—

"(aa) the amount the State received under this section for the preceding fiscal year; and

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

"(III) the sum of—

"(aa) the amount the State received under this section for the preceding fiscal year; and

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

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

"(I) the amount the State received under this section for the preceding fiscal year; and

"(II) that amount multiplied by the sum of 1.5 percent and the percent-

age increase in the amount appropriated under this section from the preceding fiscal year.

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

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

"(A) AMOUNTS GREATER THAN FISCAL YEAR 1999 ALLOCATIONS.—If the amount available for allocations is greater than the amount allocated to the States for fiscal year 1999, each State shall be allocated the sum of—

"(i) the amount the State received under this section for fiscal year 1999; and

"(ii) an amount that bears the same relation to any remaining funds as the increase the State received under this section for the preceding fiscal year over fiscal year

1999 bears to the total of all such increases for all States.

"(B) AMOUNTS EQUAL TO OR LESS THAN FISCAL YEAR 1999 ALLOCATIONS.—

"(i) IN GENERAL.—If the amount available for allocations under this paragraph is equal to or less than the amount allocated to the States for fiscal year 1999, each State shall be allocated the amount the State received for fiscal year 1999.

"(ii) RATABLE REDUCTION.—If the amount available for allocations under this paragraph is insufficient to make the allocations described in clause (i), those allocations shall be ratably reduced.

"(e) STATE-LEVEL ACTIVITIES.—

"(1) STATE ADMINISTRATION.—

"(A) IN GENERAL.—For the purpose of administering this part, including paragraph (3), section 619, and the coordination of activities under this part with, and providing technical assistance to, other programs that provide services to children with disabilities—

"(i) each State may reserve not more than the maximum amount the State was

eligible to reserve for State administration for fiscal year 2003 or $800,000 (adjusted by the cumulative rate of inflation since fiscal year 2003 as measured by the percentage increase, if any, in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor), whichever is greater; and

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

"(B) PART C.—Funds reserved under subparagraph (A) may be used for the administration of part C, if the State educational agency is the lead agency for the State under that part.

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

"(2) OTHER STATE-LEVEL ACTIVITIES.—

"(A) STATE-LEVEL ACTIVITIES.—

"(i) IN GENERAL.—For the purpose of carrying out State-level activities, each State may reserve for each of the fiscal years 2004 and 2005, not more than 10 percent of the amount that remains after subtracting the amount reserved under paragraph (1) from the amount of the State's allocation under subsection (d) for fiscal years 2004 and 2005, respectively. For fiscal years 2006, 2007, 2008, and 2009, the State may reserve the maximum amount the State was eligible to reserve under the preceding sentence for fiscal year 2005 (adjusted by the cumulative rate of inflation since fiscal year 2005 as measured by the percentage increase, if any, in the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor).

"(ii) SMALL STATE ADJUSTMENT.—Notwithstanding clause (i), in the case of a State for which the maximum amount reserved for State administration under paragraph (1) is not greater than $800,000 (as

adjusted pursuant to paragraph (1)(A)(i)), the State may reserve for the purpose of carrying out State-level activities for each of the fiscal years 2004 and 2005, not more than 12 percent of the amount that remains after subtracting the amount reserved under paragraph (1) from the amount of the State's allocation under subsection (d) for fiscal years 2004 and 2005, respectively. For each of the fiscal years 2006, 2007, 2008, and 2009, each such State may reserve for such purpose the maximum amount the State was eligible to reserve under the preceding sentence for fiscal year 2005 (adjusted by the cumulative rate of inflation since fiscal year 2005 as measured by the percentage increase, if any, in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor).

"(B) REQUIRED ACTIVITIES.—Funds reserved under subparagraph (A) shall be used to carry out the following activities:

"(i) For monitoring, enforcement and complaint investigation.

"(ii) To establish and implement the mediation, processes required by section 615(e)(1), including providing for the costs of mediators and support personnel;

"(iii) To support the State protection and advocacy system to advise and assist parents in the areas of—

"(I) dispute resolution and due process;

"(II) voluntary mediation; and

"(III) the opportunity to resolve complaints.

"(C) AUTHORIZED ACTIVITIES.—Funds reserved under subparagraph (A) may be used to carry out the following activities:

"(i) For support and direct services, including technical assistance, personnel preparation, and professional development and training.

"(ii) To support paperwork reduction activities, including expanding the use of technology in the IEP process.

"(iii) To assist local educational agencies in providing positive behavioral inter-

ventions and supports and mental health services for children with disabilities.

"(iv) To improve the use of technology in the classroom by children with disabilities to enhance learning.

"(v) To support the development and use of technology, including universally designed technologies and assistive technology devices, to maximize accessibility to the general curriculum for children with disabilities.

"(vi) Development and implementation of transition programs, including coordination of services with agencies involved in supporting the transition of students with disabilities to post-secondary activities.

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

"(viii) To support capacity building activities and improve the delivery of services by local educational agencies to improve results for children with disabilities.

"(ix) Alternative programming for children who have been expelled from school, and services for children in correctional fa-

cilities, children enrolled in State-operated or State-supported schools, and children in charter schools.

"(x) To support the development and provision of appropriate accommodations for children with disabilities, or the development and provision of alternate assessments that are valid and reliable for assessing the performance of children with disabilities, in accordance with sections 1111(b) and 6111 of the Elementary and Secondary Education Act of 1965.

"(3) LOCAL EDUCATIONAL AGENCY RISK POOL.—

"(A) IN GENERAL.—For the purpose of assisting local educational agencies (and charter schools that are local educational agencies) in addressing the needs of high-need children and the unanticipated enrollment of other children eligible for services under this part, each State shall reserve for each of the fiscal years 2004 through 2009, 2 percent of the amount that remains after subtracting the amount reserved under paragraph (1) from the amount of the State's allocation under subsection (d) for each of

the fiscal years 2004 through 2009, respectively, to—

"(i) establish a high-cost fund; and

"(ii) make disbursements from the high-cost fund to local educational agencies in accordance with this paragraph.

"(B) REQUIRED DISBURSEMENTS FROM THE FUND.—

"(i) IN GENERAL.—Each State educational agency shall make disbursements from the fund established under subparagraph (A) to local educational agencies to pay the percentage, described in subparagraph (D), of the costs of providing a free appropriate public education to high-need children.

"(ii) SPECIAL RULE.—If funds reserved for a fiscal year under subparagraph (A) are insufficient to pay the percentage described in subparagraph (D) to assist all the local educational agencies having applications approved under subparagraph (C), then the State educational agency shall ratably reduce the amount paid to each local

educational agency that receives a disbursement for that fiscal year.

"(C) APPLICATION.—A local educational agency that desires a disbursement under this subsection shall submit an application to the State educational agency at such time, in such manner, and containing such information as the State educational agency may require. Such application shall include assurances that funds provided under this paragraph shall not be used to pay costs that otherwise would be reimbursable as medical assistance for a child with a disability under the State medicaid program under title XIX of the Social Security Act.

"(D) DISBURSEMENTS.—

"(i) IN GENERAL.—A State educational agency shall make a disbursement to a local educational agency that submits an application under subparagraph (C) in an amount that is equal to 75 percent of the costs that are in excess of 4 times the average per-pupil expenditure in the United States or in the State where the child resides (whichever average per-pupil expenditure is lower) associated with educating

each high need child served by such local educational agency in a fiscal year for whom such agency desires a disbursement.

"(ii) APPROPRIATE COSTS.—The costs associated with educating a high need child under clause (i) are only those costs associated with providing direct special education and related services to such child that are identified in such child's appropriately developed IEP.

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

"(F) PERMISSIBLE DISBURSEMENTS FROM REMAINING FUNDS.—A State educational agency may make disbursements to local educational agencies from any funds that are remaining in the high cost fund after making the required disbursements under subparagraph (D) for a fiscal year for the following purposes:

"(i) To pay the costs associated with serving children with disabilities who

moved into the areas served by such local agencies after the budget for the following school year had been finalized to assist the local educational agencies in providing a free appropriate public education for such children in such year.

"(ii) To compensate local educational agencies for extraordinary costs, as determined by the State, of any children eligible for services under this part due to—

"(I) unexpected enrollment or placement of children eligible for services under this part; or

"(II) a significant underestimate of the average cost of providing services to children eligible for services under this part.

"(G) REMAINING FUNDS.—Funds reserved under subparagraph (A) in any fiscal year but not expended in that fiscal year pursuant to subparagraph (D) or subparagraph (F) shall—

"(i) be allocated to local educational agencies pursuant to subparagraphs (D) or (F) for the next fiscal year; or

"(ii) be allocated to local educational agencies in the same manner as funds are allocated to local educational agencies under subsection (f).

"(H) ASSURANCE OF A FREE APPROPRIATE PUBLIC EDUCATION.—Nothing in this section shall be construed—

"(i) to limit or condition the right of a child with a disability who is assisted under this part to receive a free appropriate public education pursuant to section 612(a)(1) in a least restrictive environment pursuant to section 612(a)(5); or

"(ii) to authorize a State educational agency or local educational agency to indicate a limit on what is expected to be spent on the education of a child with a disability.

"(I) MEDICAID SERVICES NOT AFFECTED.—Disbursements provided under this subsection shall not be used to pay costs that otherwise would be reimbursable as medical assistance for a child with a disability under the State medicaid program under title XIX of the Social Security Act.

"(J) DEFINITIONS.—In this paragraph:

"(i) AVERAGE PER-PUPIL EXPENDITURE.—The term 'average per-pupil expenditure' has the meaning given the term in section 9101 of the Elementary and Secondary Education Act of 1965.

"(ii) HIGH-NEED CHILD.—The term 'high-need', when used with respect to a child with a disability, means a child with a disability for whom a free appropriate public education in a fiscal year costs more than 4 times the average per-pupil expenditure for such fiscal year.

"(K) SPECIAL RULE FOR RISK POOL AND HIGH-NEED ASSISTANCE PROGRAMS IN EFFECT AS OF JANUARY 1, 2003.—Notwithstanding the provisions of subparagraphs (A) through (J), a State may use funds reserved pursuant to this paragraph for administering and implementing a placement-neutral cost-sharing and reimbursement program of high-need, low-incidence, emergency, catastrophic, or extraordinary aid to local educational agencies that provides services to students eligible under this part based on eligi-

bility criteria for such programs that were operative on January 1, 2003.

"(4) INAPPLICABILITY OF CERTAIN PROHIBITIONS.—A State may use funds the State reserves under paragraphs (1), (2), and (3) without regard to—

"(A) the prohibition on commingling of funds in section 612(a)(17)(B); and

"(B) the prohibition on supplanting other funds in section 612(a)(17)(C).

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

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

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

"(6) FLEXIBILITY IN USING FUNDS FOR PART C.—Any State eligible to receive a grant under section 619 may use funds made available under paragraph (1)(A), subsection (f)(3), or section 619(f)(5) to develop and implement a State policy jointly with the lead agency under part C and the State educational

agency to provide early intervention services (which shall include an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills) in accordance with part C to children with disabilities who are eligible for services under section 619 and who previously received services under part C until such children enter, or are eligible under State law to enter, kindergarten.

"(f) SUBGRANTS TO LOCAL EDUCATIONAL AGENCIES.—

"(1) SUBGRANTS REQUIRED.—Each State that receives a grant under this section for any fiscal year shall distribute any funds the State does not reserve under subsection (e) to local educational agencies (including public charter schools that operate as local educational agencies) in the State that have established their eligibility under section 613 for use in accordance with this part.

"(2) PROCEDURE FOR ALLOCATIONS TO LOCAL EDUCATIONAL AGENCIES.—

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

"(i) BASE PAYMENTS.—The State shall first award each local educational agency described in paragraph (1) the amount the local educational agency would have received under this section for fiscal year 1999, if the State had distributed 75 percent of its grant for that year under section 611(d) as section 611(d) was then in effect.

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

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

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

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

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

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

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

"(i) the aggregate current expenditures, during the second fiscal year preceding the fiscal year for which the determination is made (or, if satisfactory data for that year are not available, during the most recent

preceding fiscal year for which satisfactory data are available) of all local educational agencies in the 50 States and the District of Columbia; plus

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

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

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

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

"(1) PROVISION OF AMOUNTS FOR ASSISTANCE.—

"(A) IN GENERAL.—The Secretary of Education shall provide amounts to the Secretary of the Interior to meet the need for assistance for the education of children with disabilities on reservations aged 5 through 21 who are enrolled in elementary schools and secondary schools for Indian children operated or funded by the Sec-

retary of the Interior. The amount of such payment for any fiscal year shall be equal to 80 percent of the amount allotted under subsection (c) for that fiscal year.

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

"(C) ADDITIONAL REQUIREMENT.—With respect to all other children aged 3 through 21 on reservations, the State educational agency shall

be responsible for ensuring that all of the requirements of this part are implemented.

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

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

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

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

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

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

"(F) includes an assurance that the Department of the Interior will cooperate with the Department of Education in its exercise of moni-

toring and oversight of this application, and any agreements entered into between the Secretary of the Interior and other entities under this part, and will fulfill its duties under this part.

"(3) APPLICABILITY.—Section 616(a) shall apply to the information described in this paragraph.

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

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

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

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

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

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

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

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

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

"(6) ESTABLISHMENT OF ADVISORY BOARD.—To meet the requirements of section 612(a)(20), the Secretary of the Interior shall establish, under the BIA, an advisory board composed of individuals involved in or concerned with the education and provision of services to Indian infants, toddlers, children, and youth with disabilities, including Indians with disabilities, Indian parents or guardians of such children, teachers, service providers, State and local educational officials, representatives of tribes or tribal organizations, representatives from State Interagency Coordinating Councils under section 641 in States having reservations, and other members representing the various divisions and entities of the BIA. The chairperson shall be selected by the Secretary of the Interior. The advisory board shall—

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

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

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

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

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

"(7) ANNUAL REPORTS.—

"(A) IN GENERAL.—The advisory board established under paragraph (6) shall prepare and submit to the Secretary of the Interior and to Congress an annual report containing a description of the activities of the advisory board for the preceding year.

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

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

"SEC. 612. STATE ELIGIBILITY.

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

"(1) FREE APPROPRIATE PUBLIC EDUCATION.—

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

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

"(i) aged 3 through 5 and 18 through 21 in a State to the extent that its application to those children would be inconsistent with State law or practice, or the order of

any court, respecting the provision of public education to children in those age ranges; and

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

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

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

"(C) STATE FLEXIBILITY.—A State that provides early intervention services in accordance with part C to a child who is eligible for services under section 619, is not required to provide such child with a free appropriate public education.

"(2) FULL EDUCATIONAL OPPORTUNITY GOAL.—The State has established a goal of providing full edu-

cational opportunity to all children with disabilities and a detailed timetable for accomplishing that goal.

"(3) CHILD FIND.—

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

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

"(4) INDIVIDUALIZED EDUCATION PROGRAM.—An individualized education program, or an individualized family service plan that meets the requirements of section 636(d), is developed, reviewed, and

revised for each child with a disability in accordance with section 614(d).

"(5) LEAST RESTRICTIVE ENVIRONMENT.—

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

"(B) ADDITIONAL REQUIREMENT.—

"(i) IN GENERAL.—A State funding mechanism shall not result in placements that violate the requirements of subparagraph (A), and a State shall not use a funding mechanism by which the State distributes funds on the basis of the type of setting in which a child is served that will result in the failure to provide a child with a disability a free appropriate public edu-

cation according to the unique needs of the child as described in the child's IEP.

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

"(6) PROCEDURAL SAFEGUARDS.—

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

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

mining an appropriate educational program for a child.

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

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

"(9) TRANSITION FROM PART C TO PRESCHOOL PROGRAMS.—Children participating in early-intervention programs assisted under part C, and who will participate in preschool programs assisted under this part, experience a smooth and effective transition to those preschool programs in a manner consistent with section 637(a)(8). By the third birthday of such a child, an individualized education program or, if consistent with sections 614(d)(2)(B) and 636(d), an individualized family service plan, has been developed and is being implemented for the child. The local educational agency will participate in transition planning conferences arranged by the designated lead agency under section 635(a)(10).

"(10) CHILDREN IN PRIVATE SCHOOLS.—

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

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

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

"(II) Such services may be provided to children with disabilities on the premises of private, including reli-

gious, schools, to the extent consistent with law.

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

"(ii) CHILD-FIND REQUIREMENT.—

"(I) IN GENERAL.—The requirements of paragraph (3) of this subsection (relating to child find) shall apply with respect to children with disabilities in the State who are enrolled in private, including religious, elementary schools and secondary schools. Such child find process shall be conducted in a comparable time period as for other students attending public schools in the local educational agency.

"(II) EQUITABLE PARTICIPATION.—The child find process shall be designed to ensure the equitable par-

ticipation of parentally placed private school children and an accurate count of such children.

"(III) ACTIVITIES.—In carrying out this clause, the local educational agency, or where applicable, the State educational agency, shall undertake activities similar to those activities undertaken for its public school children.

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

"(iii) CONSULTATION.—To ensure timely and meaningful consultation, a local educational agency, or where appropriate, a State educational agency, shall consult, with representatives of children with disabilities who are parentally placed in private schools, during the design and development of special education and related services for these children, including consultation regarding—

"(I) the child find process and how parentally placed private school children suspected of having a disability can participate equitably, including how parents, teachers, and private school officials will be informed of the process;

"(II) the determination of the proportionate share of Federal funds available to serve parentally placed private school children with disabilities under this paragraph, including the determination of how the proportionate share of those funds were calculated;

"(III) the consultation process among the school district, private school officials, and parents of parentally placed private school children with disabilities, including how such process will operate throughout the school year to ensure that parentally placed children with disabilities identified through the child find process can meaningfully participate in special education and related services;

"(IV) how, where, and by whom special education and related services will be provided for parentally placed private school children, including a discussion of alternate service delivery mechanisms, how such services will be apportioned if funds are insufficient to serve all children, and how and when these decisions will be made; and

"(V) how, if the local educational agency disagrees with the views of the private school officials on the provision of services through a contract, the local educational agency shall provide to the private school officials a written explanation of the reasons why the local educational agency chose not to provide services through a contract.

"(iv) WRITTEN AFFIRMATION.—When timely and meaningful consultation as required by this section has occurred, the local educational agency shall obtain a written affirmation signed by the representatives of participating private schools, and if such officials do not provide such affirmations

within a reasonable period of time, the local educational agency shall forward the documentation of the consultation process to the State educational agency.

"(v) COMPLIANCE.—

"(I) IN GENERAL.—A private school official shall have the right to complain to the State educational agency that the local educational agency did not engage in consultation that was meaningful and timely, or did not give due consideration to the views of the private school official.

"(II) PROCEDURE.—If the private school official wishes to complain, the official shall provide the basis of the noncompliance with this section by the local educational agency to the State educational agency, and the local educational agency shall forward the appropriate documentation to the State educational agency. If the private school official is dissatisfied with the decision of the State educational agency, such official may complain to the

Secretary by providing the basis of the noncompliance with this section by the local educational agency to the Secretary, and the State educational agency shall forward the appropriate documentation to the Secretary.

"(vi) PROVISION OF EQUITABLE SERVICES.—

"(I) DIRECT SERVICES.—To the extent practicable, the local educational agency shall provide direct services to children with disabilities parentally placed in private schools.

"(II) DIRECTLY OR THROUGH CONTRACTS.—A public agency may provide special education and related services directly or through contracts with public and private agencies, organizations, and institutions.

"(III) SECULAR, NEUTRAL, NONIDEOLOGICAL.—Special education and related services provided to children with disabilities attending private schools, including materials and equip-

ment, shall be secular, neutral, and nonideological.

"(vii) PUBLIC CONTROL OF FUNDS.—The control of funds used to provide special education and related services under this section, and title to materials, equipment, and property purchased with those funds, shall be in a public agency for the uses and purposes provided in this Act, and a public agency shall administer the funds and property.

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

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

cation and related services to all children with disabilities within such State.

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

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

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

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

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

"(I) if—

"(aa) at the most recent IEP meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP Team that they were rejecting the placement

proposed by the public agency to provide a free appropriate public education to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or

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

"(II) if, prior to the parents' removal of the child from the public school, the public agency informed the parents, through the notice requirements described in section 615(b)(3), of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not

make the child available for such evaluation; or

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

"(iv) EXCEPTION.—Notwithstanding the notice requirement in clause (iii)(I), the cost of reimbursement—

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

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

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

"(II) may, in the discretion of a court or a hearing officer, not be reduced or denied for failure to provide such notice if—

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

"(bb) compliance with clause (iii)(I) would likely have resulted

in physical or serious emotional harm to the child.

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

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

"(i) the requirements of this part are met; and

"(ii) all educational programs for children with disabilities in the State, including all such programs administered by any other State or local agency—

"(I) are under the general supervision of individuals in the State who are responsible for educational programs for children with disabilities; and

"(II) meet the educational standards of the State educational agency.

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

"(C) EXCEPTION.—Notwithstanding subparagraphs (A) and (B), the Governor (or another individual pursuant to State law), consistent with State law, may assign to any public agency in the State the responsibility of ensuring that the requirements of this part are met with respect to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons.

"(12) OBLIGATIONS RELATED TO AND METHODS OF ENSURING SERVICES.—

"(A) ESTABLISHING RESPONSIBILITY FOR SERVICES.—The Chief Executive Officer of a State or designee of the officer shall ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each public agency described in subparagraph (B) and the State educational agency, in order to ensure that all services described in subparagraph (B)(i) that are needed to ensure a free appropriate public education are provided, including the provision of such services during the pendency of any dispute under clause (iii). Such agreement or mechanism shall include the following:

"(i) AGENCY FINANCIAL RESPONSIBILITY.—An identification of, or a method for defining, the financial responsibility of each agency for providing services described in subparagraph (B)(i) to ensure a free appropriate public education to children with disabilities, provided that the financial responsibility of each public agency described in subparagraph (B), including the State Medicaid agency and other public insurers of children with disabilities, shall precede the financial responsibility of the local educational agency (or the State agency responsible for developing the child's IEP).

"(ii) CONDITIONS AND TERMS OF REIMBURSEMENT.—The conditions, terms, and procedures under which a local educational agency shall be reimbursed by other agencies.

"(iii) INTERAGENCY DISPUTES.—Procedures for resolving interagency disputes (including procedures under which local educational agencies may initiate proceedings) under the agreement or other mechanism to secure reimbursement from

other agencies or otherwise implement the provisions of the agreement or mechanism.

"(iv) COORDINATION OF SERVICES PROCEDURES.—Policies and procedures for agencies to determine and identify the interagency coordination responsibilities of each agency to promote the coordination and timely and appropriate delivery of services described in subparagraph (B)(i).

"(B) OBLIGATION OF PUBLIC AGENCY.—

"(i) IN GENERAL.—If any public agency other than an educational agency is otherwise obligated under Federal or State law, or assigned responsibility under State policy pursuant to subparagraph (A), to provide or pay for any services that are also considered special education or related services (such as, but not limited to, services described in section 602(1) relating to assistive technology devices, 602(2) relating to assistive technology services, 602(25) relating to related services, 602(32) relating to supplementary aids and services, and 602(33) relating to transition services) that are necessary for ensuring a free appropriate pub-

lic education to children with disabilities within the State, such public agency shall fulfill that obligation or responsibility, either directly or through contract or other arrangement pursuant to subparagraph (A) or an agreement pursuant to subparagraph (C).

"(ii) REIMBURSEMENT FOR SERVICES BY PUBLIC AGENCY.—If a public agency other than an educational agency fails to provide or pay for the special education and related services described in clause (i), the local educational agency (or State agency responsible for developing the child's IEP) shall provide or pay for such services to the child. Such local educational agency or State agency is authorized to claim reimbursement for the services from the public agency that failed to provide or pay for such services and such public agency shall reimburse the local educational agency or State agency pursuant to the terms of the interagency agreement or other mechanism described in subparagraph (A)(i) according

to the procedures established in such agreement pursuant to subparagraph (A)(ii).

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

"(i) State statute or regulation;

"(ii) signed agreements between respective agency officials that clearly identify the responsibilities of each agency relating to the provision of services; or

"(iii) other appropriate written methods as determined by the Chief Executive Officer of the State or designee of the officer and approved by the Secretary.

"(13) PROCEDURAL REQUIREMENTS RELATING TO LOCAL EDUCATIONAL AGENCY ELIGIBILITY.—The State educational agency will not make a final determination that a local educational agency is not eligible for assistance under this part without first affording that agency reasonable notice and an opportunity for a hearing.

"(14) PERSONNEL STANDARDS.—

"(A) IN GENERAL.—The State educational agency has established and maintains standards to ensure that personnel necessary to carry out this part are appropriately and adequately pre-

pared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities.

"(B) RELATED SERVICES PERSONNEL AND PARAPROFESSIONALS.—The standards under subparagraph (A) include standards for related services personnel and paraprofessionals that—

"(i) are consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services;

"(ii) ensure that related services personnel who deliver services in their discipline or profession meet the requirements of clause (i) and have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis; and

"(iii) allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulation, or written policy, in meeting the requirements of this part to be used to assist

in the provision of special education and related services under this part to children with disabilities.

"(C) STANDARDS FOR SPECIAL EDUCATION TEACHERS.—

"(i) IN GENERAL.—The standards described in subparagraph (A) shall ensure that each person employed as a special education teacher in the State who teaches in an elementary, middle, or secondary school is highly qualified not later than the end of the 2006–2007 school year.

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

"(I) the Secretary, the State educational agency, and local educational agencies shall apply the definition of highly qualified in section 602(10) to special education teachers; and

"(II) the State shall ensure that all special education teachers teaching in core academic subjects within the

State are highly qualified (as defined in section 602(10)) not later than the end of the 2006–2007 school year.

"(iii) PARENTS' RIGHT TO KNOW.—In carrying out section 1111(h)(6) of the Elementary and Secondary Education Act of 1965 with respect to special education teachers, a local educational agency shall—

"(I) include in a response to a request under such section any additional information needed to demonstrate that the teacher meets the applicable requirements of section 602(10) relating to certification or licensure as a special education teacher; and

"(II) apply the definition of highly qualified in section 602(10) in carrying out section 1111(h)(6)(B)(ii).

"(D) POLICY.—In implementing this section, a State shall adopt a policy that includes a requirement that local educational agencies in the State take measurable steps to recruit, hire, train, and retain highly qualified personnel to

provide special education and related services under this part to children with disabilities.

"(E) RULE OF CONSTRUCTION.—Notwithstanding any other individual right of action that a parent or student may maintain under this part, nothing in this subsection shall be construed to create a right of action on behalf of an individual student for the failure of a particular State educational agency or local educational agency staff person to be highly qualified, or to prevent a parent from filing a complaint about staff qualifications with the State educational agency as provided for under this part.

"(15) PERFORMANCE GOALS AND INDICATORS.—The State—

"(A) has established goals for the performance of children with disabilities in the State that—

"(i) promote the purposes of this Act, as stated in section 601(d);

"(ii) are the same as the State's definition of adequate yearly progress, including the State's objectives for progress by children with disabilities, under section

1111(b)(2)(C) of the Elementary and Secondary Education Act of 1965;

"(iii) address graduation rates and drop out rates, as well as such other factors as the State may determine; and

"(iv) are consistent, to the extent appropriate, with any other goals and standards for children established by the State;

"(B) has established performance indicators the State will use to assess progress toward achieving the goals described in subparagraph (A), including measurable annual objectives for progress by children with disabilities under section 1111(b)(2)(C)(v)(II)(cc) of the Elementary and Secondary Education Act of 1965; and

"(C) will annually report to the Secretary and the public on the progress of the State, and of children with disabilities in the State, toward meeting the goals established under subparagraph (A).

"(16) PARTICIPATION IN ASSESSMENTS.—

"(A) IN GENERAL.— All children with disabilities are included in all general State and districtwide assessment programs and accountability systems, including assessments and ac-

countability systems described under section 1111 of the Elementary and Secondary Education Act of 1965, with appropriate accommodations, alternate assessments where necessary, and as indicated in their respective individualized education programs.

"(B) ACCOMMODATION GUIDELINES.—The State (or, in the case of a districtwide assessment, the local educational agency) has developed guidelines for the provision of appropriate accommodations.

"(C) ALTERNATE ASSESSMENTS.—

"(i) IN GENERAL.—The State (or, in the case of a districtwide assessment, the local educational agency) has developed and implemented guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in regular assessments under subparagraph (B) as indicated in their respective individualized education programs.

"(ii) REQUIREMENTS FOR ALTERNATE ASSESSMENTS.—The guidelines under

clause (i) shall provide for alternate assessments that—

"(I) are aligned with the State's challenging academic content and academic achievement standards; and

"(II) if the State has adopted alternate academic achievement standards permitted under section 1111(b)(1) of the Elementary and Secondary Education Act of 1965, measure the achievement of children with disabilities against those standards.

"(iii) CONDUCT OF ALTERNATIVE ASSESSMENTS.—The State conducts the alternate assessments described in this subparagraph.

"(D) REPORTS.—The State educational agency (or, in the case of a districtwide assessment, the local educational agency) makes available to the public, and reports to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled children, the following:

"(i) The number of children with disabilities participating in regular assess-

ments, and the number of those children who were provided accommodations in order to participate in those assessments.

"(ii) The number of children with disabilities participating in alternate assessments described in subparagraph (C)(ii)(I).

"(iii) The number of children with disabilities participating in alternate assessments described in subparagraph (C)(ii)(II).

"(iv) The performance of children with disabilities on regular assessments and on alternate assessments (if the number of children with disabilities participating in those assessments is sufficient to yield statistically reliable information and reporting that information will not reveal personally identifiable information about an individual student), compared with the achievement of all children, including children with disabilities, on those assessments.

"(E) UNIVERSAL DESIGN.—The State educational agency (or, in the case of a districtwide assessment, the local educational agency) shall, to the extent feasible, use universal design prin-

ciples in developing and administering any assessments under this paragraph.

"(17) SUPPLEMENTATION OF STATE, LOCAL, AND OTHER FEDERAL FUNDS.—

"(A) EXPENDITURES.—Funds paid to a State under this part will be expended in accordance with all the provisions of this part.

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

"(C) PROHIBITION AGAINST SUPPLANTATION AND CONDITIONS FOR WAIVER BY SECRETARY.—Except as provided in section 613, funds paid to a State under this part will be used to supplement the level of Federal, State, and local funds (including funds that are not under the direct control of State or local educational agencies) expended for special education and related services provided to children with disabilities under this part and in no case to supplant such Federal, State, and local funds, except that, where the State provides clear and convincing evidence that all children with disabilities have available to them a free appropriate public education, the Secretary may waive, in whole or in part, the

requirements of this subparagraph if the Secretary concurs with the evidence provided by the State.

"(18) MAINTENANCE OF STATE FINANCIAL SUPPORT.—

"(A) IN GENERAL.—The State does not reduce the amount of State financial support for special education and related services for children with disabilities, or otherwise made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year.

"(B) REDUCTION OF FUNDS FOR FAILURE TO MAINTAIN SUPPORT.—The Secretary shall reduce the allocation of funds under section 611 for any fiscal year following the fiscal year in which the State fails to comply with the requirement of subparagraph (A) by the same amount by which the State fails to meet the requirement.

"(C) WAIVERS FOR EXCEPTIONAL OR UNCONTROLLABLE CIRCUMSTANCES.—The Secretary may waive the requirement of subparagraph (A) for a State, for 1 fiscal year at a time, if the Secretary determines that—

"(i) granting a waiver would be equitable due to exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State; or

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

"(D) SUBSEQUENT YEARS.—If, for any year, a State fails to meet the requirement of subparagraph (A), including any year for which the State is granted a waiver under subparagraph (C), the financial support required of the State in future years under subparagraph (A) shall be the amount that would have been required in the absence of that failure and not the reduced level of the State's support.

"(19) PUBLIC PARTICIPATION.—Prior to the adoption of any policies and procedures needed to comply with this section (including any amendments to such policies and procedures), the State ensures that there are public hearings, adequate notice of the hearings, and an opportunity for comment available

to the general public, including individuals with disabilities and parents of children with disabilities.

"(20) STATE ADVISORY PANEL.—

"(A) IN GENERAL.—The State has established and maintains an advisory panel for the purpose of providing policy guidance with respect to special education and related services for children with disabilities in the State.

"(B) MEMBERSHIP.—Such advisory panel shall consist of members appointed by the Governor, or any other official authorized under State law to make such appointments, that is representative of the State population and that is composed of individuals involved in, or concerned with, the education of children with disabilities, including—

"(i) parents of children with disabilities ages birth through 26;

"(ii) individuals with disabilities;

"(iii) teachers;

"(iv) representatives of institutions of higher education that prepare special education and related services personnel;

"(v) State and local education officials;

"(vi) administrators of programs for children with disabilities;

"(vii) representatives of other State agencies involved in the financing or delivery of related services to children with disabilities;

"(viii) representatives of private schools and public charter schools;

"(ix) at least 1 representative of a vocational, community, or business organization concerned with the provision of transition services to children with disabilities; and

"(x) representatives from the State juvenile and adult corrections agencies.

"(C) SPECIAL RULE.—A majority of the members of the panel shall be individuals with disabilities ages birth through 26 or parents of such individuals.

"(D) DUTIES.—The advisory panel shall—

"(i) advise the State educational agency of unmet needs within the State in the education of children with disabilities;

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

"(iii) advise the State educational agency in developing evaluations and reporting on data to the Secretary under section 618;

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

"(v) advise the State educational agency in developing and implementing policies relating to the coordination of services for children with disabilities.

"(21) SUSPENSION AND EXPULSION RATES.—

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

"(i) among local educational agencies in the State; or

"(ii) compared to such rates for non-disabled children within such agencies.

"(B) REVIEW AND REVISION OF POLICIES.—If such discrepancies are occurring, the State educational agency reviews and, if appropriate, revises (or requires the affected State or local educational agency to revise) its policies, procedures, and practices relating to the development and implementation of IEPs, the use of behavioral interventions, and procedural safeguards, to ensure that such policies, procedures, and practices comply with this Act.

"(22) ACCESS TO INSTRUCTIONAL MATERIALS.—

"(A) IN GENERAL.—The State adopts the national Instructional Materials Accessibility Standard described in section 675(a) for the purposes of providing instructional materials to blind persons or other persons with print disabilities in a timely manner after the publication of the standard in the Federal Register.

"(B) PREPARATION AND DELIVERY OF FILES.—Not later than 2 years after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2003, a State educational agency, as part of any print instructional materials adoption process, procurement contract, or other practice or instrument used for

purchase of print instructional materials, enters into a written contract with the publisher of the print instructional materials to—

"(i) prepare, and on or before delivery of the print instructional materials, provide to the National Instructional Materials Access Center, established pursuant to section 675(b), electronic files containing the contents of the print instructional materials using the Instructional Materials Accessibility Standard; or

"(ii) purchase instructional materials from a publisher that are produced in or may be rendered in the specialized formats described in section 675(a)(4)(C).

"(C) ASSISTIVE TECHNOLOGY.—In carrying out subparagraph (B), the State educational agency, to the maximum extent possible, shall work collaboratively with the State agency responsible for assistive technology programs.

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

"(1) shall comply with any additional requirements of section 613(a), as if such agency were a local educational agency; and

"(2) may use amounts that are otherwise available to such agency under this part to serve those children without regard to section 613(a)(2)(A)(i) (relating to excess costs).

"(c) EXCEPTION FOR PRIOR STATE PLANS.—

"(1) IN GENERAL.—If a State has on file with the Secretary policies and procedures that demonstrate that such State meets any requirement of subsection (a), including any policies and procedures filed under this part as in effect before the effective date of the Individuals with Disabilities Education Improvement Act of 2003, the Secretary shall consider such State to have met such requirement for purposes of receiving a grant under this part.

"(2) MODIFICATIONS MADE BY STATE.—Subject to paragraph (3), an application submitted by a State in accordance with this section shall remain in effect until the State submits to the Secretary such modifications as the State determines necessary. This section shall apply to a modification to an application to the same extent and in the same manner as this section applies to the original plan.

"(3) MODIFICATIONS REQUIRED BY THE SECRETARY.—If, after the effective date of the Individuals with Disabilities Education Improvement Act of 2003, the provisions of this Act are amended (or the regulations developed to carry out this Act are amended), there is a new interpretation of this Act by a Federal court or a State's highest court, or there is an official finding of noncompliance with Federal law or regulations, then the Secretary may require a State to modify its application only to the extent necessary to ensure the State's compliance with this part.

"(d) APPROVAL BY THE SECRETARY.—

"(1) IN GENERAL.—If the Secretary determines that a State is eligible to receive a grant under this part, the Secretary shall notify the State of that determination.

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

"(A) with reasonable notice; and

"(B) with an opportunity for a hearing.

"(e) ASSISTANCE UNDER OTHER FEDERAL PROGRAMS.—Nothing in this title permits a State to reduce medical and other assistance available, or to alter eligi-

bility, under titles V and XIX of the Social Security Act with respect to the provision of a free appropriate public education for children with disabilities in the State.

"(f) BY-PASS FOR CHILDREN IN PRIVATE SCHOOLS.—

"(1) IN GENERAL.—If, on the date of enactment of the Education of the Handicapped Act Amendments of 1983, a State educational agency was prohibited by law from providing for the equitable participation in special programs of children with disabilities enrolled in private elementary schools and secondary schools as required by subsection (a)(10)(A), or if the Secretary determines that a State educational agency, local educational agency, or other entity has substantially failed or is unwilling to provide for such equitable participation, then the Secretary shall, notwithstanding such provision of law, arrange for the provision of services to such children through arrangements which shall be subject to the requirements of such subsection.

"(2) PAYMENTS.—

"(A) DETERMINATION OF AMOUNTS.—If the Secretary arranges for services pursuant to this subsection, the Secretary, after consultation with the appropriate public and private school officials, shall pay to the provider of such services

for a fiscal year an amount per child that does not exceed the amount determined by dividing—

"(i) the total amount received by the State under this part for such fiscal year; by

"(ii) the number of children with disabilities served in the prior year, as reported to the Secretary by the State under section 618.

"(B) WITHHOLDING OF CERTAIN AMOUNTS.—Pending final resolution of any investigation or complaint that may result in a determination under this subsection, the Secretary may withhold from the allocation of the affected State educational agency the amount the Secretary estimates will be necessary to pay the cost of services described in subparagraph (A).

"(C) PERIOD OF PAYMENTS.—The period under which payments are made under subparagraph (A) shall continue until the Secretary determines that there will no longer be any failure or inability on the part of the State educational agency to meet the requirements of subsection (a)(10)(A).

"(3) NOTICE AND HEARING.—

"(A) IN GENERAL.—The Secretary shall not take any final action under this subsection until the State educational agency affected by such action has had an opportunity, for at least 45 days after receiving written notice thereof, to submit written objections and to appear before the Secretary or the Secretary's designee to show cause why such action should not be taken.

"(B) REVIEW OF ACTION.—If a State educational agency is dissatisfied with the Secretary's final action after a proceeding under subparagraph (A), such agency may, not later than 60 days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings on which the Secretary based the Secretary's action, as provided in section 2112 of title 28, United States Code.

"(C) REVIEW OF FINDINGS OF FACT.—The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive, but the

court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify the Secretary's previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

"(D) JURISDICTION OF COURT OF APPEALS; REVIEW BY UNITED STATES SUPREME COURT.—Upon the filing of a petition under subparagraph (B), the United States court of appeals shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

"SEC. 613. LOCAL EDUCATIONAL AGENCY ELIGIBILITY.

"(a) IN GENERAL.—A local educational agency is eligible for assistance under this part for a fiscal year if such agency submits a plan that provides assurances to the State educational agency that the local educational agency meets each of the following conditions:

"(1) CONSISTENCY WITH STATE POLICIES.—The local educational agency, in providing for the education of children with disabilities within its jurisdiction, has in effect policies, procedures, and programs that are consistent with the State policies and procedures established under section 612.

"(2) USE OF AMOUNTS.—

"(A) IN GENERAL.—Amounts provided to the local educational agency under this part shall be expended in accordance with the applicable provisions of this part and—

"(i) shall be used only to pay the excess costs of providing special education and related services to children with disabilities;

"(ii) shall be used to supplement State, local, and other Federal funds and not to supplant such funds; and

"(iii) shall not be used, except as provided in subparagraphs (B) and (C), to reduce the level of expenditures for the education of children with disabilities made by the local educational agency from local funds below the level of those expenditures for the preceding fiscal year.

"(B) EXCEPTION.—Notwithstanding the restriction in subparagraph (A)(iii), a local educational agency may reduce the level of expenditures where such reduction is attributable to—

"(i) the voluntary departure, by retirement or otherwise, or departure for just cause, of special education personnel;

"(ii) a decrease in the enrollment of children with disabilities;

"(iii) the termination of the obligation of the agency, consistent with this part, to provide a program of special education to a particular child with a disability that is an exceptionally costly program, as determined by the State educational agency, because the child—

"(I) has left the jurisdiction of the agency;

"(II) has reached the age at which the obligation of the agency to provide a free appropriate public education to the child has terminated; or

"(III) no longer needs such program of special education; or

"(iv) the termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of school facilities.

"(C) TREATMENT OF FEDERAL FUNDS IN CERTAIN FISCAL YEARS.—

"(i) 8 PERCENT RULE.—Notwithstanding clauses (ii) and (iii) of subparagraph (A), a local educational agency may treat as local funds, for the purposes of such clauses, not more than 8 percent of the amount of funds the local educational agency receives under this part.

"(ii) 40 PERCENT RULE.—Notwithstanding clauses (ii) and (iii) of subparagraph (A), for any fiscal year for which States are allocated the maximum amount of grants pursuant to section 611(a)(2), a local educational agency may treat as local funds, for the purposes of such clauses, not more than 40 percent of the amount of funds the local educational agency receives under this part, subject to clause (iv).

"(iii) EARLY INTERVENING SERVICES.—

"(I) 8 PERCENT RULE.—If a local educational agency exercises authority pursuant to clause (i), the 8 percent funds shall be counted toward the percentage and amount of funds that may be used to provide early intervening educational services pursuant to subsection (f).

"(II) 40 PERCENT RULE.—If a local educational agency exercises authority pursuant to clause (ii), the local educational agency shall use an amount of the 40 percent funds from clause (ii) that represents 15 percent of the total amount of funds the local educational agency receives under this part, to provide early intervening educational services pursuant to subsection (f).

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

"(I) clauses (ii) and (iii) of subparagraph (A); and

"(II) the provision of the local share of costs for title XIX of the Social Security Act.

"(v) REPORT.—For each fiscal year in which a local educational agency exercises its authority pursuant to this subparagraph and treats Federal funds as local funds, the local educational agency shall report to the State educational agency the amount of funds so treated and the activities that were funded with such funds.

"(D) SCHOOLWIDE PROGRAMS UNDER TITLE I OF THE ESEA.—Notwithstanding subparagraph (A) or any other provision of this part, a local educational agency may use funds received under this part for any fiscal year to carry out a schoolwide program under section 1114 of the Elementary and Secondary Education Act of 1965, except that the amount so used in any such program shall not exceed—

"(i) the number of children with disabilities participating in the schoolwide program; multiplied by

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

"(II) the number of children with disabilities in the jurisdiction of that agency.

"(3) PERSONNEL DEVELOPMENT.—The local educational agency shall ensure that all personnel necessary to carry out this part are appropriately and adequately prepared, consistent with the requirements of section 612(a)(14) of this Act and section 2122 of the Elementary and Secondary Education Act of 1965.

"(4) PERMISSIVE USE OF FUNDS.—

"(A) USES.—Notwithstanding paragraph (2)(A) or section 612(a)(17)(B) (relating to commingled funds), funds provided to the local educational agency under this part may be used for the following activities:

"(i) SERVICES AND AIDS THAT ALSO BENEFIT 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 individ-

ualized education program of the child, even if 1 or more nondisabled children benefit from such services.

"(ii) EARLY INTERVENING SERVICES.—To develop and implement coordinated, early intervening educational services in accordance with subsection (f).

"(B) ADMINISTRATIVE CASE MANAGEMENT.—A local educational agency may use funds received under this part to purchase appropriate technology for recordkeeping, data collection, and related case management activities of teachers and related services personnel providing services described in the individualized education program of children with disabilities, that is needed for the implementation of such case management activities.

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

"(A) serves children with disabilities attending those charter schools in the same manner as the local educational agency serves children

with disabilities in its other schools, including providing supplementary and related services on site at the charter school to the same extent to which the local educational agency has a policy or practice of providing such services on the site to its other public schools; and

"(B) provides funds under this part to those charter schools on the same basis, including proportional distribution based on relative enrollment of children with disabilities, and at the same time, as the local educational agency distributes State, local, or a combination of State and local, funds to those charter schools under the State's charter school law.

"(6) PURCHASE OF INSTRUCTIONAL MATERIALS.—Not later than 2 years after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2003, a local educational agency, when purchasing print instructional materials, acquires these instructional materials in the same manner as a State educational agency described in section 612(a)(22).

"(7) INFORMATION FOR STATE EDUCATIONAL AGENCY.—The local educational agency shall provide the State educational agency with information nec-

essary to enable the State educational agency to carry out its duties under this part, including, with respect to paragraphs (15) and (16) of section 612(a), information relating to the performance of children with disabilities participating in programs carried out under this part.

"(8) PUBLIC INFORMATION.—The local educational agency shall make available to parents of children with disabilities and to the general public all documents relating to the eligibility of such agency under this part.

"(9) RECORDS REGARDING MIGRATORY CHILDREN WITH DISABILITIES.—The local educational agency shall cooperate in the Secretary's efforts under section 1308 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6398) to ensure the linkage of records pertaining to migratory children with a disability for the purpose of electronically exchanging, among the States, health and educational information regarding such children.

"(b) EXCEPTION FOR PRIOR LOCAL PLANS.—

"(1) IN GENERAL.—If a local educational agency or State agency has on file with the State educational agency policies and procedures that demonstrate that such local educational agency, or such State agency,

as the case may be, meets any requirement of subsection (a), including any policies and procedures filed under this part as in effect before the effective date of the Individuals with Disabilities Education Improvement Act of 2003, the State educational agency shall consider such local educational agency or State agency, as the case may be, to have met such requirement for purposes of receiving assistance under this part.

"(2) MODIFICATION MADE BY LOCAL EDUCATIONAL AGENCY.—Subject to paragraph (3), an application submitted by a local educational agency in accordance with this section shall remain in effect until the local educational agency submits to the State educational agency such modifications as the local educational agency determines necessary.

"(3) MODIFICATIONS REQUIRED BY STATE EDUCATIONAL AGENCY.—If, after the effective date of the Individuals with Disabilities Education Improvement Act of 2003, the provisions of this Act are amended (or the regulations developed to carry out this Act are amended), there is a new interpretation of this Act by Federal or State courts, or there is an official finding of noncompliance with Federal or State law or regulations, then the State educational agency may re-

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

"(c) NOTIFICATION OF LOCAL EDUCATIONAL AGENCY OR STATE AGENCY IN CASE OF INELIGIBILITY.—If the State educational agency determines that a local educational agency or State agency is not eligible under this section, then the State educational agency shall notify the local educational agency or State agency, as the case may be, of that determination and shall provide such local educational agency or State agency with reasonable notice and an opportunity for a hearing.

"(d) LOCAL EDUCATIONAL AGENCY COMPLIANCE.—

"(1) IN GENERAL.—If the State educational agency, after reasonable notice and an opportunity for a hearing, finds that a local educational agency or State agency that has been determined to be eligible under this section is failing to comply with any requirement described in subsection (a), the State educational agency shall reduce or shall not provide any further payments to the local educational agency or State agency until the State educational agency is satisfied that the local educational agency or State

agency, as the case may be, is complying with that requirement.

"(2) ADDITIONAL REQUIREMENT.—Any State agency or local educational agency in receipt of a notice described in paragraph (1) shall, by means of public notice, take such measures as may be necessary to bring the pendency of an action pursuant to this subsection to the attention of the public within the jurisdiction of such agency.

"(3) CONSIDERATION.—In carrying out its responsibilities under paragraph (1), the State educational agency shall consider any decision made in a hearing held under section 615 that is adverse to the local educational agency or State agency involved in that decision.

"(e) JOINT ESTABLISHMENT OF ELIGIBILITY.—

"(1) JOINT ESTABLISHMENT.—

"(A) IN GENERAL.—A State educational agency may require a local educational agency to establish its eligibility jointly with another local educational agency if the State educational agency determines that the local educational agency will be ineligible under this section because the local educational agency will not be able to establish and maintain programs of suffi-

cient size and scope to effectively meet the needs of children with disabilities.

"(B) CHARTER SCHOOL EXCEPTION.—A State educational agency may not require a charter school that is a local educational agency to jointly establish its eligibility under subparagraph (A) unless the charter school is explicitly permitted to do so under the State's charter school law.

"(2) AMOUNT OF PAYMENTS.—If a State educational agency requires the joint establishment of eligibility under paragraph (1), the total amount of funds made available to the affected local educational agencies shall be equal to the sum of the payments that each such local educational agency would have received under section 611(f) if such agencies were eligible for such payments.

"(3) REQUIREMENTS.—Local educational agencies that establish joint eligibility under this subsection shall—

"(A) adopt policies and procedures that are consistent with the State's policies and procedures under section 612(a); and

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

"(4) REQUIREMENTS FOR EDUCATIONAL SERVICE AGENCIES.—

"(A) IN GENERAL.—If an educational service agency is required by State law to carry out programs under this part, the joint responsibilities given to local educational agencies under this subsection shall—

"(i) not apply to the administration and disbursement of any payments received by that educational service agency; and

"(ii) be carried out only by that educational service agency.

"(B) ADDITIONAL REQUIREMENT.—Notwithstanding any other provision of this subsection, an educational service agency shall provide for the education of children with disabilities in the least restrictive environment, as required by section 612(a)(5).

"(f) EARLY INTERVENING SERVICES.—

"(1) IN GENERAL.—A local educational agency may not use more than 15 percent of the amount such agency receives under this part for any fiscal year, less any amount treated as local funds pursuant to subsection (a)(2)(C), if any, in combination with other amounts (which may include amounts other

than education funds), to develop and implement coordinated, early intervening educational services, which may include interagency financing structures, for students in kindergarten through grade 12 (with a particular emphasis on students in kindergarten through grade 3) who do not meet the definition of a child with a disability under section 602(3) but who need additional academic and behavioral support to succeed in a general education environment.

"(2) ACTIVITIES.—In implementing coordinated, early intervening educational services under this subsection, a local educational agency may carry out activities that include—

"(A) professional development (which may be provided by entities other than local educational agencies) for teachers and other school staff to enable such personnel to deliver scientifically based academic and behavioral interventions, including scientifically based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software;

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

"(C) developing and implementing interagency financing structures for the provision of such services and supports.

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

"(4) REPORTING.—Each local educational agency that develops and maintains coordinated, early intervening educational services with funds made available for this subsection, shall annually report to the State educational agency on—

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

"(B) the number of children served under this subsection who are subsequently referred to special education.

"(5) COORDINATION WITH CERTAIN PROJECTS UNDER ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965.—Funds made available to carry out this subsection may be used to carry out coordinated, early intervening educational services aligned with activities funded by, and carried out under, the Elementary and Secondary Education Act of 1965 if such funds are used to supplement, and not supplant, funds made available under the Elementary and Sec-

ondary Education Act of 1965 for the activities and services assisted under this subsection.

"(6) REPORT TO CONGRESS.—Not later than 1 year after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2003, the Comptroller General shall conduct a study on the types of services provided to children served under this subsection, and shall submit a report to Congress regarding the study.

"(g) DIRECT SERVICES BY THE STATE EDUCATIONAL AGENCY.—

"(1) IN GENERAL.—A State educational agency shall use the payments that would otherwise have been available to a local educational agency or to a State agency to provide special education and related services directly to children with disabilities residing in the area served by that local educational agency, or for whom that State agency is responsible, if the State educational agency determines that the local educational agency or State agency, as the case may be—

"(A) has not provided the information needed to establish the eligibility of such agency under this section;

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

"(C) is unable or unwilling to be consolidated with 1 or more local educational agencies in order to establish and maintain such programs; or

"(D) has 1 or more children with disabilities who can best be served by a regional or State program or service delivery system designed to meet the needs of such children.

"(2) MANNER AND LOCATION OF EDUCATION AND SERVICES.—The State educational agency may provide special education and related services under paragraph (1) in such manner and at such locations (including regional or State centers) as the State agency considers appropriate. Such education and services shall be provided in accordance with this part.

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

"(1) all children with disabilities who are participating in programs and projects funded under this

part receive a free appropriate public education, and that those children and their parents are provided all the rights and procedural safeguards described in this part; and

"(2) the agency meets such other conditions of this section as the Secretary determines to be appropriate.

"(i) DISCIPLINARY INFORMATION.—The State may require that a local educational agency include in the records of a child with a disability a statement of any current or previous disciplinary action that has been taken against the child and transmit such statement to the same extent that such disciplinary information is included in, and transmitted with, the student records of nondisabled children. The statement may include a description of any behavior engaged in by the child that required disciplinary action, a description of the disciplinary action taken, and any other information that is relevant to the safety of the child and other individuals involved with the child. If the State adopts such a policy, and the child transfers from 1 school to another, the transmission of any of the child's records shall include both the child's current individualized education program and any such statement of current or previous disciplinary action that has been taken against the child.

"(j) STATE AGENCY FLEXIBILITY.—

"(1) TREATMENT OF FEDERAL FUNDS IN CERTAIN FISCAL YEARS.—If a State educational agency pays or reimburses local educational agencies within the State for not less than 80 percent of the non-Federal share of the costs of special education and related services, or the State is the sole provider of free appropriate public education or direct services pursuant to section 612(b), then the State educational agency, notwithstanding sections 612(a) (17) and (18) and 612(b), may treat funds allocated pursuant to section 611 as general funds available to support the educational purposes described in paragraph (2) (A) and (B).

"(2) CONDITIONS.—A State educational agency may use funds in accordance with paragraph (1) subject to the following conditions:

"(A) 8 PERCENT RULE.—A State educational agency may treat not more than 8 percent of the funds the State educational agency receives under this part as general funds to support any educational purpose described in the Elementary and Secondary Education Act of 1965, needs-based student or teacher higher edu-

cation programs, or the non-Federal share of costs of title XIX of the Social Security Act.

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

"(C) REQUIREMENT.—A State educational agency may exercise its authority pursuant to subparagraph (B) only if the State educational agency uses an amount of the 40 percent funds from subparagraph (B) that represents 15 percent of the total amount of funds the State educational agency receives under this part, to provide, or to pay or reimburse local educational agencies for providing, early intervening prereferral services pursuant to subsection (f).

"(2) PROHIBITION.—Notwithstanding subsection (a), if the Secretary determines that a State educational agency is unable to establish, maintain, or oversee programs of free appropriate public education that meet the requirements of this part, then the Secretary shall prohibit the State educational agency from treating funds allocated under this part as general funds pursuant to paragraph (1).

"(3) REPORT.—For each fiscal year for which a State educational agency exercises its authority pursuant to paragraph (1) and treats Federal funds as general funds, the State educational agency shall report to the Secretary the amount of funds so treated and the activities that were funded with such funds.

"SEC. 614. EVALUATIONS, ELIGIBILITY DETERMINATIONS, INDIVIDUALIZED EDUCATION PROGRAMS, AND EDUCATIONAL PLACEMENTS.

"(a) EVALUATIONS AND REEVALUATIONS.—

"(1) INITIAL EVALUATIONS.—

"(A) IN GENERAL.—A State educational agency, other State agency, or local educational agency shall conduct a full and individual initial evaluation in accordance with this paragraph and subsection (b), before the initial pro-

vision of special education and related services to a child with a disability under this part.

"(B) REQUEST FOR INITIAL EVALUATION.—Consistent with subparagraph (D), either a parent of a child, or a State educational agency, other State agency, or local educational agency may initiate a request for an initial evaluation to determine if the child is a child with a disability.

"(C) PROCEDURES.—Such initial evaluation shall consist of procedures—

"(i) to determine whether a child is a child with a disability (as defined in section 602(3)) within 60 days of receiving parental consent for the evaluation, or, if the State has established a timeframe within which the evaluation must be conducted, within such timeframe; and

"(ii) to determine the educational needs of such child.

"(D) PARENTAL CONSENT.—

"(i) IN GENERAL.—The agency proposing to conduct an initial evaluation to determine if the child qualifies as a child with a disability as defined in section

602(3) (A) or (B) shall obtain an informed consent from the parent of such child before the evaluation is conducted. Parental consent for evaluation shall not be construed as consent for placement for receipt of special education and related services.

"(ii) REFUSAL.—If the parents of such child refuse consent for the evaluation, the agency may continue to pursue an evaluation by utilizing the mediation and due process procedures under section 615, except to the extent inconsistent with State law relating to parental consent.

"(iii) REFUSAL OR FAILURE TO CONSENT.—If the parent of a child does not provide informed consent to the receipt of special education and related services, or the parent fails to respond to a request to provide the consent, the local educational agency shall not be considered to be in violation of the requirement to make available a free appropriate public education to the child for the failure to provide the special education and related services for which the

local educational agency requests such informed consent.

"(2) REEVALUATIONS.—

"(A) IN GENERAL.—A local educational agency shall ensure that a reevaluation of each child with a disability is conducted in accordance with subsections (b) and (c)—

"(i) if the local educational agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or

"(ii) if the child's parents or teacher requests a reevaluation.

"(B) LIMITATION.—A reevaluation conducted under subparagraph (A) shall occur—

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

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

"(b) EVALUATION PROCEDURES.—

"(1) NOTICE.—The local educational agency shall provide notice to the parents of a child with a

disability, in accordance with subsections (b)(3), (b)(4), and (c) of section 615, that describes any evaluation procedures such agency proposes to conduct.

"(2) CONDUCT OF EVALUATION.—In conducting the evaluation, the local educational agency shall—

"(A) use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent, that may assist in determining—

"(i) whether the child is a child with a disability; and

"(ii) the content of the child's individualized education program, including information related to enabling the child to be involved in and progress in the general curriculum, or for preschool children, to participate in appropriate activities;

"(B) not use any single procedure, measure, or assessment as the sole criterion for determining whether a child is a child with a disability or determining an appropriate educational program for the child; and

"(C) use technically sound instruments that may assess the relative contribution of cognitive

and behavioral factors, in addition to physical or developmental factors.

"(3) ADDITIONAL REQUIREMENTS.—Each local educational agency shall ensure that—

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

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

"(ii) are provided and administered, to the extent practicable, in the language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally;

"(iii) are used for purposes for which the assessments or measures are valid and reliable;

"(iv) are administered by trained and knowledgeable personnel; and

"(v) are administered in accordance with any instructions provided by the producer of such tests;

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

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

"(4) DETERMINATION OF ELIGIBILITY.—Upon completion of administration of tests and other evaluation materials—

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

"(B) a copy of the evaluation report and the documentation of determination of eligibility shall be given to the parent.

"(5) SPECIAL RULE FOR ELIGIBILITY DETERMINATION.—In making a determination of eligibility under paragraph (4)(A), a child shall not be determined to be a child with a disability if the determinant factor for such determination is—

"(A) lack of scientifically based instruction in reading;

"(B) lack of instruction in mathematics; or

"(C) limited English proficiency.

"(6) SPECIFIC LEARNING DISABILITIES.—

"(A) IN GENERAL.—Notwithstanding section 607(b), when determining whether a child has a specific learning disability as defined in section 602(29), a local educational agency shall not be required to take into consideration whether a child has a severe discrepancy between achievement and intellectual ability in oral expression, listening comprehension, written expression, basic reading skill, reading comprehension, mathematical calculation, or mathematical reasoning.

"(B) ADDITIONAL AUTHORITY.—In determining whether a child has a specific learning disability, a local educational agency may use a process that determines if the child responds to scientific, research-based intervention as a part of the evaluation procedures described in paragraphs (2) and (3).

"(c) ADDITIONAL REQUIREMENTS FOR EVALUATION AND REEVALUATIONS.—

"(1) REVIEW OF EXISTING EVALUATION DATA.—As part of an initial evaluation (if appropriate) and as part of any reevaluation under this section, the IEP Team described in subsection (d)(1)(B) and other qualified professionals, as appropriate, shall—

"(A) review existing evaluation data on the child, including evaluations and information provided by the parents of the child, current classroom-based assessments, and observations, and teacher and related services providers observations; and

"(B) on the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine—

"(i) whether the child has a particular category of disability, as described in section 602(3), or, in case of a reevaluation of a child, whether the child continues to have such a disability;

"(ii) the present levels of performance and educational needs of the child;

"(iii) whether the child needs special education and related services, or in the case of a reevaluation of a child, whether the child continues to need special education and related services; and

"(iv) whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out

in the individualized education program of the child and to participate, as appropriate, in the general curriculum.

"(2) SOURCE OF DATA.—The local educational agency shall administer such tests and other evaluation materials and procedures as may be needed to produce the data identified by the IEP Team under paragraph (1)(B).

"(3) PARENTAL CONSENT.—Each local educational agency shall obtain informed parental consent, in accordance with subsection (a)(1)(D), prior to conducting any reevaluation of a child with a disability, except that such informed parental consent need not be obtained if the local educational agency can demonstrate that the local educational agency had taken reasonable measures to obtain such consent and the child's parent has failed to respond.

"(4) REQUIREMENTS IF ADDITIONAL DATA ARE NOT NEEDED.—If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child is or continues to be a child with a disability, the local educational agency—

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

"(i) that determination and the reasons for the determination; and

"(ii) the right of such parents to request an assessment to determine whether the child is or continues to be a child with a disability; and

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

"(5) EVALUATIONS BEFORE CHANGE IN ELIGIBILITY.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), a local educational agency shall evaluate a child with a disability in accordance with this section before determining that the child is no longer a child with a disability.

"(B) EXCEPTION.—

"(i) IN GENERAL.—The evaluation described in subparagraph (A) shall not be required before the termination of a child's eligibility under this part due to graduation from secondary school with a regular diploma, or to exceeding the age eligibility for

a free appropriate public education under State law.

"(ii) SUMMARY OF PERFORMANCE.—For a child whose eligibility under this part terminates under circumstances described in clause (i), a local educational agency shall provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals.

"(d) INDIVIDUALIZED EDUCATION PROGRAMS.—

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

"(A) INDIVIDUALIZED EDUCATION PROGRAM.—

"(i) IN GENERAL.—The term 'individualized education program' or 'IEP' means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with this section and that includes—

"(I) a statement of the child's present levels of academic achievement and functional performance, including—

"(aa) how the child's disability affects the child's involvement and progress in the general curriculum; or

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

"(II) a statement of measurable annual goals, including academic and functional goals, designed to—

"(aa) meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general curriculum; and

"(bb) meet each of the child's other educational needs that result from the child's disability;

"(III) a description of how the child's progress toward meeting the annual goals described in subclause (II) will be measured and when periodic reports on the progress the child is making toward meeting the annual goals

(such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;

"(IV) a statement of the special education and related services, and supplementary aids and services, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child—

"(aa) to advance appropriately toward attaining the annual goals;

"(bb) to be involved in and make progress in the general curriculum in accordance with subclause (I) and to participate in extracurricular and other nonacademic activities; and

"(cc) to be educated and participate with other children with disabilities and nondisabled chil-

dren in the activities described in this paragraph;

"(V) an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in subclause (IV)(cc);

"(VI)(aa) a statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments consistent with section 612(a)(16)(A); and

"(bb) if the IEP Team determines that the child shall take an alternate assessment on a particular State or districtwide assessment of student achievement, a statement of why—

"(AA) the child cannot participate in the regular assessment; and

"(BB) the particular alternate assessment selected is appropriate for the child;

"(VII) the projected date for the beginning of the services and modifications described in subclause (IV), and the anticipated frequency, location, and duration of those services and modifications; and

"(VIII) beginning not later than the first IEP to be in effect when the child is 14, and updated annually thereafter—

"(aa) appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills;

"(bb) the transition services (including courses of study) needed by the child to reach those goals, including services to be provided by other agencies when needed; and

"(cc) beginning at least 1 year before the child reaches the

age of majority under State law, a statement that the child has been informed of the child's rights under this title, if any, that will transfer to the child on reaching the age of majority under section 615(m).

"(ii) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to require—

"(I) that additional information be included in a child's IEP beyond what is explicitly required in this section; and

"(II) the IEP Team to include information under 1 component of a child's IEP that is already contained under another component of such IEP.

"(B) INDIVIDUALIZED EDUCATION PROGRAM TEAM.—The term 'individualized education program team' or 'IEP Team' means a group of individuals composed of—

"(i) the parents of a child with a disability;

"(ii) at least 1 regular education teacher of such child (if the child is, or may be, participating in the regular education environment);

"(iii) at least 1 special education teacher, or where appropriate, at least 1 special education provider of such child;

"(iv) a representative of the local educational agency who—

"(I) is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;

"(II) is knowledgeable about the general curriculum; and

"(III) is knowledgeable about the availability of resources of the local educational agency;

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

"(vi) at the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the

child, including related services personnel as appropriate; and

"(vii) whenever appropriate, the child with a disability.

"(C) IEP TEAM ATTENDANCE.—

"(i) ATTENDANCE NOT NECESSARY.—A member of the IEP Team shall not be required to attend an IEP meeting, in whole or in part, if that member, the parent of a child with a disability, and the local educational agency agree that the attendance of such member is not necessary because no modification to the member's area of the curriculum or related services is being modified or discussed in the meeting.

"(ii) EXCUSAL.—A member of the IEP Team may be excused from attending an IEP meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if—

"(I) that member, the parent, and the local educational agency consent to the excusal; and

"(II) the member submits input into the development of the IEP prior to the meeting.

"(iii) WRITTEN AGREEMENT AND CONSENT REQUIRED.—A parent's agreement under clause (i) and consent under clause (ii) shall be in writing.

"(2) REQUIREMENT THAT PROGRAM BE IN EFFECT.—

"(A) IN GENERAL.—At the beginning of each school year, each local educational agency, State educational agency, or other State agency, as the case may be, shall have in effect, for each child with a disability in its jurisdiction, an individualized education program, as defined in paragraph (1)(A).

"(B) PROGRAM FOR CHILD AGED 3 THROUGH 5.—In the case of a child with a disability aged 3 through 5 (or, at the discretion of the State educational agency, a 2-year-old child with a disability who will turn age 3 during the school year), an individualized family service plan that contains the material described in section 636, and that is developed in accordance

with this section, may serve as the IEP of the child if using that plan as the IEP is—

"(i) consistent with State policy; and

"(ii) agreed to by the agency and the child's parents.

"(3) DEVELOPMENT OF IEP.—

"(A) IN GENERAL.—In developing each child's IEP, the IEP Team, subject to subparagraph (C), shall consider—

"(i) the strengths of the child;

"(ii) the concerns of the parents for enhancing the education of their child;

"(iii) the results of the initial evaluation or most recent evaluation of the child; and

"(iv) the academic, developmental, and functional needs of the child.

"(B) CONSIDERATION OF SPECIAL FACTORS.—The IEP Team shall—

"(i) in the case of a child whose behavior impedes the child's learning or that of others, provide for positive behavioral interventions and supports, and other strategies to address that behavior;

"(ii) in the case of a child with limited English proficiency, consider the language needs of the child as such needs relate to the child's IEP;

"(iii) in the case of a child who is blind or visually impaired—

"(I) provide for instruction in Braille and the use of Braille unless the IEP Team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child; and

"(II) consider, when appropriate, instructional services related to functional performance skills, orientation and mobility, and skills in the use of assistive technology devices, including low vision devices;

"(iv) consider the communication needs of the child, and in the case of a child

who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and

"(v) consider whether the child requires assistive technology devices and services.

"(C) REQUIREMENT WITH RESPECT TO REGULAR EDUCATION TEACHER.—A regular education teacher of the child, as a member of the IEP Team shall, to the extent appropriate, participate in the development of the IEP of the child, including the determination of appropriate positive behavioral interventions and supports, and other strategies, and the determination of supplementary aids and services, program modifications, and support for school personnel consistent with paragraph (1)(A)(i)(IV).

"(D) AGREEMENT.—In making changes to a child's IEP after the annual IEP meeting for a school year, the parent of a child with a dis-

ability and the local educational agency may agree not to convene an IEP meeting for the purposes of making such changes, and instead may develop a written document to amend or modify the child's current IEP.

"(E) CONSOLIDATION OF IEP TEAM MEETINGS.—To the extent possible, the local educational agency shall encourage the consolidation of reevaluations of a child with IEP Team meetings for the child.

"(4) REVIEW AND REVISION OF IEP.—

"(A) IN GENERAL.—The local educational agency shall ensure that, subject to subparagraph (B), the IEP Team—

"(i) reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and

"(ii) revise the IEP as appropriate to address—

"(I) any lack of expected progress toward the annual goals and in the general curriculum, where appropriate;

"(II) the results of any reevaluation conducted under this section;

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

"(IV) the child's anticipated needs; or

"(V) other matters.

"(B) REQUIREMENT WITH RESPECT TO REGULAR EDUCATION TEACHER.—A regular education teacher of the child, as a member of the IEP Team, shall, consistent with paragraph (1)(C), participate in the review and revision of the IEP of the child.

"(5) THREE-YEAR IEP.—

"(A) DEVELOPMENT OF 3-YEAR IEP.—The local educational agency may offer a child with a disability who has reached the age of 18, the option of developing a comprehensive 3-year IEP. With the consent of the parent, when appropriate, the IEP Team shall develop an IEP, as described in paragraphs (1) and (3), that is designed to serve the child for the final 3-year transition period, which includes a statement of—

"(i) measurable goals that will enable the child to be involved in and make

progress in the general education curriculum and that will meet the child's transitional and postsecondary needs that result from the child's disability; and

"(ii) measurable annual goals for measuring progress toward meeting the postsecondary goals described in clause (i).

"(B) REVIEW AND REVISION OF 3-YEAR IEP.—

"(i) REQUIREMENT.—Each year the local educational agency shall ensure that the IEP Team—

"(I) provides an annual review of the child's IEP to determine the child's current levels of progress and determine whether the annual goals for the child are being achieved; and

"(II) revises the IEP, as appropriate, to enable the child to continue to meet the measurable transition goals set out in the IEP.

"(ii) COMPREHENSIVE REVIEW.—If the review under clause (i) determines that the child is not making sufficient progress toward the goals described in subparagraph

(A), the local educational agency shall ensure that the IEP Team provides a review, within 30 calendar days, of the IEP under paragraph (4).

"(iii) PREFERENCE.—At the request of the child, or when appropriate, the parent, the IEP Team shall conduct a review of the child's 3-year IEP under paragraph (4) rather than an annual review under subparagraph (B)(i).

"(6) FAILURE TO MEET TRANSITION OBJECTIVES.—If a participating agency, other than the local educational agency, fails to provide the transition services described in the IEP in accordance with paragraph (1)(A)(i)(VIII), the local educational agency shall reconvene the IEP Team to identify alternative strategies to meet the transition objectives for the child set out in that program.

"(7) CHILDREN WITH DISABILITIES IN ADULT PRISONS.—

"(A) IN GENERAL.—The following requirements shall not apply to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons:

"(i) The requirements contained in section 612(a)(16) and paragraph (1)(A)(i)(V) (relating to participation of children with disabilities in general assessments).

"(ii) The requirements of items (aa) and (bb) of paragraph (1)(A)(i)(VIII) (relating to transition planning and transition services), do not apply with respect to such children whose eligibility under this part will end, because of their age, before they will be released from prison.

"(B) ADDITIONAL REQUIREMENT.—If a child with a disability is convicted as an adult under State law and incarcerated in an adult prison, the child's IEP Team may modify the child's IEP or placement notwithstanding the requirements of sections 612(a)(5)(A) and 614(d)(1)(A) if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

"(e) EDUCATIONAL PLACEMENTS.—Each local educational agency or State educational agency shall ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child.

"(f) ALTERNATIVE MEANS OF MEETING PARTICIPATION.—When conducting IEP Team meetings and placement meetings pursuant to this section, the parent of a child with a disability and a local educational agency may agree to use alternative means of meeting participation, such as video conferences and conference calls.

"SEC. 615. PROCEDURAL SAFEGUARDS.

"(a) ESTABLISHMENT OF PROCEDURES.—Any State educational agency, State agency, or local educational agency that receives assistance under this part shall establish and maintain procedures in accordance with this section to ensure that children with disabilities and their parents are guaranteed procedural safeguards with respect to the provision of free appropriate public education by such agencies.

"(b) TYPES OF PROCEDURES.—The procedures required by this section shall include—

"(1) an opportunity for the parents of a child with a disability to examine all records relating to such child and to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to such child, and to obtain an independent educational evaluation of the child;

"(2) procedures to protect the rights of the child whenever the parents of the child are not known, the agency cannot, after reasonable efforts, locate the parents, or the child is a ward of the State, including the assignment of an individual (who shall not be an employee of the State educational agency, the local educational agency, or any other agency that is involved in the education or care of the child) to act as a surrogate for the parents;

"(3) written prior notice to the parents of the child, in accordance with subsection (c)(1), whenever the local educational agency—

"(A) proposes to initiate or change; or

"(B) refuses to initiate or change,

the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child;

"(4) procedures designed to ensure that the notice required by paragraph (3) is in the native language of the parents, unless it clearly is not feasible to do so;

"(5) an opportunity for mediation in accordance with subsection (e);

"(6) an opportunity for either party to present complaints with respect to any matter relating to the

identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child;

"(7)(A) procedures that require either party, or the attorney representing a party, to provide due process complaint notice in accordance with subsection (c)(2) (which shall remain confidential)—

"(i) to the other party, in the complaint filed under paragraph (6), and forward a copy of such notice to the State educational agency; and

"(ii) that shall include—

"(I) the name of the child, the address of the residence of the child, and the name of the school the child is attending;

"(II) in the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the child and the name of the school the child is attending;

"(III) a description of the nature of the problem of the child relating to such proposed initiation or change, including facts relating to such problem; and

"(IV) a proposed resolution of the problem to the extent known and available to the party at the time; and

"(B) a requirement that a party may not have a due process hearing until the party, or the attorney representing the party, files a notice that meets the requirements of subparagraph (A)(ii);

"(8) a requirement that the local educational agency shall send a prior written notice pursuant to subsection (c)(1) in response to a parent's due process complaint notice under paragraph (7) if the local educational agency has not sent such a prior written notice to the parent regarding the subject matter contained in the parent's due process complaint notice; and

"(9) procedures that require the State educational agency to develop a model form to assist parents in filing a complaint and due process complaint notice in accordance with paragraphs (6) and (7), respectively.

"(c) NOTIFICATION REQUIREMENTS.—

"(1) CONTENT OF PRIOR WRITTEN NOTICE.—The prior written notice of the local educational agency required by subsection (b)(3) shall include—

"(A) a description of the action proposed or refused by the agency;

"(B) an explanation of why the agency proposes or refuses to take the action;

"(C) a description of any other options that the agency considered and the reasons why those options were rejected;

"(D) a description of each evaluation procedure, test, record, or report the agency used as a basis for the proposed or refused action;

"(E) a description of any other factors that are relevant to the agency's proposal or refusal;

"(F) a statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; and

"(G) sources for parents to contact to obtain assistance in understanding the provisions of this part.

"(2) DUE PROCESS COMPLAINT NOTICE.—

"(A) IN GENERAL.—The due process complaint notice required under subsection (b)(7)(A) shall be deemed to be sufficient unless the party

receiving the notice notifies the hearing officer and the other party in writing that the receiving party believes the notice has not met the requirements of that subsection.

"(B) TIMING.—The party sending a hearing officer notification under subparagraph (A) shall send the notification within 20 days of receiving the complaint.

"(C) DETERMINATION.—Within 5 days of receipt of the notification provided under subparagraph (B), the hearing officer shall make a determination on the face of the notice of whether the notification meets the requirements of subsection (b)(7)(A), and shall immediately notify both parties in writing of such determination.

"(D) PARENT'S AMENDED NOTICE OF COMPLAINT.—

"(i) IN GENERAL.—A parent may amend the parent's due process complaint notice only if—

"(I) the public agency consents in writing to such amendment and is given the opportunity to resolve the complaint through a meeting held pursuant to subsection (f)(1)(B); or

"(II) the hearing officer grants permission, but may do so only before a due process hearing occurs.

"(ii) APPLICABLE TIMELINE.—The applicable timeline for a due process hearing under this part shall recommence at the time the party files an amended notice.

"(d) PROCEDURAL SAFEGUARDS NOTICE.—

"(1) IN GENERAL.—A copy of the procedural safeguards available to the parents of a child with a disability shall be given to the parents only 1 time a year, except that a copy also shall be given to the parents—

"(A) upon initial referral or parental request for evaluation;

"(B) upon registration of a complaint under subsection (b)(6); and

"(C) upon request by a parent.

"(2) CONTENTS.—The procedural safeguards notice shall include a full explanation of the procedural safeguards, written in the native language of the parents, unless it clearly is not feasible to do so, and written in an easily understandable manner, available under this section and under regulations promulgated by the Secretary relating to—

"(A) independent educational evaluation;

"(B) prior written notice;

"(C) parental consent;

"(D) access to educational records;

"(E) the opportunity to present and resolve complaints, including—

"(i) the time period in which to make a complaint;

"(ii) the opportunity for the agency to resolve the complaint; and

"(iii) the availability of mediation;

"(F) the child's placement during pendency of due process proceedings;

"(G) procedures for students who are subject to placement in an interim alternative educational setting;

"(H) requirements for unilateral placement by parents of children in private schools at public expense;

"(I) due process hearings, including requirements for disclosure of evaluation results and recommendations;

"(J) State-level appeals (if applicable in that State);

"(K) civil actions, including the time period in which to file such actions; and

"(L) attorney's fees.

"(e) MEDIATION.—

"(1) IN GENERAL.—Any State educational agency or local educational agency that receives assistance under this part shall ensure that procedures are established and implemented to allow parties to disputes involving any matter, including matters arising prior to the filing of a complaint pursuant to subsection (b)(6), to resolve such disputes through a mediation process.

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

"(A) The procedures shall ensure that the mediation process—

"(i) is voluntary on the part of the parties;

"(ii) is not used to deny or delay a parent's right to a due process hearing under subsection (f), or to deny any other rights afforded under this part; and

"(iii) is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

"(B) OPPORTUNITY TO MEET WITH A DISINTERESTED PARTY.—A local educational agency or a State agency may establish procedures to offer to parents and schools who choose not to use the mediation process, an opportunity to meet, at a time and location convenient to the parents, with a disinterested party who is under contract with—

"(i) a parent training and information center or community parent resource center in the State established under section 671 or 672; or

"(ii) an appropriate alternative dispute resolution entity,

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

"(C) LIST OF QUALIFIED MEDIATORS.—The State shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.

"(D) COSTS.—The State shall bear the cost of the mediation process, including the costs of meetings described in subparagraph (B).

"(E) SCHEDULING AND LOCATION.—Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute.

"(F) WRITTEN MEDIATION AGREEMENT.—An agreement reached by the parties to the dispute in the mediation process shall be set forth in a written mediation agreement that is enforceable in any State court of competent jurisdiction or in a district court of the United States.

"(G) MEDIATION DISCUSSIONS.—Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings, and the parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of such process.

"(f) IMPARTIAL DUE PROCESS HEARING.—

"(1) IN GENERAL.—

"(A) HEARING.—Whenever a complaint has been received under subsection (b)(6) or (k), the parents or the local educational agency involved

in such complaint shall have an opportunity for an impartial due process hearing, which shall be conducted by the State educational agency or by the local educational agency, as determined by State law or by the State educational agency.

"(B) OPPORTUNITY TO RESOLVE COMPLAINT.—

"(i) PRELIMINARY MEETING.—Prior to the opportunity for an impartial due process hearing under subparagraph (A), the local educational agency shall convene a meeting with the parents and the IEP Team—

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

"(II) which shall include a representative of the public agency who has decisionmaking authority on behalf of such agency;

"(III) which may not include an attorney of the local educational agency unless the parent is accompanied by an attorney; and

"(IV) where the parents of the child discuss their complaint, and the

specific issues that form the basis of the complaint, and the local educational agency is provided the opportunity to resolve the complaint,

unless the parents and the local educational agency agree in writing to waive such meeting, or agree to use the mediation process described in subsection (e).

"(ii) HEARING.—If the local educational agency has not resolved the complaint to the satisfaction of the parents within 15 days of the receipt of the complaint, the due process hearing may occur, and all of the applicable timelines for a due process hearing under this part shall commence.

"(iii) WRITTEN SETTLEMENT AGREEMENT.—In the case that an agreement is reached to resolve the complaint at such meeting, the agreement shall be set forth in a written settlement agreement that is—

"(I) signed by both the parent and a representative of the public agency who has decisionmaking authority on behalf of such agency; and

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

"(2) DISCLOSURE OF EVALUATIONS AND RECOMMENDATIONS.—

"(A) IN GENERAL.—Not less than 5 business days prior to a hearing conducted pursuant to paragraph (1), each party shall disclose to all other parties all evaluations completed by that date, and recommendations based on the offering party's evaluations, that the party intends to use at the hearing.

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

"(3) LIMITATIONS ON HEARING.—

"(A) PERSON CONDUCTING HEARING.—A hearing officer conducting a hearing pursuant to paragraph (1)(A) shall, at a minimum—

"(i) not be—

"(I) an employee of the State educational agency or the local edu-

cational agency involved in the education or care of the child; or

"(II) a person having a personal or professional interest that conflicts with the person's objectivity in the hearing;

"(ii) possess a fundamental understanding of this Act, Federal and State regulations pertaining to this Act, and interpretations of this Act by State and Federal courts;

"(iii) possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and

"(iv) possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

"(B) SUBJECT MATTER OF HEARING.—The party requesting the due process hearing shall not be allowed to raise issues at the due process hearing that were not raised in the notice filed under subsection (b)(7), unless the other party agrees otherwise.

"(C) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to preclude a par-

ent from filing a separate due process complaint on an issue separate from a due process complaint already filed.

"(D) TIMELINE FOR REQUESTING HEARING.—A parent or public agency shall request an impartial due process hearing within 2 years of the date the parent or public agency knew or should have known about the alleged action that forms the basis of the complaint, or, if the State has an explicit time limitation for requesting such a hearing under this part, in such time as the State law allows.

"(E) EXCEPTION TO THE STATUTE OF LIMITATIONS.—The statute of limitations described in subparagraph (D) shall not apply if the parent was prevented from requesting the hearing due to—

"(i) failure of the local educational agency to provide prior written or procedural safeguards notices;

"(ii) false representations that the local educational agency was attempting to resolve the problem forming the basis of the complaint; or

"(iii) the local educational agency's withholding of information from parents.

"(F) DECISION OF HEARING OFFICER.—

"(i) IN GENERAL.—Subject to clause (ii), a decision made by a hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education.

"(ii) PROCEDURAL ISSUES.—In matters alleging a procedural violation, a hearing officer may find that a child did not receive a free appropriate public education only if the procedural inadequacies—

"(I) compromised the child's right to an appropriate public education;

"(II) seriously hampered the parents' opportunity to participate in the process; or

"(III) caused a deprivation of educational benefits.

"(iii) RULE OF CONSTRUCTION.—Nothing in this paragraph shall be construed to preclude a hearing officer from ordering a local educational agency to comply with procedural requirements under this section.

"(G) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to affect the right of a parent to file a complaint with the State educational agency.

"(g) APPEAL.—If the hearing required by subsection (f) is conducted by a local educational agency, any party aggrieved by the findings and decision rendered in such a hearing may appeal such findings and decision to the State educational agency. Such State educational agency shall conduct an impartial review of such decision. The officer conducting such review shall make an independent decision upon completion of such review.

"(h) SAFEGUARDS.—Any party to a hearing conducted pursuant to subsection (f) or (k), or an appeal conducted pursuant to subsection (g), shall be accorded—

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

"(2) the right to present evidence and confront, cross-examine, and compel the attendance of witnesses;

"(3) the right to a written, or, at the option of the parents, electronic verbatim record of such hearing; and

"(4) the right to a written, or, at the option of the parents, electronic findings of fact and decisions, which findings and decisions—

"(A) shall be made available to the public consistent with the requirements of section 617(b) (relating to the confidentiality of data, information, and records); and

"(B) shall be transmitted to the advisory panel established pursuant to section 612(a)(20).

"(i) ADMINISTRATIVE PROCEDURES.—

"(1) IN GENERAL.—

"(A) DECISION MADE IN HEARING.—A decision made in a hearing conducted pursuant to subsection (f) or (k) shall be final, except that any party involved in such hearing may appeal such decision under the provisions of subsection (g) and paragraph (2).

"(B) DECISION MADE AT APPEAL.—A decision made under subsection (g) shall be final, except that any party may bring an action under paragraph (2).

"(2) RIGHT TO BRING CIVIL ACTION.—

"(A) IN GENERAL.—Any party aggrieved by the findings and decision made under subsection (f) or (k) who does not have the right to an ap-

peal 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) LIMITATION.—The party bringing the action shall have 90 days from the date of the decision of the hearing officer to bring such an action, or, if the State has an explicit time limitation for bringing such action under this part, in such time as the State law allows.

"(C) ADDITIONAL REQUIREMENTS.—In any action brought under this paragraph, the court—

"(i) shall receive the records of the administrative proceedings;

"(ii) shall hear additional evidence at the request of a party; and

"(iii) basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.

"(3) JURISDICTION OF DISTRICT COURTS; ATTORNEYS' FEES.—

"(A) IN GENERAL.—The district courts of the United States shall have jurisdiction of actions brought under this section without regard to the amount in controversy.

"(B) AWARD OF ATTORNEYS' FEES.—In any action or proceeding brought under this section, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to the parents of a child with a disability who is the prevailing party.

"(C) DETERMINATION OF AMOUNT OF ATTORNEYS' FEES.—Fees awarded under this paragraph shall be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this subsection.

"(D) PROHIBITION OF ATTORNEYS' FEES AND RELATED COSTS FOR CERTAIN SERVICES.—

"(i) IN GENERAL.—Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding

under this section for services performed subsequent to the time of a written offer of settlement to a parent if—

"(I) the offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than 10 days before the proceeding begins;

"(II) the offer is not accepted within 10 days; and

"(III) the court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.

"(ii) IEP TEAM MEETINGS.—Attorneys' fees may not be awarded relating to any meeting of the IEP Team unless such meeting is convened as a result of an administrative proceeding or judicial action, or, at the discretion of the State, for a mediation described in subsection (e).

"(iii) OPPORTUNITY TO RESOLVE COMPLAINTS.—A meeting conducted pursuant to

subsection (f)(1)(B)(i) shall not be considered—

"(I) a meeting convened as a result of an administrative hearing or judicial action; or

"(II) an administrative hearing or judicial action for purposes of this paragraph.

"(E) EXCEPTION TO PROHIBITION ON ATTORNEYS' FEES AND RELATED COSTS.—Notwithstanding subparagraph (D), an award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.

"(F) REDUCTION IN AMOUNT OF ATTORNEYS' FEES.—Except as provided in subparagraph (G), whenever the court finds that—

"(i) the parent, or the parent's attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;

"(ii) the amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing

in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;

"(iii) the time spent and legal services furnished were excessive considering the nature of the action or proceeding; or

"(iv) the attorney representing the parent did not provide to the local educational agency the appropriate information in the notice of the complaint described in subsection (b)(7)(A),

the court shall reduce, accordingly, the amount of the attorneys' fees awarded under this section.

"(G) EXCEPTION TO REDUCTION IN AMOUNT OF ATTORNEYS' FEES.—The provisions of subparagraph (F) shall not apply in any action or proceeding if the court finds that the State or local educational agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of this section.

"(4) PARENTS REPRESENTING THEIR CHILDREN IN COURT.—Subject to subsection (m), and notwithstanding any other provision of Federal law regarding attorney representation (including the Federal Rules of Civil Procedure), a parent of a child with a

disability may represent the child in any action under this part in Federal or State court, without the assistance of an attorney.

"(j) MAINTENANCE OF CURRENT EDUCATIONAL PLACEMENT.—Except as provided in subsection (k)(4), during the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents otherwise agree, the child shall remain in the then-current educational placement of such child, or, if applying for initial admission to a public school, shall, with the consent of the parents, be placed in the public school program until all such proceedings have been completed.

"(k) PLACEMENT IN ALTERNATIVE EDUCATIONAL SETTING.—

"(1) AUTHORITY OF SCHOOL PERSONNEL.—

"(A) IN GENERAL.—School personnel under this section may order a change in the placement of a child with a disability who violates a code of student conduct to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 school days (to the extent such alternatives are applied to children without disabilities).

"(B) ADDITIONAL AUTHORITY.—If school personnel seek to order a change in placement that would exceed 10 school days and the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to subparagraph (C), the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner in which the procedures would be applied to children without disabilities, except as provided in section 612(a)(1).

"(C) MANIFESTATION DETERMINATION.—

"(i) IN GENERAL.—Except as provided in subparagraphs (A) and (D), within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the IEP Team shall review all relevant information in the student's file, any information provided by the parents, and teacher observations, to determine—

"(I) if the conduct in question was the result of the child's disability; or

"(II) if the conduct in question resulted from the failure to implement the IEP or to implement behavioral interventions as required by section 614(d)(3)(B)(i).

"(ii) MANIFESTATION.—If the IEP Team determines that either subclause (I) or (II) of clause (i) is applicable for the child, the conduct shall be determined to be a manifestation of the child's disability.

"(D) SPECIAL CIRCUMSTANCES.—In cases where a child—

"(i) carries or possesses a weapon to or at school, on school premises, or to or at a school function under the jurisdiction of a State or local educational agency; or

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

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

school personnel may remove a student to an interim alternative educational setting for not more than 45 school days, without regard to whether the behavior is determined to be a manifestation of the child's disability.

"(E) NOTIFICATION.—Not later than the date on which the decision to take disciplinary action is made, the local educational agency shall notify the parents of that decision, and of all procedural safeguards accorded under this section.

"(F) SERVICES.—A child with a disability who is removed from the child's current placement under subparagraph (B) or (D) shall—

"(i) continue to receive educational services pursuant to section 612(a)(1), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and

"(ii) receive behavioral intervention services as described in section 614(d)(3)(B)(i), and a functional behavioral assessment (but only if the local educational

agency did not conduct such an assessment before the violation occurred), designed to address the behavior violation so that the violation does not recur.

"(2) DETERMINATION OF SETTING.—The alternative educational setting shall be determined by the IEP Team.

"(3) APPEAL.—

"(A) IN GENERAL.—The parent of a child with a disability who disagrees with any decision regarding disciplinary action, placement, or the manifestation determination under this subsection, or a local educational agency that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others, may request a hearing.

"(B) AUTHORITY OF HEARING OFFICER.—

"(i) IN GENERAL.—If a parent of a child with a disability disagrees with a decision as described in subparagraph (A), the hearing officer may determine whether the decision regarding such action was appropriate.

"(ii) CHANGE OF PLACEMENT ORDER.—A hearing officer under this section may order a change in placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of such child is substantially likely to result in injury to the child or to others.

"(4) PLACEMENT DURING APPEALS.—When a parent requests a hearing regarding a disciplinary procedure described in paragraph (1)(B) or challenges the interim alternative educational setting or manifestation determination—

"(A) the child shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period provided for in paragraph (1)(B), whichever occurs first, unless the parent and the State or local educational agency agree otherwise; and

"(B) the State or local educational agency shall arrange for an expedited hearing, which

shall occur within 20 school days of the date the hearing is requested.

"(5) PROTECTIONS FOR CHILDREN NOT YET ELIGIBLE FOR SPECIAL EDUCATION AND RELATED SERVICES.—

"(A) IN GENERAL.—A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violates a code of student conduct, may assert any of the protections provided for in this part if the local educational agency had knowledge (as determined in accordance with this paragraph) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

"(B) BASIS OF KNOWLEDGE.—A local educational agency shall be deemed to have knowledge that a child is a child with a disability if, before the behavior that precipitated the disciplinary action occurred—

"(i) the parent of the child has expressed concern in writing (unless the parent is illiterate or has a disability that prevents compliance with the requirements con-

tained in this clause) to personnel of the appropriate educational agency that the child is in need of special education and related services;

"(ii) the parent of the child has requested an evaluation of the child pursuant to section 614;

"(iii) the teacher of the child, or other personnel of the local educational agency, has expressed concern about a pattern of behavior demonstrated by the child, to the director of special education of such agency or to other administrative personnel of the agency; or

"(iv) the child has engaged in a pattern of behavior that should have alerted personnel of the local educational agency that the child may be in need of special education and related services.

"(C) EXCEPTION.—A local educational agency shall not be deemed to have knowledge that the child has a disability if the parent of the child has not agreed to allow an evaluation of the child pursuant to section 614.

"(D) CONDITIONS THAT APPLY IF NO BASIS OF KNOWLEDGE.—

"(i) IN GENERAL.—If a local educational agency does not have knowledge that a child is a child with a disability (in accordance with subparagraph (B) or (C)) prior to taking disciplinary measures against the child, the child may be subjected to disciplinary measures applied to children without disabilities who engaged in comparable behaviors consistent with clause (ii).

"(ii) LIMITATIONS.—If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under paragraph (1), the evaluation shall be conducted in an expedited manner. If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency shall provide special education and related services in accordance with this part, except that, pending the results of the

evaluation, the child shall remain in the educational placement determined by school authorities.

"(6) REFERRAL TO AND ACTION BY LAW ENFORCEMENT AND JUDICIAL AUTHORITIES.—

"(A) CONSTRUCTION.—Nothing in this part shall be construed to prohibit an agency from reporting a crime committed by a child with a disability to appropriate authorities or to prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.

"(B) TRANSMITTAL OF RECORDS.—An agency reporting a crime committed by a child with a disability shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime.

"(7) DEFINITIONS.—For purposes of this subsection, the following definitions apply:

"(A) CONTROLLED SUBSTANCE.—The term 'controlled substance' means a drug or other substance identified under schedule I, II, III, IV, or

V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

"(B) ILLEGAL DRUG.—The term 'illegal drug' means a controlled substance but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.

"(C) WEAPON.—The term 'weapon' has the meaning given the term 'dangerous weapon' under section 930(g)(2) of title 18, United States Code.

"(D) SERIOUS BODILY INJURY.—The term 'serious bodily injury' has the meaning given the term 'serious bodily injury' under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code.

"(l) RULE OF CONSTRUCTION.—Nothing in this title shall be construed to restrict or limit the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of children with disabilities, except that before the filing of

a civil action under such laws seeking relief that is also available under this part, the procedures under subsections (f) and (g) shall be exhausted to the same extent as would be required had the action been brought under this part.

"(m) TRANSFER OF PARENTAL RIGHTS AT AGE OF MAJORITY.—

"(1) IN GENERAL.—A State that receives amounts from a grant under this part may provide that, when a child with a disability reaches the age of majority under State law (except for a child with a disability who has been determined to be incompetent under State law)—

"(A) the public agency shall provide any notice required by this section to both the individual and the parents;

"(B) all other rights accorded to parents under this part transfer to the child;

"(C) the agency shall notify the individual and the parents of the transfer of rights; and

"(D) all rights accorded to parents under this part transfer to children who are incarcerated in an adult or juvenile Federal, State, or local correctional institution.

"(2) SPECIAL RULE.—If, under State law, a child with a disability who has reached the age of

majority under State law, who has not been determined to be incompetent, but who is determined not to have the ability to provide informed consent with respect to the educational program of the child, the State shall establish procedures for appointing the parent of the child, or if the parent is not available, another appropriate individual, to represent the educational interests of the child throughout the period of eligibility of the child under this part.

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

"SEC. 616. MONITORING, TECHNICAL ASSISTANCE, AND ENFORCEMENT.

"(a) FEDERAL AND STATE MONITORING.—

"(1) IN GENERAL.—The Secretary shall—

"(A) monitor implementation of this Act through—

"(i) oversight of the States' exercise of general supervision, as required in section 612(a)(11); and

"(ii) the system of indicators, described in subsection (b)(2); and

"(B) enforce this Act in accordance with subsection (c); and

"(C) require States to monitor implementation of this Act by local educational agencies and enforce this Act in accordance with paragraph (3) of this subsection and subsection (c).

"(2) FOCUSED MONITORING.—The primary focus of Federal and State monitoring activities described in paragraph (1) shall be on improving educational results and functional outcomes for all children with disabilities, while ensuring compliance with program requirements, with a particular emphasis on those requirements that are most closely related to improving educational results for children with disabilities.

"(3) MONITORING PRIORITIES.—The Secretary shall monitor, and shall require States to monitor, the following priority areas:

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

"(B) Provision of transition services, as defined in section 602(33).

"(C) State exercise of general supervisory authority, including the effective use of complaint resolution and mediation.

"(D) Overrepresentation of racial and ethnic groups in special education and related services, to the extent the overrepresentation is the result of inappropriate policies, procedures, and practices.

"(4) PERMISSIVE AREAS OF REVIEW.—The Secretary may examine other relevant information and data, including data provided by States under section 618, and data from the State's compliance plan under subsection (b)(2)(C).

"(b) INDICATORS.—

"(1) SYSTEM.—The Secretary shall implement and administer a system of required indicators as described in paragraph (2) that measures the progress of States in improving their performance under this Act.

"(2) INDICATORS.—

"(A) IN GENERAL.—Using the performance indicators established by States under section 612(a)(15), the Secretary shall review—

"(i) the performance of children with disabilities in the State on assessments, including alternate assessments, dropout rates, and graduation rates, which for purposes of this paragraph means the number and per-

centage of students with disabilities who graduate with a regular diploma within the number of years specified in a student's IEP; and

"(ii) the performance of children with disabilities in the State on assessments, including alternate assessments, dropout rates, and graduation rates, as compared to the performance and rates for all children.

"(B) SECRETARY'S ASSESSMENT.—Based on that review and a review of the State's compliance plan under subparagraph (C), the Secretary shall assess the State's progress in improving educational results for children with disabilities.

"(C) STATE COMPLIANCE PLAN.—Not later than 1 year after the date of the enactment of the Individuals with Disabilities Education Improvement Act of 2003, each State shall have in place a compliance plan developed in collaboration with the Secretary. Each State's compliance plan shall—

"(i) include benchmarks to measure continuous progress on the priority areas described in subsection (a)(3);

"(ii) describe strategies the State will use to achieve the benchmarks; and

"(iii) be approved by the Secretary.

"(D) PUBLIC REPORTING AND PRIVACY.—

"(i) IN GENERAL.—After the Secretary approves a State's compliance plan under subparagraph (C), the State shall use the benchmarks in the plan and the indicators described in this subsection to analyze the progress of each local educational agency in the State on those benchmarks and indicators.

"(ii) REPORT.—The State shall report annually to the public on each local educational agency's progress under clause (i), except where doing so would result in the disclosure of personally identifiable information about individual children or where the available data is insufficient to yield statistically reliable information.

"(3) DATA COLLECTION AND ANALYSIS.—The Secretary shall—

"(A) review the data collection and analysis capacity of States to ensure that data and information determined necessary for implementation

of this subsection is collected, analyzed, and accurately reported to the Secretary; and

"(B) provide technical assistance to improve the capacity of States to meet these data collection requirements.

"(c) COMPLIANCE AND ENFORCEMENT.—

"(1) IN GENERAL.—The Secretary shall examine relevant State information and data annually, to determine whether the State is making satisfactory progress toward improving educational results for children with disabilities using the indicators described in subsection (b)(2)(A) and the benchmarks established in the State compliance plan under subsection (b)(2)(C), and is in compliance with the provisions of this Act.

"(2) LACK OF SATISFACTORY PROGRESS BY A STATE.—

"(A) IN GENERAL.—If after examining data, as provided in subsection (b)(2) (A) and (C), the Secretary determines that a State failed to make satisfactory progress in meeting the indicators described in subsection (b)(2)(A) or has failed to meet the benchmarks described in subsection (b)(2)(C) for 2 consecutive years after the State has developed its compliance plan, the Sec-

retary shall notify the State that the State has failed to make satisfactory progress, and shall take 1 or more of the following actions:

"(i) Direct the use of State level funds for technical assistance, services, or other expenditures to ensure that the State resolves the area or areas of unsatisfactory progress.

"(ii) Withhold not less than 20, but not more than 50, percent of the State's funds for State administration and activities for the fiscal year under section 611(e), after providing the State the opportunity to show cause why the withholding should not occur, until the Secretary determines that sufficient progress has been made in improving educational results for children with disabilities.

"(B) ADDITIONAL SECRETARIAL ACTION.—If, at the end of the 5th year after the Secretary has approved the compliance plan that the State has developed under subsection (b)(2)(C), the Secretary determines that a State failed to meet the benchmarks in the State compliance plan and make satisfactory progress in improving

educational results for children with disabilities pursuant to the indicators described in subsection (b)(2)(A), the Secretary shall take 1 or more of the following actions:

"(i) Seek to recover funds under section 452 of the General Education Provisions Act.

"(ii) After providing reasonable notice and an opportunity for a hearing to the State educational agency involved, withhold, in whole or in part, any further payments to the State under this part pursuant to subsection (c)(5).

"(iii) After providing reasonable notice and an opportunity for a hearing to the State educational agency involved, refer the matter for appropriate enforcement action, which may include referral to the Department of Justice.

"(iv) Pending the outcome of any hearing to withhold payments under clause (ii), the Secretary may suspend payments to a recipient, suspend the authority of the recipient to obligate Federal funds, or both, after such recipient has been given reason-

able notice and an opportunity to show cause why future payments or authority to obligate Federal funds should not be suspended.

"(C) SUBSTANTIAL NONCOMPLIANCE.—Notwithstanding subparagraph (B), at any time that the Secretary determines that a State is not in substantial compliance with any provision of this part or that there is a substantial failure to comply with any condition of a local agency's or State agency's eligibility under this part, the Secretary shall take 1 or more of the following actions:

"(i) Request that the State prepare a corrective action plan or improvement plan if the Secretary determines that the State should be able to correct the problem within 1 year.

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

"(iii) Require the State to enter into a compliance agreement under section 457 of the General Education Provisions Act, if the Secretary has reason to believe that the

State cannot correct the problem within 1 year.

"(iv) Recovery of funds under section 452 of the General Education Provisions Act.

"(v) After providing reasonable notice and an opportunity for a hearing to the State educational agency involved, withhold, in whole or in part, any further payments to the State under this part.

"(vi) After providing reasonable notice and an opportunity for a hearing to the State educational agency involved, refer the matter for appropriate enforcement action, which may include referral to the Department of Justice.

"(vii) Pending the outcome of any hearing to withhold payments under clause (v), the Secretary may suspend payments to a recipient, suspend the authority of the recipient to obligate Federal funds, or both, after such recipient has been given reasonable notice and an opportunity to show cause why future payments or authority to

obligate Federal funds should not be suspended.

"(3) EGREGIOUS NONCOMPLIANCE.—At any time that the Secretary determines that a State is in egregious noncompliance or is willfully disregarding the provisions of this Act, the Secretary shall take such additional enforcement actions as the Secretary determines to be appropriate from among those actions specified in paragraph (2)(C), and, additionally, may impose 1 or more of the following sanctions upon that State:

"(A) Institute a cease and desist action under section 456 of the General Education Provisions Act.

"(B) Refer the case to the Office of the Inspector General.

"(4) REPORT TO CONGRESS.—The Secretary shall report to Congress within 30 days of taking enforcement action pursuant to paragraph (2) (B) or (C), or (3), on the specific action taken and the reasons why enforcement action was taken.

"(5) NATURE OF WITHHOLDING.—If the Secretary withholds further payments under paragraphs (2)(B)(ii) and (2)(C)(v), the Secretary may determine that such withholding will be limited to programs or

projects, or portions thereof, affected by the failure, or that the State educational agency shall not make further payments under this part to specified local educational agencies or State agencies affected by the failure. Until the Secretary is satisfied that there is no longer any failure to make satisfactory progress as specified in paragraph (2)(B), or to comply with the provisions of this part, as specified in paragraph (2)(C), payments to the State under this part shall be withheld in whole or in part, or payments by the State educational agency under this part shall be limited to local educational agencies and State agencies whose actions did not cause or were not involved in the failure, as the case may be. Any State educational agency, State agency, or local educational agency that has received notice under paragraph (2)(B) or (2)(C) shall, by means of a public notice, take such measures as may be necessary to bring the pendency of an action pursuant to this subsection to the attention of the public within the jurisdiction of such agency.

"(6) JUDICIAL REVIEW.—

"(A) IN GENERAL.—If any State is dissatisfied with the Secretary's final action with respect to the eligibility of the State under section 612, such State may, not later than 60 days

after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings upon which the Secretary's action was based, as provided in section 2112 of title 28, United States Code.

"(B) JURISDICTION; REVIEW BY UNITED STATES SUPREME COURT.—Upon the filing of such petition, the court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

"(C) STANDARD OF REVIEW.—The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive, but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify the Secretary's

previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

"(d) DIVIDED STATE AGENCY RESPONSIBILITY.—For purposes of this section, where responsibility for ensuring that the requirements of this part are met with respect to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons is assigned to a public agency other than the State educational agency pursuant to section 612(a)(11)(C), the Secretary, in instances where the Secretary finds that the failure to comply 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 that—

"(1) any reduction or withholding of payments to the State shall be proportionate to the total funds allotted under section 611 to the State as the number of eligible children with disabilities in adult prisons under the supervision of the other public agency is proportionate to the number of eligible individuals with disabilities in the State under the supervision of the State educational agency; and

"(2) any withholding of funds under paragraph (1) shall be limited to the specific agency responsible for the failure to comply with this part.

"(e) STATE AND LOCAL MONITORING.—

"(1) IN GENERAL.—The State educational agency shall monitor and enforce implementation of this Act, implement a system of monitoring the benchmarks in the State's compliance plan under subsection (b)(2)(C), and require local educational agencies to monitor and enforce implementation of this Act.

"(2) ADDITIONAL ENFORCEMENT OPTIONS.—If a State educational agency determines that a local educational agency is not meeting the requirements of this part, including the benchmarks in the State's compliance plan, the State educational agency shall prohibit the local educational agency from treating funds received under this part as local funds under section 613(a)(2)(C) for any fiscal year.

"SEC. 617. ADMINISTRATION.

"(a) RESPONSIBILITIES OF SECRETARY.—The Secretary shall—

"(1) cooperate with, and (directly or by grant or contract) furnish technical assistance necessary to, a State in matters relating to—

"(A) the education of children with disabilities; and

"(B) carrying out this part; and

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

"(b) CONFIDENTIALITY.—The Secretary shall take appropriate action, in accordance with section 444 of the General Education Provisions Act (20 U.S.C. 1232g), to assure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by the Secretary and by State and local educational agencies pursuant to this part.

"(c) PERSONNEL.—The Secretary is authorized to hire qualified personnel necessary to carry out the Secretary's duties under subsection (a) and under sections 618, 661, and 664, without regard to the provisions of title 5, United States Code, relating to appointments in the competitive service and without regard to chapter 51 and subchapter III of chapter 53 of such title relating to classification and general schedule pay rates, except that not more than 20 such personnel shall be employed at any 1 time.

"(d) MODEL FORMS.—Not later than the date that the Secretary publishes final regulations under this Act, to implement amendments made by the Individuals with Disabilities Education Improvement Act of 2003, the Secretary

shall publish and disseminate widely to States, local educational agencies, and parent and community training and information centers—

"(1) a model IEP form;

"(2) a model individualized family service plan (IFSP) form;

"(3) a model form of the notice of procedural safeguards described in section 615(d); and

"(4) a model form of the prior written notice described in section 615 (b)(3) and (c)(1) that is consistent with the requirements of this part and is sufficient to meet such requirements.

"SEC. 618. PROGRAM INFORMATION.

"(a) IN GENERAL.—Each State that receives assistance under this part, and the Secretary of the Interior, shall provide data each year to the Secretary of Education and the public on—

"(1)(A) the number and percentage of children with disabilities, by race, ethnicity, limited English proficiency status, gender, and disability category, who are receiving a free appropriate public education;

"(B) the number and percentage of children with disabilities, by race, gender, and ethnicity, who are receiving early intervention services;

"(C) the number and percentage of children with disabilities, by race, ethnicity, limited English proficiency status, gender, and disability category, who are participating in regular education;

"(D) the number and percentage of children with disabilities, by race, ethnicity, limited English proficiency status, gender, and disability category, who are in separate classes, separate schools or facilities, or public or private residential facilities;

"(E) the number and percentage of children with disabilities, by race, ethnicity, limited English proficiency status, gender, and disability category, who, for each year of age from age 14 through 21, stopped receiving special education and related services because of program completion (including graduation with a regular secondary school diploma), or other reasons, and the reasons why those children stopped receiving special education and related services;

"(F) the number and percentage of children with disabilities, by race, gender, and ethnicity, who, from birth through age 2, stopped receiving early intervention services because of program completion or for other reasons;

"(G)(i) the number and percentage of children with disabilities, by race, ethnicity, limited English

proficiency status, gender, and disability category, who are removed to an interim alternative educational setting under section 615(k)(1);

"(ii) the acts or items precipitating those removals; and

"(iii) the number of children with disabilities who are subject to long-term suspensions or expulsions;

"(H) the incidence and duration of disciplinary actions by race, ethnicity, limited English proficiency status, gender, and disability category, of children with disabilities, including suspensions of 1 day or more;

"(I) the number and percentage of children with disabilities who are removed to alternative educational settings or expelled as compared to children without disabilities who are removed to alternative educational settings or expelled;

"(J) the number of due process complaints filed under section 615 and the number of hearings conducted;

"(K) the number of hearings requested under section 615(k) and the number of changes in placements ordered as a result of those hearings;

"(L) the number of hearings requested under section 615(k)(3)(B)(ii) and the number of changes in placements ordered as a result of those hearings; and

"(M) the number of mediations held and the number of settlement agreements reached through such mediations;

"(2) the number and percentage of infants and toddlers, by race, and ethnicity, who are at risk of having substantial developmental delays (as defined in section 632), and who are receiving early intervention services under part C; and

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

"(b) DATA REPORTING.—The data described in subsection (a) shall be reported by each State at the school district and State level in a manner that does not result in the disclosure of data identifiable to individual children.

"(c) TECHNICAL ASSISTANCE.—The Secretary may provide technical assistance to States to ensure compliance with the data collection and reporting requirements under this Act.

"(d) DISPROPORTIONALITY.—

"(1) IN GENERAL.—Each State that receives assistance under this part, and the Secretary of the Interior, shall provide for the collection and examina-

tion of data to determine if significant disproportionality based on race is occurring in the State with respect to—

"(A) the identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment described in section 602(3);

"(B) the placement in particular educational settings of such children; and

"(C) the incidence, duration, and type of disciplinary actions, including suspensions and expulsions.

"(2) REVIEW AND REVISION OF POLICIES, PRACTICES, AND PROCEDURES.—In the case of a determination of significant disproportionality with respect to the identification of children as children with disabilities, or the placement in particular educational settings of such children, in accordance with paragraph (1), the State or the Secretary of the Interior, as the case may be, shall provide for the review and, if appropriate, revision of the policies, procedures, and practices used in such identification or placement to ensure that such policies, procedures,

and practices comply with the requirements of this Act.

"SEC. 619. PRESCHOOL GRANTS.

"(a) IN GENERAL.—The Secretary shall provide grants under this section to assist States to provide special education and related services, in accordance with this part—

"(1) to children with disabilities aged 3 through 5, inclusive; and

"(2) at the State's discretion, to 2-year-old children with disabilities who will turn 3 during the school year.

"(b) ELIGIBILITY.—A State shall be eligible for a grant under this section if such State—

"(1) is eligible under section 612 to receive a grant under this part; and

"(2) makes a free appropriate public education available to all children with disabilities, aged 3 through 5, residing in the State.

"(c) ALLOCATIONS TO STATES.—

"(1) IN GENERAL.—The Secretary shall allocate the amount made available to carry out this section for a fiscal year among the States in accordance with paragraph (2) or (3), as the case may be.

"(2) INCREASE IN FUNDS.—If the amount available for allocations to States under paragraph (1) is

equal to or greater than the amount allocated to the States under this section for the preceding fiscal year, those allocations shall be calculated as follows:

"(A) ALLOCATION.—

"(i) IN GENERAL.—Except as provided in subparagraph (B), the Secretary shall—

"(I) allocate to each State the amount the State received under this section for fiscal year 1997;

"(II) allocate 85 percent of any remaining funds to States on the basis of the States' relative populations of children aged 3 through 5; and

"(III) allocate 15 percent of those remaining funds to States on the basis of the States' relative populations of all children aged 3 through 5 who are living in poverty.

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

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

"(i) PRECEDING YEARS.—No State's allocation shall be less than its allocation under this section for the preceding fiscal year.

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

"(I) the sum of—

"(aa) the amount the State received under this section for fiscal year 1997; and

"(bb) ⅓ of 1 percent of the amount by which the amount appropriated under subsection (j) for the fiscal year exceeds the amount appropriated for this section for fiscal year 1997;

"(II) the sum of—

"(aa) the amount the State received under this section for the preceding fiscal year; and

"(bb) that amount multiplied by the percentage by which the in-

crease in the funds appropriated under this section from the preceding fiscal year exceeds 1.5 percent; or

"(III) the sum of—

"(aa) the amount the State received under this section for the preceding fiscal year; and

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

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

"(I) the amount the State received under this section for the preceding fiscal year; and

"(II) that amount multiplied by the sum of 1.5 percent and the percentage increase in the amount appropriated under this section from the preceding fiscal year.

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

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

"(A) ALLOCATIONS.—If the amount available for allocations is greater than the amount allocated to the States for fiscal year 1997, each State shall be allocated the sum of—

"(i) the amount the State received under this section for fiscal year 1997; and

"(ii) an amount that bears the same relation to any remaining funds as the increase the State received under this section for the preceding fiscal year over fiscal year 1997 bears to the total of all such increases for all States.

"(B) If the amount available for allocations under this paragraph is equal to or less than the amount allocated under this section to the States

for fiscal year 1997, each State shall be allocated the amount the State received for that year, ratably reduced, if necessary.

"(d) RESERVATION FOR STATE ACTIVITIES.—

"(1) IN GENERAL.—Each State may reserve not more than the amount described in paragraph (2) for administration and other State-level activities in accordance with subsections (e) and (f).

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

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

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

"(e) STATE ADMINISTRATION.—

"(1) IN GENERAL.—For the purpose of administering this section (including the coordination of activities under this part with, and providing technical assistance to, other programs that provide services to children with disabilities) a State may use not more than 20 percent of the maximum amount the State may reserve under subsection (d) for any fiscal year.

"(2) ADMINISTRATION OF PART C.—Funds described in paragraph (1) may also be used for the administration of part C of this Act, if the State educational agency is the lead agency for the State under that part.

"(f) OTHER STATE-LEVEL ACTIVITIES.—Each State shall use any funds the State reserves under subsection (d) and does not use for administration under subsection (e)—

"(1) for support services (including establishing and implementing the mediation process required by section 615(e)), which may benefit children with disabilities younger than 3 or older than 5 as long as those services also benefit children with disabilities aged 3 through 5;

"(2) for direct services for children eligible for services under this section;

"(3) for activities at the State and local levels to meet the performance goals established by the State under section 612(a)(15);

"(4) to supplement other funds used to develop and implement a statewide coordinated services system designed to improve results for children and families, including children with disabilities and their families, but not more than 1 percent of the amount received by the State under this section for a fiscal year; or

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

"(g) SUBGRANTS TO LOCAL EDUCATIONAL AGENCIES.—

"(1) SUBGRANTS REQUIRED.—Each State that receives a grant under this section for any fiscal year shall distribute all of the grant funds that the State does not reserve under subsection (d) to local edu-

cational agencies in the State that have established their eligibility under section 613, as follows:

"(A) BASE PAYMENTS.—The State shall first award each local educational agency described in paragraph (1) the amount that agency would have received under this section for fiscal year 1997 if the State had distributed 75 percent of its grant for that year under section 619(c)(3), as such section was then in effect.

"(B) ALLOCATION OF REMAINING FUNDS.—After making allocations under subparagraph (A), the State shall—

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

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

"(2) REALLOCATION OF FUNDS.—If a State educational agency determines that a local educational agency is adequately providing a free appropriate public education to all children with disabilities aged 3 through 5 residing in the area served by that agency with State and local funds, the State educational agency may reallocate any portion of the funds under this section that are not needed by that local educational agency to provide a free appropriate public education to other local educational agencies in the State that are not adequately providing special education and related services to all children with disabilities aged 3 through 5 residing in the areas the other local educational agencies serve.

"(h) PART C INAPPLICABLE.—Part C of this Act does not apply to any child with a disability receiving a free appropriate public education, in accordance with this part, with funds received under this section.

"(i) DEFINITION.—For the purpose of this section, the term 'State' means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

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

"PART C—INFANTS AND TODDLERS WITH DISABILITIES

"SEC. 631. FINDINGS AND POLICY.

"(a) FINDINGS.—Congress finds that there is an urgent and substantial need—

"(1) to enhance the development of infants and toddlers with disabilities, to minimize their potential for developmental delay, and to recognize the significant brain development which occurs during a child's first 3 years of life;

"(2) to reduce the educational costs to our society, including our Nation's schools, by minimizing the need for special education and related services after infants and toddlers with disabilities reach school age;

"(3) to maximize the potential for individuals with disabilities to live independently in society;

"(4) to enhance the capacity of families to meet the special needs of their infants and toddlers with disabilities; and

"(5) to enhance the capacity of State and local agencies and service providers to identify, evaluate, and meet the needs of all children, particularly minority, low-income, inner city, and rural children.

"(b) POLICY.—It is the policy of the United States to provide financial assistance to States—

"(1) to develop and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system that provides early intervention services for infants and toddlers with disabilities and their families;

"(2) to facilitate the coordination of payment for early intervention services from Federal, State, local, and private sources (including public and private insurance coverage);

"(3) to enhance State capacity to provide high quality early intervention services and expand and improve existing early intervention services being provided to infants and toddlers with disabilities and their families; and

"(4) to encourage States to expand opportunities for children under 3 years of age who would be at risk of having substantial developmental delay if they did not receive early intervention services.

"SEC. 632. DEFINITIONS.

"As used in this part:

"(1) AT-RISK INFANT OR TODDLER.—The term 'at-risk infant or toddler' means an individual under 3 years of age who would be at risk of experiencing

a substantial developmental delay if early intervention services were not provided to the individual.

"(2) COUNCIL.—The term 'council' means a State interagency coordinating council established under section 641.

"(3) DEVELOPMENTAL DELAY.—The term 'developmental delay', when used with respect to an individual residing in a State, has the meaning given such term by the State under section 635(a)(1).

"(4) EARLY INTERVENTION SERVICES.—The term 'early intervention services' means developmental services that—

"(A) are provided under public supervision;

"(B) are provided at no cost except where Federal or State law provides for a system of payments by families, including a schedule of sliding fees;

"(C) are designed to meet the developmental needs of an infant or toddler with a disability in any 1 or more of the following areas:

"(i) physical development;

"(ii) cognitive development;

"(iii) communication development;

"(iv) social or emotional development; or

"(v) adaptive development;

"(D) meet the standards of the State in which the services are provided, including the requirements of this part;

"(E) include—

"(i) family training, counseling, and home visits;

"(ii) special instruction;

"(iii) speech-language pathology and audiology services, and sign language and cued language services;

"(iv) occupational therapy;

"(v) physical therapy;

"(vi) psychological services;

"(vii) service coordination services;

"(viii) medical services only for diagnostic or evaluation purposes;

"(ix) early identification, screening, and assessment services;

"(x) health services necessary to enable the infant or toddler to benefit from the other early intervention services;

"(xi) social work services;

"(xii) vision services;

"(xiii) assistive technology devices and assistive technology services; and

"(xiv) transportation and related costs that are necessary to enable an infant or toddler and the infant's or toddler's family to receive another service described in this paragraph;

"(F) are provided by qualified personnel, including—

"(i) special educators;

"(ii) speech-language pathologists and audiologists;

"(iii) teachers of the deaf;

"(iv) occupational therapists;

"(v) physical therapists;

"(vi) psychologists;

"(vii) social workers;

"(viii) nurses;

"(ix) nutritionists;

"(x) family therapists;

"(xi) orientation and mobility specialists;

"(xii) vision specialists, including opthamologists and optometrists; and

"(xiii) pediatricians and other physicians;

"(G) to the maximum extent appropriate, are provided in natural environments, including the home, and community settings in which children without disabilities participate; and

"(H) are provided in conformity with an individualized family service plan adopted in accordance with section 636.

"(5) INFANT OR TODDLER WITH A DISABILITY.—The term 'infant or toddler with a disability'—

"(A) means an individual under 3 years of age who needs early intervention services because the individual—

"(i) is experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures in 1 or more of the areas of cognitive development, physical development, communication development, social or emotional development, and adaptive development; or

"(ii) has a diagnosed physical or mental condition which has a high probability of resulting in developmental delay; and

"(B) may also include, at a State's discretion—

"(i) at-risk infants and toddlers; and

"(ii) children with disabilities who are eligible for services under section 619 and who previously received services under this part until such children enter, or are eligible under State law to enter, kindergarten.

"SEC. 633. GENERAL AUTHORITY.

"The Secretary shall, in accordance with this part, make grants to States (from their allotments under section 643) to assist each State to maintain and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system to provide early intervention services for infants and toddlers with disabilities and their families.

"SEC. 634. ELIGIBILITY.

"In order to be eligible for a grant under section 633, a State shall demonstrate to the Secretary that the State—

"(1) has adopted a policy that appropriate early intervention services are available to all infants and toddlers with disabilities in the State and their families, including Indian infants and toddlers with disabilities and their families residing on a reservation geographically located in the State; and

"(2) has in effect a statewide system that meets the requirements of section 635.

"SEC. 635. REQUIREMENTS FOR STATEWIDE SYSTEM.

"(a) IN GENERAL.—A statewide system described in section 633 shall include, at a minimum, the following components:

"(1) A definition of the term 'developmental delay' that—

"(A) will be used by the State in carrying out programs under this part; and

"(B) covers, at a minimum, all infants and toddlers with—

"(i) a developmental delay of 35 percent or more in 1 of the developmental areas described in section 632(5)(A)(i); or

"(ii) a developmental delay of 25 percent or more in 2 or more of the developmental areas described in section 632(5)(A)(i).

"(2) A State policy that is in effect and that ensures that appropriate early intervention services are available to all infants and toddlers with disabilities and their families, including Indian infants and toddlers and their families residing on a reservation geographically located in the State.

"(3) A timely, comprehensive, multidisciplinary evaluation of the functioning of each infant or toddler with a disability in the State, and a family-directed identification of the needs of each family of such an infant or toddler, to appropriately assist in the development of the infant or toddler.

"(4) For each infant or toddler with a disability in the State, an individualized family service plan in accordance with section 636, including service coordination services in accordance with such service plan.

"(5) A comprehensive child find system, consistent with part B, including a system for making referrals to service providers that includes timelines and provides for participation by primary referral sources.

"(6) A public awareness program focusing on early identification of infants and toddlers with disabilities, including the preparation and dissemination by the lead agency designated or established under paragraph (10) to all primary referral sources, especially hospitals and physicians, of information for parents on the availability of early intervention services, and procedures for determining the extent to which such sources disseminate such information to parents of infants and toddlers.

"(7) A central directory that includes information on early intervention services, resources, and experts available in the State and research and demonstration projects being conducted in the State.

"(8) A comprehensive system of personnel development, including the training of paraprofessionals and the training of primary referral sources with respect to the basic components of early intervention services available in the State, which comprehensive system may include—

"(A) implementing innovative strategies and activities for the recruitment and retention of early education service providers;

"(B) promoting the preparation of early intervention providers who are fully and appropriately qualified to provide early intervention services under this part;

"(C) training personnel to work in rural and inner-city areas; and

"(D) training personnel to coordinate transition services for infants and toddlers served under this part from an early intervention program under this part to preschool or other appropriate services.

"(9) Policies and procedures relating to the establishment and maintenance of standards to ensure that personnel necessary to carry out this part are appropriately and adequately prepared and trained, including the establishment and maintenance of standards which are consistent with any State-approved or recognized certification, licensing, registration, or other comparable requirements which apply to the area in which such personnel are providing early intervention services, except that nothing in this part (including this paragraph) shall be construed to prohibit the use of paraprofessionals and assistants who are appropriately trained in accordance with State law, regulation, or written policy, to assist in the provision of early intervention services under this part to infants and toddlers with disabilities.

"(10) A single line of responsibility in a lead agency designated or established by the Governor for carrying out—

"(A) the general administration and supervision of programs and activities receiving assistance under section 633, and the monitoring of programs and activities used by the State to carry out this part, whether or not such programs or activities are receiving assistance made

available under section 633, to ensure that the State complies with this part;

"(B) the identification and coordination of all available resources within the State from Federal, State, local, and private sources;

"(C) the assignment of financial responsibility in accordance with section 637(a)(2) to the appropriate agencies;

"(D) the development of procedures to ensure that services are provided to infants and toddlers with disabilities and their families under this part in a timely manner pending the resolution of any disputes among public agencies or service providers;

"(E) the resolution of intra- and interagency disputes; and

"(F) the entry into formal interagency agreements that define the financial responsibility of each agency for paying for early intervention services (consistent with State law) and procedures for resolving disputes and that include all additional components necessary to ensure meaningful cooperation and coordination.

"(11) A policy pertaining to the contracting or making of other arrangements with service providers

to provide early intervention services in the State, consistent with the provisions of this part, including the contents of the application used and the conditions of the contract or other arrangements.

"(12) A procedure for securing timely reimbursements of funds used under this part in accordance with section 640(a).

"(13) Procedural safeguards with respect to programs under this part, as required by section 639.

"(14) A system for compiling data requested by the Secretary under section 618 that relates to this part.

"(15) A State interagency coordinating council that meets the requirements of section 641.

"(16) Policies and procedures to ensure that, consistent with section 636(d)(5) to the maximum extent appropriate, early intervention services are provided in natural environments unless a specific outcome cannot be met satisfactorily for the infant or toddler in a natural environment.

"(b) FLEXIBILITY TO SERVE CHILDREN 3 YEARS OF AGE TO UNDER 6 YEARS OF AGE.—

"(1) IN GENERAL.—A statewide system described in section 633 may include a State policy, developed and implemented jointly by the lead agency and the

State educational agency, under which parents of children with disabilities who are eligible for services under section 619 and previously received services under this part, may choose the continuation of early intervention services (which shall include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills) for such children under this part until such children enter, or are eligible under State law to enter, kindergarten.

"(2) REQUIREMENTS.—If a statewide system includes a State policy described in paragraph (1), the statewide system shall ensure—

"(A) that parents of infants or toddlers with disabilities (as defined in section 632(5)(A)) provide informed written consent to the State, before such infants and toddlers reach 3 years of age, as to whether such parents intend to choose the continuation of early intervention services pursuant to this subsection for such infants or toddlers;

"(B) that the State policy will not affect the right of any child served pursuant to this subsection to instead receive a free appropriate public education under part B;

"(C) that parents of children served pursuant to this subsection are provided with annual notice—

"(i) of such parents' right to elect services pursuant to this subsection or under part B; and

"(ii) fully explaining the differences between receiving services pursuant to this subsection and receiving services under part B, including—

"(I) the types of services available under both provisions;

"(II) applicable procedural safeguards under both provisions, including due-process protections and mediation or other dispute resolution options; and

"(III) the possible costs, if any (including any fees to be charged to families as described in section 632(4)(B)) to parents under both provisions;

"(D) that the conference under section 637(a)(9)(A)(ii)(II), the review under section 637(a)(9)(B), and the establishment of a transi-

tion plan under section 637(a)(9)(C) occur not less than 90 days (and at the discretion of the parties to the conference, not more than 9 months) before each of the following:

"(i) the time the child will first be eligible for services under part B, including under section 619; and

"(ii) if the child is receiving services in accordance with this subsection, the time the child will no longer receive those services;

"(E) the continuance of all early intervention services outlined in the child's individualized family service plan under section 636 while any eligibility determination is being made for services under this subsection;

"(F) that services provided pursuant to this subsection include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills and are provided in accordance with an individualized family service plan under section 636; and

"(G) the referral for evaluation for early intervention services of a child below the age of 3 who experiences a substantiated case of exposure to violence or trauma.

"(3) REPORTING REQUIREMENT.—If a statewide system includes a State policy described in paragraph (1), the State shall submit to the Secretary, in the State's report under section 637(b)(4)(A), a report on—

"(A) the percentage of children with disabilities who are eligible for services under section 619 but whose parents choose for such children to continue to receive early intervention services under this part; and

"(B) the number of children who are eligible for services under section 619 who instead continue to receive early intervention services under this part.

"(4) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to require a provider of services under this part to provide a child served under this part with a free appropriate public education.

"(5) AVAILABLE FUNDS.—If a statewide system includes a State policy described in paragraph (1), the policy shall describe the funds (including an identification as Federal, State, or local funds) that will be used to ensure that the option described in paragraph (1) is available to eligible children and families

who provide the consent described in paragraph (2)(A), including fees to be charged to families as described in section 632(4)(B).

"SEC. 636. INDIVIDUALIZED FAMILY SERVICE PLAN.

"(a) ASSESSMENT AND PROGRAM DEVELOPMENT.—A statewide system described in section 633 shall provide, at a minimum, for each infant or toddler with a disability, and the infant's or toddler's family, to receive—

"(1) a multidisciplinary assessment of the unique strengths and needs of the infant or toddler and the identification of services appropriate to meet such needs;

"(2) a family-directed assessment of the resources, priorities, and concerns of the family and the identification of the supports and services necessary to enhance the family's capacity to meet the developmental needs of the infant or toddler; and

"(3) a written individualized family service plan developed by a multidisciplinary team, including the parents, as required by subsection (e), including a description of the appropriate transition services for the child.

"(b) PERIODIC REVIEW.—The individualized family service plan shall be evaluated once a year and the family shall be provided a review of the plan at 6-month intervals

(or more often where appropriate based on infant or toddler and family needs).

"(c) PROMPTNESS AFTER ASSESSMENT.—The individualized family service plan shall be developed within a reasonable time after the assessment required by subsection (a)(1) is completed. With the parents' consent, early intervention services may commence prior to the completion of the assessment.

"(d) CONTENT OF PLAN.—The individualized family service plan shall be in writing and contain—

"(1) a statement of the infant's or toddler's present levels of physical development, cognitive development, communication development, social or emotional development, and adaptive development, based on objective criteria;

"(2) a statement of the family's resources, priorities, and concerns relating to enhancing the development of the family's infant or toddler with a disability;

"(3) a statement of the measurable outcomes expected to be achieved for the infant or toddler and the family, including, as appropriate, preliteracy and language skills, and the criteria, procedures, and timelines used to determine the degree to which progress toward achieving the outcomes is being made

and whether modifications or revisions of the outcomes or services are necessary;

"(4) a statement of specific early intervention services necessary to meet the unique needs of the infant or toddler and the family, including the frequency, intensity, and method of delivering services;

"(5) a statement of the natural environments in which early intervention services will appropriately be provided, including a justification of the extent, if any, to which the services will not be provided in a natural environment;

"(6) the projected dates for initiation of services and the anticipated length, duration, and frequency of the services;

"(7) the identification of the service coordinator from the profession most immediately relevant to the infant's or toddler's or family's needs (or who is otherwise qualified to carry out all applicable responsibilities under this part) who will be responsible for the implementation of the plan and coordination with other agencies and persons, including transition services; and

"(8) the steps to be taken to support the transition of the toddler with a disability to preschool or other appropriate services.

"(e) PARENTAL CONSENT.—The contents of the individualized family service plan shall be fully explained to the parents and informed written consent from the parents shall be obtained prior to the provision of early intervention services described in such plan. If the parents do not provide consent with respect to a particular early intervention service, then only the early intervention services to which consent is obtained shall be provided.

"SEC. 637. STATE APPLICATION AND ASSURANCES.

"(a) APPLICATION.—A State desiring to receive a grant under section 633 shall submit an application to the Secretary at such time and in such manner as the Secretary may reasonably require. The application shall contain—

"(1) a designation of the lead agency in the State that will be responsible for the administration of funds provided under section 633;

"(2) a certification to the Secretary that the arrangements to establish financial responsibility for services provided under this part pursuant to section 640(b) are current as of the date of submission of the certification;

"(3) information demonstrating eligibility of the State under section 634, including—

"(A) information demonstrating to the Secretary's satisfaction that the State has in effect

the statewide system required by section 633; and

"(B) a description of services to be provided to infants and toddlers with disabilities and their families through the system;

"(4) if the State provides services to at-risk infants and toddlers through the system, a description of such services;

"(5) a description of the uses for which funds will be expended in accordance with this part;

"(6) a description of the State policies and procedures that require the referral for evaluation for early intervention services of a child under the age of 3 who—

"(A) is involved in a substantiated case of child abuse or neglect; or

"(B) is identified as affected by illegal substance abuse, or withdrawal symptoms resulting from prenatal drug exposure;

"(7) a description of the procedure used to ensure that resources are made available under this part for all geographic areas within the State;

"(8) a description of State policies and procedures that ensure that, prior to the adoption by the State of any other policy or procedure necessary to

meet the requirements of this part, there are public hearings, adequate notice of the hearings, and an opportunity for comment available to the general public, including individuals with disabilities and parents of infants and toddlers with disabilities;

"(9) a description of the policies and procedures to be used—

"(A) to ensure a smooth transition for toddlers receiving early intervention services under this part (and children receiving those services under section 635(b)) to preschool, other appropriate services, or exiting the program, including a description of how—

"(i) the families of such toddlers and children will be included in the transition plans required by subparagraph (C); and

"(ii) the lead agency designated or established under section 635(a)(10) will—

"(I) notify the local educational agency for the area in which such a child resides that the child will shortly reach the age of eligibility for preschool services under part B, as determined in accordance with State law;

"(II) in the case of a child who may be eligible for such preschool services, with the approval of the family of the child, convene a conference among the lead agency, the family, and the local educational agency at least 90 days (and at the discretion of all such parties, not more than 9 months) before the child is eligible for the preschool services, to discuss any such services that the child may receive; and

"(III) in the case of a child who may not be eligible for such preschool services, with the approval of the family, make reasonable efforts to convene a conference among the lead agency, the family, and providers of other appropriate services for children who are not eligible for preschool services under part B, to discuss the appropriate services that the child may receive;

"(B) to review the child's program options for the period from the child's third birthday through the remainder of the school year; and

"(C) to establish a transition plan, including, as appropriate, steps to exit from the program; and

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

"(b) ASSURANCES.—The application described in subsection (a)—

"(1) shall provide satisfactory assurance that Federal funds made available under section 643 to the State will be expended in accordance with this part;

"(2) shall contain an assurance that the State will comply with the requirements of section 640;

"(3) shall provide satisfactory assurance that the control of funds provided under section 643, and title to property derived from those funds, will be in a public agency for the uses and purposes provided in this part and that a public agency will administer such funds and property;

"(4) shall provide for—

"(A) making such reports in such form and containing such information as the Secretary may require to carry out the Secretary's functions under this part; and

"(B) keeping such reports and affording such access to the reports as the Secretary may

find necessary to ensure the correctness and verification of the reports and proper disbursement of Federal funds under this part;

"(5) provide satisfactory assurance that Federal funds made available under section 643 to the State—

"(A) will not be commingled with State funds; and

"(B) will be used so as to supplement the level of State and local funds expended for infants and toddlers with disabilities and their families and in no case to supplant those State and local funds;

"(6) shall provide satisfactory assurance that such fiscal control and fund accounting procedures will be adopted as may be necessary to ensure proper disbursement of, and accounting for, Federal funds paid under section 643 to the State;

"(7) shall provide satisfactory assurance that policies and procedures have been adopted to ensure meaningful involvement of underserved groups, including minority, low-income, and rural families, in the planning and implementation of all the requirements of this part; and

"(8) shall contain such other information and assurances as the Secretary may reasonably require by regulation.

"(c) STANDARD FOR DISAPPROVAL OF APPLICATION.—The Secretary may not disapprove such an application unless the Secretary determines, after notice and opportunity for a hearing, that the application fails to comply with the requirements of this section.

"(d) SUBSEQUENT STATE APPLICATION.—If a State has on file with the Secretary a policy, procedure, or assurance that demonstrates that the State meets a requirement of this section, including any policy or procedure filed under part C, as in effect before the date of enactment of the Individuals with Disabilities Education Improvement Act of 2003, the Secretary shall consider the State to have met the requirement for purposes of receiving a grant under this part.

"(e) MODIFICATION OF APPLICATION.—An application submitted by a State in accordance with this section shall remain in effect until the State submits to the Secretary such modifications as the State determines necessary. This section shall apply to a modification of an application to the same extent and in the same manner as this section applies to the original application.

"(f) MODIFICATIONS REQUIRED BY THE SECRETARY.—The Secretary may require a State to modify its application under this section, but only to the extent necessary to ensure the State's compliance with this part, if—

"(1) an amendment is made to this Act, or a Federal regulation issued under this Act;

"(2) a new interpretation of this Act is made by a Federal court or the State's highest court; or

"(3) an official finding of noncompliance with Federal law or regulations is made with respect to the State.

"SEC. 638. USES OF FUNDS.

"In addition to using funds provided under section 633 to maintain and implement the statewide system required by such section, a State may use such funds—

"(1) for direct early intervention services for infants and toddlers with disabilities, and their families, under this part that are not otherwise funded through other public or private sources;

"(2) to expand and improve on services for infants and toddlers and their families under this part that are otherwise available;

"(3) to provide a free appropriate public education, in accordance with part B, to children with

disabilities from their third birthday to the beginning of the following school year;

"(4) with the written consent of the parents, to continue to provide early intervention services under this part to children with disabilities from their 3rd birthday to the beginning of the following school year, in lieu of a free appropriate public education provided in accordance with part B; and

"(5) in any State that does not provide services for at-risk infants and toddlers under section 637(a)(4), to strengthen the statewide system by initiating, expanding, or improving collaborative efforts related to at-risk infants and toddlers, including establishing linkages with appropriate public or private community-based organizations, services, and personnel for the purposes of—

"(A) identifying and evaluating at-risk infants and toddlers;

"(B) making referrals of the infants and toddlers identified and evaluated under subparagraph (A); and

"(C) conducting periodic follow-up on each such referral to determine if the status of the infant or toddler involved has changed with respect

to the eligibility of the infant or toddler for services under this part.

"SEC. 639. PROCEDURAL SAFEGUARDS.

"(a) MINIMUM PROCEDURES.—The procedural safeguards required to be included in a statewide system under section 635(a)(13) shall provide, at a minimum, the following:

"(1) The timely administrative resolution of complaints by parents. Any party aggrieved by the findings and decision regarding an administrative complaint shall have the right to bring a civil action with respect to the complaint in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy. In any action brought under this paragraph, the court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and, basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.

"(2) The right to confidentiality of personally identifiable information, including the right of parents to written notice of and written consent to the exchange of such information among agencies consistent with Federal and State law.

"(3) The right of the parents to determine whether they, their infant or toddler, or other family members will accept or decline any early intervention service under this part in accordance with State law without jeopardizing other early intervention services under this part.

"(4) The opportunity for parents to examine records relating to assessment, screening, eligibility determinations, and the development and implementation of the individualized family service plan.

"(5) Procedures to protect the rights of the infant or toddler whenever the parents of the infant or toddler are not known or cannot be found or the infant or toddler is a ward of the State, including the assignment of an individual (who shall not be an employee of the State lead agency, or other State agency, and who shall not be any person, or any employee of a person, providing early intervention services to the infant or toddler or any family member of the infant or toddler) to act as a surrogate for the parents.

"(6) Written prior notice to the parents of the infant or toddler with a disability whenever the State agency or service provider proposes to initiate or change, or refuses to initiate or change, the identification, evaluation, or placement of the infant or toddler

with a disability, or the provision of appropriate early intervention services to the infant or toddler.

"(7) Procedures designed to ensure that the notice required by paragraph (6) fully informs the parents, in the parents' native language, unless it clearly is not feasible to do so, of all procedures available pursuant to this section.

"(8) The right of parents to use mediation in accordance with section 615, except that—

"(A) any reference in the section to a State educational agency shall be considered to be a reference to a State's lead agency established or designated under section 635(a)(10);

"(B) any reference in the section to a local educational agency shall be considered to be a reference to a local service provider or the State's lead agency under this part, as the case may be; and

"(C) any reference in the section to the provision of free appropriate public education to children with disabilities shall be considered to be a reference to the provision of appropriate early intervention services to infants and toddlers with disabilities.

"(b) SERVICES DURING PENDENCY OF PROCEEDINGS.—During the pendency of any proceeding or action involving a complaint by the parents of an infant or toddler with a disability, unless the State agency and the parents otherwise agree, the infant or toddler shall continue to receive the appropriate early intervention services currently being provided or, if applying for initial services, shall receive the services not in dispute.

"SEC. 640. PAYOR OF LAST RESORT.

"(a) NONSUBSTITUTION.—Funds provided under section 643 may not be used to satisfy a financial commitment for services that would have been paid for from another public or private source, including any medical program administered by the Secretary of Defense, but for the enactment of this part, except that whenever considered necessary to prevent a delay in the receipt of appropriate early intervention services by an infant, toddler, or family in a timely fashion, funds provided under section 643 may be used to pay the provider of services pending reimbursement from the agency that has ultimate responsibility for the payment.

"(b) OBLIGATIONS RELATED TO AND METHODS OF ENSURING SERVICES.—

"(1) ESTABLISHING FINANCIAL RESPONSIBILITY FOR SERVICES.—

"(A) IN GENERAL.—The Chief Executive Officer of a State or designee of the officer shall ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each public agency and the State educational agency, in order to ensure—

"(i) the provision of, and financial responsibility for, services provided under this part; and

"(ii) such services are consistent with the requirements of section 635 and the State's application pursuant to section 637, including the provision of such services during the pendency of any dispute.

"(B) CONSISTENCY BETWEEN AGREEMENTS OR MECHANISMS UNDER PARTS B AND D.—The Chief Executive Officer of a State or designee of the officer shall ensure that the terms and conditions of such agreement or mechanism are consistent with the terms and conditions of the State's agreement or mechanism under section 612(a)(12).

"(2) REIMBURSEMENT FOR SERVICES BY PUBLIC AGENCY.—

"(A) IN GENERAL.—If a public agency other than an educational agency fails to provide or pay for the services pursuant to an agreement required under paragraph (1) the local educational agency or State agency (as determined by the Chief Executive Officer or designee) shall provide or pay for the provision of such services to the child.

"(B) REIMBURSEMENT.—Such local educational agency or State agency is authorized to claim reimbursement for the services from the public agency that failed to provide or pay for such services and such public agency shall reimburse the local educational agency or State agency pursuant to the terms of the interagency agreement or other mechanism required under paragraph (1).

"(3) SPECIAL RULE.—The requirements of paragraph (1) may be met through—

"(A) State statute or regulation;

"(B) signed agreements between respective agency officials that clearly identify the responsibilities of each agency relating to the provision of services; or

"(C) other appropriate written methods as determined by the Chief Executive Officer of the State or designee of the officer and approved by the Secretary through the review and approval of the State's application pursuant to section 637.

"(c) REDUCTION OF OTHER BENEFITS.—Nothing in this part shall be construed to permit the State to reduce medical or other assistance available or to alter eligibility under title V of the Social Security Act (relating to maternal and child health) or title XIX of the Social Security Act (relating to Medicaid for infants or toddlers with disabilities) within the State.

"SEC. 641. STATE INTERAGENCY COORDINATING COUNCIL.

"(a) ESTABLISHMENT.—

"(1) IN GENERAL.—A State that desires to receive financial assistance under this part shall establish a State interagency coordinating council.

"(2) APPOINTMENT.—The council shall be appointed by the Governor. In making appointments to the council, the Governor shall ensure that the membership of the council reasonably represents the population of the State.

"(3) CHAIRPERSON.—The Governor shall designate a member of the council to serve as the chairperson of the council, or shall require the council to

so designate such a member. Any member of the council who is a representative of the lead agency designated under section 635(a)(10) may not serve as the chairperson of the council.

"(b) COMPOSITION.—

"(1) IN GENERAL.—The council shall be composed as follows:

"(A) PARENTS.—At least 20 percent of the members shall be parents of infants or toddlers with disabilities or children with disabilities aged 12 or younger, with knowledge of, or experience with, programs for infants and toddlers with disabilities. At least 1 such member shall be a parent of an infant or toddler with a disability or a child with a disability aged 6 or younger.

"(B) SERVICE PROVIDERS.—At least 20 percent of the members shall be public or private providers of early intervention services.

"(C) STATE LEGISLATURE.—At least 1 member shall be from the State legislature.

"(D) PERSONNEL PREPARATION.—At least 1 member shall be involved in personnel preparation.

"(E) AGENCY FOR EARLY INTERVENTION SERVICES.—At least 1 member shall be from each of the State agencies involved in the provision of, or payment for, early intervention services to infants and toddlers with disabilities and their families and shall have sufficient authority to engage in policy planning and implementation on behalf of such agencies.

"(F) AGENCY FOR PRESCHOOL SERVICES.—At least 1 member shall be from the State educational agency responsible for preschool services to children with disabilities and shall have sufficient authority to engage in policy planning and implementation on behalf of such agency.

"(G) STATE MEDICAID AGENCY.—At least 1 member shall be from the agency responsible for the State medicaid program.

"(H) HEAD START AGENCY.—At least 1 representative from a Head Start agency or program in the State.

"(I) CHILD CARE AGENCY.—At least 1 representative from a State agency responsible for child care.

"(J) AGENCY FOR HEALTH INSURANCE.—At least 1 member shall be from the agency responsible for the State regulation of health insurance.

"(2) OTHER MEMBERS.—The council may include other members selected by the Governor, including a representative from the Bureau of Indian Affairs, or where there is no BIA-operated or BIA-funded school, from the Indian Health Service or the tribe or tribal council.

"(c) MEETINGS.—The council shall meet at least quarterly and in such places as the council determines necessary. The meetings shall be publicly announced, and, to the extent appropriate, open and accessible to the general public.

"(d) MANAGEMENT AUTHORITY.—Subject to the approval of the Governor, the council may prepare and approve a budget using funds under this part to conduct hearings and forums, to reimburse members of the council for reasonable and necessary expenses for attending council meetings and performing council duties (including child care for parent representatives), to pay compensation to a member of the council if the member is not employed or must forfeit wages from other employment when performing official council business, to hire staff, and to obtain the services of such professional, technical, and clerical personnel

as may be necessary to carry out its functions under this part.

"(e) FUNCTIONS OF COUNCIL.—

"(1) DUTIES.—The council shall—

"(A) advise and assist the lead agency designated or established under section 635(a)(10) in the performance of the responsibilities set forth in such section, particularly the identification of the sources of fiscal and other support for services for early intervention programs, assignment of financial responsibility to the appropriate agency, and the promotion of the interagency agreements;

"(B) advise and assist the lead agency in the preparation of applications and amendments thereto;

"(C) advise and assist the State educational agency regarding the transition of toddlers with disabilities to preschool and other appropriate services; and

"(D) prepare and submit an annual report to the Governor and to the Secretary on the status of early intervention programs for infants and toddlers with disabilities and their families operated within the State.

"(2) AUTHORIZED ACTIVITY.—The council may advise and assist the lead agency and the State educational agency regarding the provision of appropriate services for children from birth through age 5. The council may advise appropriate agencies in the State with respect to the integration of services for infants and toddlers with disabilities and at-risk infants and toddlers and their families, regardless of whether at-risk infants and toddlers are eligible for early intervention services in the State.

"(f) CONFLICT OF INTEREST.—No member of the council shall cast a vote on any matter that is likely to provide a direct financial benefit to that member or otherwise give the appearance of a conflict of interest under State law.

"SEC. 642. FEDERAL ADMINISTRATION.

"Sections 616, 617, and 618 shall, to the extent not inconsistent with this part, apply to the program authorized by this part, except that—

"(1) any reference in such sections to a State educational agency shall be considered to be a reference to a State's lead agency established or designated under section 635(a)(10);

"(2) any reference in such sections to a local educational agency, educational service agency, or a State agency shall be considered to be a reference to

an early intervention service provider under this part; and

"(3) any reference to the education of children with disabilities or the education of all children with disabilities shall be considered to be a reference to the provision of appropriate early intervention services to infants and toddlers with disabilities.

"SEC. 643. ALLOCATION OF FUNDS.

"(a) RESERVATION OF FUNDS FOR OUTLYING AREAS.—

"(1) IN GENERAL.—From the sums appropriated to carry out this part for any fiscal year, the Secretary may reserve not more than 1 percent for payments to Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands in accordance with their respective needs.

"(2) CONSOLIDATION OF FUNDS.—The provisions of Public Law 95–134, permitting the consolidation of grants to the outlying areas, shall not apply to funds those areas receive under this part.

"(b) PAYMENTS TO INDIANS.—

"(1) IN GENERAL.—The Secretary shall, subject to this subsection, make payments to the Secretary of the Interior to be distributed to tribes, tribal organi-

zations (as defined under section 4 of the Indian Self-Determination and Education Assistance Act), or consortia of the above entities for the coordination of assistance in the provision of early intervention services by the States to infants and toddlers with disabilities and their families on reservations served by elementary schools and secondary schools for Indian children operated or funded by the Department of the Interior. The amount of such payment for any fiscal year shall be 1.25 percent of the aggregate of the amount available to all States under this part for such fiscal year.

"(2) ALLOCATION.—For each fiscal year, the Secretary of the Interior shall distribute the entire payment received under paragraph (1) by providing to each tribe, tribal organization, or consortium an amount based on the number of infants and 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(h)(3)(E). The Secretary of Education may require any additional information from the Secretary of the Interior.

"(6) PROHIBITED USES OF FUNDS.—None of the funds under this subsection may be used by the Secretary of the Interior for administrative purposes, including child count, and the provision of technical assistance.

"(c) STATE ALLOTMENTS.—

"(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), from the funds remaining for each fiscal year after the reservation and payments under subsections (a), (b), and (e), the Secretary shall first allot to each State an amount that bears the same ratio to the amount of such remainder as the number of infants and toddlers in the State bears to the number of infants and toddlers in all States.

"(2) MINIMUM ALLOTMENTS.—Except as provided in paragraph (3), no State shall receive an amount under this section for any fiscal year that is less than the greater of—

"(A) ½ of 1 percent of the remaining amount described in paragraph (1); or

"(B) $500,000.

"(3) RATABLE REDUCTION.—

"(A) IN GENERAL.—If the sums made available under this part for any fiscal year are insufficient to pay the full amounts that all States are eligible to receive under this subsection for such year, the Secretary shall ratably reduce the allotments to such States for such year.

"(B) ADDITIONAL FUNDS.—If additional funds become available for making payments under this subsection for a fiscal year, allotments that were reduced under subparagraph (A) shall be increased on the same basis the allotments were reduced.

"(4) DEFINITIONS.—For the purpose of this subsection—

"(A) the terms 'infants' and 'toddlers' mean children under 3 years of age; and

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

"(d) REALLOTMENT OF FUNDS.—If a State elects not to receive its allotment under subsection (c), the Secretary

shall reallot, among the remaining States, amounts from such State in accordance with such subsection.

"(e) RESERVATION FOR STATE BONUS GRANTS.—The Secretary shall reserve 10 percent of the amount by which the amount appropriated under section 644 for any fiscal year exceeds $434,159,000 to make allotments to States that are carrying out the policy described in section 635(b), in accordance with the formula described in subsection (c)(1) without regard to subsections (c) (2) and (3).

"SEC. 644. AUTHORIZATION OF APPROPRIATIONS.

"For the purpose of carrying out this part, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2004 through 2009.

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

"SEC. 650. FINDINGS.

"Congress finds the following:

"(1) The Federal Government has an ongoing obligation to support activities that contribute to positive results for children with disabilities, enabling them to lead productive and independent adult lives.

"(2) Systemic change benefiting all students, including children with disabilities, requires the involvement of States, local educational agencies, parents, individuals with disabilities and their families,

teachers and other service providers, and other interested individuals and organizations to develop and implement comprehensive strategies that improve educational results for children with disabilities.

"(3) State educational agencies, in partnership with local educational agencies, parents of children with disabilities, and other individuals and organizations, are in the best position to improve education for children with disabilities and to address their special needs.

"(4) An effective educational system serving students with disabilities should—

"(A) maintain high academic achievement standards and clear performance goals for children with disabilities, consistent with the standards and expectations for all students in the educational system, and provide for appropriate and effective strategies and methods to ensure that all children with disabilities have the opportunity to achieve those standards and goals;

"(B) clearly define, in objective, measurable terms, the school and post-school results that children with disabilities are expected to achieve; and

"(C) promote transition services and coordinate State and local education, social, health, mental health, and other services, in addressing the full range of student needs, particularly the needs of children with disabilities who need significant levels of support to participate and learn in school and the community.

"(5) The availability of an adequate number of qualified personnel is critical to serve effectively children with disabilities, to assume leadership positions in administration and direct services, to provide teacher training, and to conduct high quality research to improve special education.

"(6) High quality, comprehensive professional development programs are essential to ensure that the persons responsible for the education or transition of children with disabilities possess the skills and knowledge necessary to address the educational and related needs of those children.

"(7) Models of professional development should be scientifically based and reflect successful practices, including strategies for recruiting, preparing, and retaining personnel.

"(8) Continued support is essential for the development and maintenance of a coordinated and high

quality program of research to inform successful teaching practices and model curricula for educating children with disabilities.

"(9) A comprehensive research agenda should be established and pursued to promote the highest quality and rigor in special education research, and to address the full range of issues facing children with disabilities, parents of children with disabilities, school personnel, and others.

"(10) Training, technical assistance, support, and dissemination activities are necessary to ensure that parts B and C are fully implemented and achieve high quality early intervention, educational, and transitional results for children with disabilities and their families.

"(11) Parents, teachers, administrators, and related services personnel need technical assistance and information in a timely, coordinated, and accessible manner in order to improve early intervention, educational, and transitional services and results at the State and local levels for children with disabilities and their families.

"(12) Parent training and information activities assist parents of a child with a disability in dealing

with the multiple pressures of parenting such a child and are of particular importance in—

"(A) playing a vital role in creating and preserving constructive relationships between parents of children with disabilities and schools by facilitating open communication between the parents and schools; encouraging dispute resolution at the earliest possible point in time; and discouraging the escalation of an adversarial process between the parents and schools;

"(B) ensuring the involvement of parents in planning and decisionmaking with respect to early intervention, educational, and transitional services;

"(C) achieving high quality early intervention, educational, and transitional results for children with disabilities;

"(D) providing such parents information on their rights, protections, and responsibilities under this Act to ensure improved early intervention, educational, and transitional results for children with disabilities;

"(E) assisting such parents in the development of skills to participate effectively in the

education and development of their children and in the transitions described in section 673(b)(6);

"(F) supporting the roles of such parents as participants within partnerships seeking to improve early intervention, educational, and transitional services and results for children with disabilities and their families; and

"(G) supporting such parents who may have limited access to services and supports, due to economic, cultural, or linguistic barriers.

"(13) Support is needed to improve technological resources and integrate technology, including universally designed technologies, into the lives of children with disabilities, parents of children with disabilities, school personnel, and others through curricula, services, and assistive technologies.

"Subpart 1—State Personnel Preparation and Professional Development Grants

"SEC. 651. PURPOSE; DEFINITION; PROGRAM AUTHORITY.

"(a) PURPOSE.—The purpose of this subpart is to assist State educational agencies in reforming and improving their systems for personnel preparation and professional development in early intervention, educational, and transition services in order to improve results for children with disabilities.

"(b) DEFINITION.—In this subpart, the term 'personnel' means special education teachers, regular education teachers, principals, administrators, related services personnel, paraprofessionals, and early intervention personnel serving infants, toddlers, preschoolers, or children with disabilities, except where a particular category of personnel, such as related services personnel, is identified.

"(c) COMPETITIVE GRANTS.—

"(1) IN GENERAL.—Except as provided in subsection (d), for any fiscal year for which the amount appropriated under section 655, that remains after the Secretary reserves funds under subsection (e) for the fiscal year, is less than $100,000,000, the Secretary shall award grants, on a competitive basis, to State educational agencies to carry out the activities described in the State plan submitted under section 653.

"(2) PRIORITY.—In awarding grants under paragraph (1), the Secretary may give priority to State educational agencies that—

"(A) are in States with the greatest personnel shortages; or

"(B) demonstrate the greatest difficulty meeting the requirements of section 612(a)(14).

"(3) MINIMUM.—The Secretary shall make a grant to each State educational agency selected under paragraph (1) in an amount for each fiscal year that is—

"(A) not less than $500,000, nor more than $4,000,000, in the case of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico; and

"(B) not less than $80,000 in the case of an outlying area.

"(4) INCREASES.—The Secretary may increase the amounts under in paragraph (3) to account for inflation.

"(5) FACTORS.—The Secretary shall set the amount of each grant under paragraph (1) after considering—

"(A) the amount of funds available for making the grants;

"(B) the relative population of the State or outlying area;

"(C) the types of activities proposed by the State or outlying area;

"(D) the alignment of proposed activities with section 612(a)(14);

"(E) the alignment of proposed activities with the State plans and applications submitted under sections 1111 and 2112, respectively, of the Elementary and Secondary Education Act of 1965; and

"(F) the use, as appropriate, of scientifically based activities.

"(d) FORMULA GRANTS.—

"(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), for the first fiscal year for which the amount appropriated under section 655, that remains after the Secretary reserves funds under subsection (e) for the fiscal year, is equal to or greater than $100,000,000, and for each fiscal year thereafter, the Secretary shall allot to each State educational agency, whose application meets the requirements of this subpart, an amount that bears the same relation to the amount appropriated as the amount the State received under section 611(d) for that fiscal year bears to the amount of funds received by all States (whose applications meet the requirements of this subpart) under section 611(d) for that fiscal year.

"(2) MINIMUM ALLOTMENTS FOR STATES THAT RECEIVED COMPETITIVE GRANTS.—

"(A) IN GENERAL.—The amount allotted under this subsection to any State that received a competitive multi-year grant under subsection (c) for which the grant period has not expired shall be at least the amount specified for that fiscal year in the State's grant award document under that subsection.

"(B) SPECIAL RULE.—Each such State shall use the minimum amount described in subparagraph (A) for the activities described in its competitive grant award document for that year, unless the Secretary approves a request from the State to spend the funds on other activities.

"(3) MINIMUM ALLOTMENT.—The amount of any State educational agency's allotment under this subsection for any fiscal year shall not be less than—

"(A) the greater of $500,000 or ½ of 1 percent of the total amount available under this subsection for that year, in the case of each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico; and

"(B) $80,000, in the case of an outlying area.

"(e) CONTINUATION AWARDS.—

"(1) IN GENERAL.—Notwithstanding any other provision of this subpart, from funds appropriated under section 655 for each fiscal year, the Secretary shall reserve the amount that is necessary to make a continuation award to any State (at the request of the State) that received a multi-year award under this part (as this part was in effect on the day before the date of enactment of the Individuals with Disabilities Education Improvement Act of 2003), to enable the State to carry out activities in accordance with the terms of the multi-year award.

"(2) PROHIBITION.—A State that receives a continuation award under paragraph (1) for any fiscal year may not receive any other award under this subpart for that fiscal year.

"SEC. 652. ELIGIBILITY AND COLLABORATIVE PROCESS.

"(a) ELIGIBLE APPLICANTS.—A State educational agency may apply for a grant under this subpart for a grant period of not less than 1 year and not more than 5 years.

"(b) PARTNERS.—

"(1) IN GENERAL.—In order to be considered for a grant under this subpart, a State educational agency shall establish a partnership with local educational agencies and other State agencies involved in, or con-

cerned with, the education of children with disabilities, including institutions of higher education and the State agencies responsible for administering part C, child care, and vocational rehabilitation programs.

"(2) OTHER PARTNERS.—In order to be considered for a grant under this subpart, a State educational agency shall work in partnership with other persons and organizations involved in, and concerned with, the education of children with disabilities, which may include—

"(A) the Governor;

"(B) parents of children with disabilities ages birth through 26;

"(C) parents of nondisabled children ages birth through 26;

"(D) individuals with disabilities;

"(E) parent training and information centers or community parent resource centers funded under sections 671 and 672, respectively;

"(F) community based and other nonprofit organizations involved in the education and employment of individuals with disabilities;

"(G) personnel as defined in section 651(b);

"(H) the State advisory panel established under part B;

"(I) the State interagency coordinating council established under part C;

"(J) individuals knowledgeable about vocational education;

"(K) the State agency for higher education;

"(L) public agencies with jurisdiction in the areas of health, mental health, social services, and juvenile justice;

"(M) other providers of professional development that work with infants, toddlers, preschoolers, and children with disabilities; and

"(N) other individuals.

"(3) REQUIRED PARTNER.—If State law assigns responsibility for teacher preparation and certification to an individual, entity, or agency other than the State educational agency, the State educational agency shall—

"(A) include that individual, entity, or agency as a partner in the partnership under this subsection; and

"(B) ensure that any activities the State will carry out under this subpart that are within that partner's jurisdiction (which may include activities described in section 654(b)) are carried out by that partner.

"SEC. 653. APPLICATIONS.

"(a) IN GENERAL.—

"(1) SUBMISSION.—A State educational agency that desires to receive a grant under this subpart shall submit to the Secretary an application at such time, in such manner, and including such information as the Secretary may require.

"(2) STATE PLAN.—The application shall include a plan that identifies and addresses the State and local needs for the personnel preparation and professional development of administrators, principals, and teachers, as well as individuals who provide direct supplementary aids and services to children with disabilities, and that—

"(A) is designed to enable the State to meet the requirements of section 612(a)(14) and section 635(a) (8) and (9);

"(B) is based on an assessment of State and local needs that identifies critical aspects and areas in need of improvement related to the preparation, ongoing training, and professional development of personnel that serve infants, toddlers, preschoolers, and children with disabilities within the State, including—

"(i) current and anticipated personnel vacancies and shortages; and

"(ii) the number of preservice programs; and

"(C) is integrated and aligned, to the maximum extent possible, with State plans and activities under the Elementary and Secondary Education Act of 1965, the Rehabilitation Act of 1973, and the Higher Education Act of 1965.

"(3) REQUIREMENT.—The State application shall contain an assurance that the State educational agency will carry out each of the strategies described in subsection (b)(4).

"(b) ELEMENTS OF STATE PERSONNEL PREPARATION AND PROFESSIONAL DEVELOPMENT PLAN.—Each professional development plan under subsection (a)(2) shall—

"(1) describe a partnership agreement that is in effect for the period of the grant, which agreement shall specify—

"(A) the nature and extent of the partnership described in section 652(b) and the respective roles of each member of the partnership, including the partner described in section 652(b)(3) if applicable; and

"(B) how the State will work with other persons and organizations involved in, and concerned with, the education of children with dis-

abilities, including the respective roles of each of the persons and organizations;

"(2) describe how the strategies and activities described in paragraph (4) will be coordinated with other public resources (including part B and part C funds retained for use at the State level for personnel and professional development purposes) and private resources;

"(3) describe how the State will align its professional development plan under this subpart with the plan and application submitted under sections 1111 and 2112, respectively, of the Elementary and Secondary Education Act of 1965;

"(4) describe what strategies the State will use to address the professional development and personnel needs identified under subsection (a)(2) and how those strategies will be implemented, including—

"(A) a description of the preservice and in-service programs and activities to be supported under this subpart that will provide personnel with the knowledge and skills to meet the needs of, and improve the performance and achievement of, infants, toddlers, preschoolers, and children with disabilities; and

"(B) how such strategies shall be integrated, to the maximum extent possible, with other activities supported by grants funded under this part, including those under section 664;

"(5) provide an assurance that the State will provide technical assistance to local educational agencies to improve the quality of professional development available to meet the needs of personnel who serve children with disabilities;

"(6) provide an assurance that the State will provide technical assistance to entities that provide services to infants and toddlers with disabilities to improve the quality of professional development available to meet the needs of personnel serving such children;

"(7) describe how the State will recruit and retain highly qualified teachers and other qualified personnel in geographic areas of greatest need;

"(8) describe the steps the State will take to ensure that poor and minority children are not taught at higher rates by teachers who are not highly qualified; and

"(9) describe how the State will assess, on a regular basis, the extent to which the strategies implemented under this subpart have been effective in meet-

ing the performance goals described in section 612(a)(15).

"(c) PEER REVIEW.—

"(1) IN GENERAL.—The Secretary shall use a panel of experts who are competent, by virtue of their training, expertise, or experience, to evaluate applications for grants under section 651(c)(1).

"(2) COMPOSITION OF PANEL.—A majority of a panel described in paragraph (1) shall be composed of individuals who are not employees of the Federal Government.

"(3) PAYMENT OF FEES AND EXPENSES OF CERTAIN MEMBERS.—The Secretary may use available funds appropriated to carry out this subpart to pay the expenses and fees of panel members who are not employees of the Federal Government.

"(d) REPORTING PROCEDURES.—Each State educational agency that receives a grant under this subpart shall submit annual performance reports to the Secretary. The reports shall describe the progress of the State in implementing its plan and analyze the effectiveness of the State's activities under this subpart.

"SEC. 654. USE OF FUNDS.

"(a) PROFESSIONAL DEVELOPMENT ACTIVITIES.—A State educational agency that receives a grant under this

subpart shall use the grant funds to support activities in accordance with the State's plan described in section 653, including 1 or more of the following:

"(1) Carrying out programs that provide support to both special education and regular education teachers of children with disabilities and principals, such as programs that—

"(A) provide teacher mentoring, team teaching, reduced class schedules and case loads, and intensive professional development; and

"(B) use standards or assessments for guiding beginning teachers that are consistent with challenging State student academic achievement and functional standards and with the requirements for professional development as defined in section 9101(34) of the Elementary and Secondary Education Act of 1965.

"(2) Encouraging and supporting the training of special education and regular education teachers and administrators to effectively use and integrate technology—

"(A) into curricula and instruction, including training to improve the ability to collect, manage, and analyze data to improve teaching,

decisionmaking, school improvement efforts, and accountability;

"(B) to enhance learning by children with disabilities; and

"(C) to effectively communicate with parents.

"(3) Providing professional development activities that—

"(A) improve the knowledge of special education and regular education teachers concerning—

"(i) the academic and developmental or functional needs of students with disabilities; or

"(ii) effective instructional strategies, methods, and skills, and the use of State academic content standards and student academic achievement and functional standards, and State assessments, to improve teaching practices and student academic achievement;

"(B) improve the knowledge of special education and regular education teachers and principals and, in appropriate cases, paraprofes-

sionals, concerning effective instructional practices and that—

"(i) provide training in how to teach and address the needs of children with different learning styles and children with limited English proficiency;

"(ii) involve collaborative groups of teachers and administrators;

"(iii) provide training in methods of—

"(I) positive behavioral interventions and supports to improve student behavior in the classroom;

"(II) scientifically based reading instruction, including early literacy instruction;

"(III) early and appropriate interventions to identify and help children with disabilities;

"(IV) effective instruction for children with low incidence disabilities;

"(V) successful transitioning to postsecondary opportunities; and

"(VI) using classroom-based techniques to assist children prior to referral for special education;

"(iv) provide training to enable personnel to work with and involve parents in their child's education, including parents of low income and limited English proficient children with disabilities;

"(v) provide training for special education personnel and regular education personnel in planning, developing, and implementing effective and appropriate IEPs; and

"(vi) providing training to meet the needs of students with significant health, mobility, or behavioral needs prior to serving such students; and

"(C) train administrators, principals, and other relevant school personnel in conducting effective IEP meetings.

"(4) Developing and implementing initiatives to promote the recruitment and retention of highly qualified special education teachers, particularly initiatives that have been proven effective in recruitment and retaining highly qualified teachers, including programs that provide—

"(A) teacher mentoring from exemplary special education teachers, principals, or superintendents;

"(B) induction and support for special education teachers during their first 3 years of employment as teachers; or

"(C) incentives, including financial incentives, to retain special education teachers who have a record of success in helping students with disabilities.

"(5) Carrying out programs and activities that are designed to improve the quality of personnel who serve children with disabilities, such as—

"(A) innovative professional development programs (which may be provided through partnerships that include institutions of higher education), including programs that train teachers and principals to integrate technology into curricula and instruction to improve teaching, learning, and technology literacy, which professional development shall be consistent with the definition of professional development in section 9101(34) of the Elementary and Secondary Education Act of 1965; and

"(B) the development and use of proven, cost effective strategies for the implementation of professional development activities, such as through the use of technology and distance learning.

"(6) Carrying out programs and activities that are designed to improve the quality of early intervention personnel, including paraprofessionals and primary referral sources, such as—

"(A) professional development programs to improve the delivery of early intervention services;

"(B) initiatives to promote the recruitment and retention of early intervention personnel; and

"(C) interagency activities to ensure that personnel are adequately prepared and trained.

"(b) OTHER ACTIVITIES.—A State educational agency that receives a grant under this subpart shall use the grant funds to support activities in accordance with the State's plan described in section 653, including 1 or more of the following:

"(1) Reforming special education and regular education teacher certification (including recertification) or licensing requirements to ensure that—

"(A) special education and regular education teachers have—

"(i) the training and information necessary to address the full range of needs of children with disabilities across disability categories; and

"(ii) the necessary subject matter knowledge and teaching skills in the academic subjects that they teach;

"(B) special education and regular education teacher certification (including recertification) or licensing requirements are aligned with challenging State academic content standards; and

"(C) special education and regular education teachers have the subject matter knowledge and teaching skills, including technology literacy, necessary to help students with disabilities meet challenging State student academic achievement and functional standards.

"(2) Programs that establish, expand, or improve alternative routes for State certification of special education teachers for highly qualified individuals with a baccalaureate or master's degree, including mid-career professionals from other occupations,

paraprofessionals, and recent college or university graduates with records of academic distinction who demonstrate the potential to become highly effective special education teachers.

"(3) Teacher advancement initiatives for special education teachers that promote professional growth and emphasize multiple career paths (such as paths to becoming a career teacher, mentor teacher, or exemplary teacher) and pay differentiation.

"(4) Developing and implementing mechanisms to assist local educational agencies and schools in effectively recruiting and retaining highly qualified special education teachers.

"(5) Reforming tenure systems, implementing teacher testing for subject matter knowledge, and implementing teacher testing for State certification or licensing, consistent with title II of the Higher Education Act of 1965.

"(6) Funding projects to promote reciprocity of teacher certification or licensing between or among States for special education teachers, except that no reciprocity agreement developed under this paragraph or developed using funds provided under this subpart may lead to the weakening of any State teaching certification or licensing requirement.

"(7) Developing or assisting local educational agencies to serve children with disabilities through the development and use of proven, innovative strategies to deliver intensive professional development programs that are both cost effective and easily accessible, such as strategies that involve delivery through the use of technology, peer networks, and distance learning.

"(8) Developing, or assisting local educational agencies in developing, merit based performance systems, and strategies that provide differential and bonus pay for special education teachers.

"(9) Supporting activities that ensure that teachers are able to use challenging State academic content standards and student academic and functional achievement standards, and State assessments for all children with disabilities, to improve instructional practices and improve the academic achievement of children with disabilities.

"(10) When applicable, coordinating with, and expanding centers established under, section 2113(c)(18) of the Elementary and Secondary Education Act of 1965 to benefit special education teachers.

"(c) CONTRACTS AND SUBGRANTS.—Each such State educational agency—

"(1) shall award contracts or subgrants to local educational agencies, institutions of higher education, parent training and information centers, or community parent resource centers, as appropriate, to carry out its State plan under this subpart; and

"(2) may award contracts and subgrants to other public and private entities, including the lead agency under part C, to carry out such plan.

"(d) USE OF FUNDS FOR PROFESSIONAL DEVELOPMENT.—A State educational agency that receives a grant under this subpart shall use—

"(1) not less than 75 percent of the funds the State educational agency receives under the grant for any fiscal year for activities under subsection (a); and

"(2) not more than 25 percent of the funds the State educational agency receives under the grant for any fiscal year for activities under subsection (b).

"(e) GRANTS TO OUTLYING AREAS.—Public Law 95–134, permitting the consolidation of grants to the outlying areas, shall not apply to funds received under this subpart.

"SEC. 655. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated to carry out this subpart such sums as may be necessary for each of the fiscal years 2004 through 2009.

"Subpart 2—Scientifically Based Research, Technical Assistance, Model Demonstration Projects, and Dissemination of Information

"SEC. 660. PURPOSE.

"The purpose of this subpart is—

"(1) to provide Federal funding for scientifically based research, technical assistance, model demonstration projects, and information dissemination to improve early intervention, educational, and transitional results for children with disabilities; and

"(2) to assist State educational agencies and local educational agencies in improving their education systems.

"SEC. 661. ADMINISTRATIVE PROVISIONS.

"(a) COMPREHENSIVE PLAN.—

"(1) IN GENERAL.—After receiving input from interested individuals with relevant expertise, the Secretary shall develop and implement a comprehensive plan for activities carried out under this subpart (other than activities assisted under section 665 and subpart 3) in order to enhance the provision of early intervention, educational, related and transitional

services to children with disabilities under parts B and C. The plan shall be coordinated with the plan developed pursuant to section 177(c) of the Education Sciences Reform Act of 2002 and shall include mechanisms to address early intervention, educational, related service and transitional needs identified by State educational agencies in applications submitted for State Personnel and Professional Development grants under subpart 1 and for grants under this subpart.

"(2) PUBLIC COMMENT.—The Secretary shall provide a public comment period of at least 60 days on the plan.

"(3) DISTRIBUTION OF FUNDS.—In implementing the plan, the Secretary shall, to the extent appropriate, ensure that funds are awarded to recipients under this subpart, subpart 3, and subpart 4 to carry out activities that benefit, directly or indirectly, children with the full range of disabilities and of all ages.

"(4) REPORTS TO CONGRESS.—The Secretary shall annually report to Congress on the Secretary's activities under this subpart, subpart 3, and subpart 4, including an initial report not later than 12 months after the date of enactment of the Individuals

with Disabilities Education Improvement Act of 2003.

"(b) ELIGIBLE APPLICANTS.—

"(1) IN GENERAL.—Except as otherwise provided in this subpart, the following entities are eligible to apply for a grant, contract, or cooperative agreement under this subpart:

"(A) A State educational agency.

"(B) A local educational agency.

"(C) A public charter school that is a local educational agency under State law.

"(D) An institution of higher education.

"(E) Any other public agency.

"(F) A private nonprofit organization.

"(G) An outlying area.

"(H) An Indian tribe or a tribal organization (as defined under section 4 of the Indian Self-Determination and Education Assistance Act).

"(I) A for-profit organization.

"(2) SPECIAL RULE.—The Secretary may limit the entities eligible for an award of a grant, contract, or cooperative agreement to 1 or more categories of eligible entities described in paragraph (1).

"(c) SPECIAL POPULATIONS.—

"(1) APPLICATION REQUIREMENT.—In making an award of a grant, contract, or cooperative agreement under this subpart, subpart 3, and subpart 4, the Secretary shall, as appropriate, require an applicant to meet the criteria set forth by the Secretary under this subpart and demonstrate how the applicant will address the needs of children with disabilities from minority backgrounds.

"(2) OUTREACH AND TECHNICAL ASSISTANCE.—Notwithstanding any other provision of this Act, the Secretary shall reserve at least 1 percent of the total amount of funds made available to carry out this subpart, subpart 3, or subpart 4 for 1 or both of the following activities:

"(A) To provide outreach and technical assistance to Historically Black Colleges and Universities, and to institutions of higher education with minority enrollments of at least 25 percent, to promote the participation of such colleges, universities, and institutions in activities under this subpart.

"(B) To enable Historically Black Colleges and Universities, and the institutions described in subparagraph (A), to assist other colleges, universities, institutions, and agencies in im-

proving educational and transitional results for children with disabilities.

"(d) PRIORITIES.—The Secretary, in making an award of a grant, contract, or cooperative agreement under this subpart, subpart 3, or subpart 4, may, without regard to the rulemaking procedures under section 553(a) of title 5, United States Code, limit competitions to, or otherwise give priority to—

"(1) projects that address 1 or more—

"(A) age ranges;

"(B) disabilities;

"(C) school grades;

"(D) types of educational placements or early intervention environments;

"(E) types of services;

"(F) content areas, such as reading; or

"(G) effective strategies for helping children with disabilities learn appropriate behavior in the school and other community based educational settings;

"(2) projects that address the needs of children based on the severity or incidence of their disability;

"(3) projects that address the needs of—

"(A) low achieving students;

"(B) underserved populations;

"(C) children from low income families;

"(D) limited English proficient children;

"(E) unserved and underserved areas;

"(F) rural or urban areas;

"(G) children whose behavior interferes with their learning and socialization;

"(H) children with reading difficulties;

"(I) children in charter schools; or

"(J) children who are gifted and talented;

"(4) projects to reduce inappropriate identification of children as children with disabilities, particularly among minority children;

"(5) projects that are carried out in particular areas of the country, to ensure broad geographic coverage;

"(6) projects that promote the development and use of universally designed technologies, assistive technology devices, and assistive technology services to maximize children with disabilities' access to and participation in the general education curriculum; and

"(7) any activity that is authorized in this subpart or subpart 3.

"(e) APPLICANT AND RECIPIENT RESPONSIBILITIES.—

"(1) DEVELOPMENT AND ASSESSMENT OF PROJECTS.—The Secretary shall require that an applicant for, and a recipient of, a grant, contract, or cooperative agreement for a project under this subpart, subpart 3, or subpart 4—

"(A) involve individuals with disabilities or parents of individuals with disabilities ages birth through 26 in planning, implementing, and evaluating the project; and

"(B) where appropriate, determine whether the project has any potential for replication and adoption by other entities.

"(2) ADDITIONAL RESPONSIBILITIES.—The Secretary may require a recipient of a grant, contract, or cooperative agreement under this subpart, subpart 3, or subpart 4 to—

"(A) share in the cost of the project;

"(B) prepare any findings and products from the project in formats that are useful for specific audiences, including parents, administrators, teachers, early intervention personnel, related services personnel, and individuals with disabilities;

"(C) disseminate such findings and products; and

"(D) collaborate with other such recipients in carrying out subparagraphs (B) and (C).

"(f) APPLICATION MANAGEMENT.—

"(1) STANDING PANEL.—

"(A) IN GENERAL.—The Secretary shall establish and use a standing panel of experts who are competent, by virtue of their training, expertise, or experience, to evaluate applications under this subpart (other than applications for assistance under section 665), subpart 3, and subpart 4 that, 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 high quality programs of personnel preparation;

"(ii) individuals who design and carry out scientifically based research targeted to the improvement of special education programs and services;

"(iii) individuals who have recognized experience and knowledge necessary to integrate and apply scientifically based re-

search findings to improve educational and transitional results for children with disabilities;

"(iv) individuals who administer programs at the State or local level in which children with disabilities participate;

"(v) individuals who prepare parents of children with disabilities to participate in making decisions about the education of their children;

"(vi) individuals who establish policies that affect the delivery of services to children with disabilities;

"(vii) parents of children with disabilities ages birth through 26 who are benefiting, or have benefited, from coordinated research, personnel preparation, and technical assistance; and

"(viii) individuals with disabilities.

"(C) TERM.—Unless approved by the Secretary due to extenuating circumstances related to shortages of experts in a particular area of expertise or for a specific competition, no individual shall serve on the standing panel for more than 3 consecutive years.

"(2) PEER REVIEW PANELS FOR PARTICULAR COMPETITIONS.—

"(A) COMPOSITION.—The Secretary shall ensure that each sub panel selected from the standing panel that reviews applications under this subpart (other than section 665), subpart 3, and subpart 4 includes—

"(i) individuals with knowledge and expertise on the issues addressed by the activities authorized by the relevant subpart; and

"(ii) to the extent practicable, parents of children with disabilities ages birth through 26, individuals with disabilities, and persons from diverse backgrounds.

"(B) FEDERAL EMPLOYMENT LIMITATION.—A majority of the individuals on each sub panel that reviews an application under this subpart (other than an application under section 665), subpart 3, and subpart 4 shall be individuals who are not employees of the Federal Government.

"(3) USE OF DISCRETIONARY FUNDS FOR ADMINISTRATIVE PURPOSES.—

"(A) EXPENSES AND FEES OF NON-FEDERAL PANEL MEMBERS.—The Secretary may use funds made available under this subpart, subpart 3, and subpart 4 to pay the expenses and fees of the panel members who are not officers or employees of the Federal Government.

"(B) ADMINISTRATIVE SUPPORT.—The Secretary may use not more than 1 percent of the funds made available to carry out this subpart, subpart 3, or subpart 4 to pay non-Federal entities for administrative support related to management of applications submitted under this subpart.

"(4) AVAILABILITY OF CERTAIN PRODUCTS.—The Secretary shall ensure that recipients of grants, cooperative agreements, or contracts under this subpart, subpart 3, and subpart 4 make available in formats that are accessible to individuals with disabilities any products developed under such grants, cooperative agreements, or contracts that the recipient is making available to the public.

"(g) PROGRAM EVALUATION.—The Secretary may use funds made available to carry out this subpart, subpart 3, and subpart 4 to evaluate activities carried out under this subpart.

"(h) MINIMUM FUNDING REQUIRED.—

"(1) IN GENERAL.—Subject to paragraph (2), the Secretary shall ensure that, for each fiscal year, at least the following amounts are provided under this subpart and subpart 3 to address the following needs:

"(A) $12,832,000 to address the educational, related services, transitional, and early intervention needs of children with deaf-blindness.

"(B) $4,000,000 to address the postsecondary, vocational, technical, continuing, and adult education needs of individuals with deafness.

"(C) $4,000,000 to address the educational, related services, and transitional needs of children with an emotional disturbance and those who are at risk of developing an emotional disturbance.

"(2) RATABLE REDUCTION.—If the total amount appropriated to carry out this subpart, subpart 3, and part E of the Education Sciences Reform Act of 2002 for any fiscal year is less than $130,000,000, the amounts listed in paragraph (1) shall be ratably reduced.

"(i) ELIGIBILITY FOR FINANCIAL ASSISTANCE.—No State or local educational agency, or other public institution or agency, may receive a grant or enter into a contract or cooperative agreement under this subpart that relates exclusively to programs, projects, and activities pertaining to children aged 3 through 5, inclusive, unless the State is eligible to receive a grant under section 619(b).

"SEC. 662. RESEARCH COORDINATION TO IMPROVE RESULTS FOR CHILDREN WITH DISABILITIES.

"The Secretary shall coordinate research carried out under this subpart with research carried out under part E of the Education Sciences Reform Act of 2002.

"SEC. 663. TECHNICAL ASSISTANCE, DEMONSTRATION PROJECTS, DISSEMINATION OF INFORMATION, AND IMPLEMENTATION OF SCIENTIFICALLY BASED RESEARCH.

"(a) IN GENERAL.—From amounts made available under section 675, the Secretary, on a competitive basis, shall award grants to, or enter into contracts or cooperative agreements with, eligible entities to provide technical assistance, carry out model demonstration projects, disseminate useful information, and implement activities that are supported by scientifically based research.

"(b) REQUIRED ACTIVITIES.—The Secretary shall support activities to improve services provided under this Act,

including the practices of professionals and others involved in providing such services to children with disabilities, that promote academic achievement and functional performance to improve educational results and functional outcomes for children with disabilities through—

"(1) implementing effective strategies that are conducive to learning and for addressing inappropriate behavior of students with disabilities in schools, including strategies to prevent children with emotional and behavioral problems from developing emotional disturbances that require the provision of special education and related services;

"(2) improving the alignment, compatibility, and development of valid and reliable assessment methods, including alternate assessment methods and evaluation methods, for assessing adequately yearly progress as described in section 1111(b)(2) of the Elementary and Secondary Education Act of 1965;

"(3) providing information to both regular education teachers and special education teachers to address the different learning styles and disabilities of students;

"(4) disseminating information on innovative, effective, and efficient curricula, materials (including

those that are universally designed), instructional approaches, and strategies that—

"(A) support effective transitions between educational settings or from school to post-school settings;

"(B) support effective inclusion of students with disabilities in general education settings, especially students with low-incidence disabilities; and

"(C) improve educational and transitional results at all levels of the educational system in which the activities are carried out and, in particular, that improve the progress of children with disabilities, as measured by assessments within the general education curriculum involved; and

"(5) demonstrating and applying scientifically-based findings to facilitate systematic changes related to the provision of services to children with disabilities.

"(c) AUTHORIZED ACTIVITIES.—Activities that may be carried out under this section include activities to improve services provided under this Act, including the practices of professionals and others involved in providing such services to children with disabilities, that promote increased

academic achievement and enhanced functional outcomes for children with disabilities through—

"(1) supporting and promoting the coordination of early intervention, education, and transitional services for children with disabilities with services provided by health, rehabilitation, and social service agencies;

"(2) promoting improved alignment and compatibility of general and special education reforms concerned with curriculum and instructional reform, and evaluating of such reforms;

"(3) enabling professionals, parents of children with disabilities, and other persons, to learn about, and implement, the findings of scientifically based research and effective practices relating to the provision of services to children with disabilities;

"(4) disseminating information relating to successful approaches to overcoming systemic barriers to the effective and efficient delivery of early intervention, educational, and transitional services, to personnel who provide services to children with disabilities;

"(5) assisting States and local educational agencies with the process of planning systemic changes that will promote improved early intervention, edu-

cational, and transitional results for children with disabilities;

"(6) promoting change through a multi-State or regional framework that benefits States, local educational agencies, and other participants in partnerships that are in the process of achieving systemic change;

"(7) focusing on the needs and issues that are specific to a population of children with disabilities, such as providing single-State and multi-State technical assistance and in-service training—

"(A) to schools and agencies serving deaf-blind children and their families;

"(B) to programs and agencies serving other groups of children with low-incidence disabilities and their families;

"(C) to address the postsecondary education needs of individuals who are deaf or hard-of-hearing; and

"(D) to schools and personnel providing special education and related services for children with autism spectrum disorders;

"(8) demonstrating models of personnel preparation to ensure appropriate placements and services for all students with disabilities and to reduce

disproportionality in eligibility, placement, and disciplinary actions for minority and limited English proficient children: and

"(9) disseminating information on how to reduce racial and ethnic disproportionalities.

"(d) BALANCE AMONG DISABILITIES AND AGE RANGES.—In carrying out this section, the Secretary shall ensure that there is an appropriate balance across all age ranges and disabilities.

"(e) LINKING STATES TO INFORMATION SOURCES.—In carrying out this section, the Secretary may support projects that link States to technical assistance resources, including special education and general education resources, and may make research and related products available through libraries, electronic networks, parent training projects, and other information sources.

"(f) APPLICATIONS.—

"(1) IN GENERAL.—An eligible entity that desires to receive a grant, or to enter into a contract or cooperative agreement, under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

"(2) CONTENTS.—The Secretary may, as appropriate, require eligible entities to demonstrate that the

projects described in their applications are supported by scientifically based research that has been carried out in conjunction with the standards for the conduct and evaluation of all research and development established by the National Center for Education Research under sections 133 and 134 of the Education Sciences Reform Act of 2002.

"(3) PRIORITY.—As appropriate, the Secretary shall give priority to applications that propose to serve teachers and school personnel directly in the school environment or that strengthen State and local agency capacity to improve instructional practices of personnel to improve educational results for children with disabilities in the school environment.

"SEC. 664. PERSONNEL DEVELOPMENT TO IMPROVE SERVICES AND RESULTS FOR CHILDREN WITH DISABILITIES.

"(a) IN GENERAL.—The Secretary, on a competitive basis, shall award grants to, or enter into contracts or cooperative agreements with, eligible entities for 1 or more of the following:

"(1) To help address the needs identified in the State plan described in section 653(a)(2) for highly qualified personnel, as defined in section 651(b), to work with infants, toddlers, or children with disabil-

ities, consistent with the standards described in section 612(a)(14).

"(2) To ensure that those personnel have the necessary skills and knowledge, derived from practices that have been determined, through scientifically based research, to be successful in serving those children.

"(3) To encourage increased focus on academics and core content areas in special education personnel preparation programs.

"(4) To ensure that regular education teachers have the necessary skills and knowledge to provide instruction to students with disabilities in the regular education classroom.

"(5) To ensure that all special education teachers are highly qualified.

"(6) To ensure that preservice and in-service personnel preparation programs include training in—

"(A) the use of new technologies;

"(B) the area of early intervention, educational, and transition services;

"(C) effectively involving parents; and

"(D) positive behavioral supports.

"(7) To provide high-quality professional development for principals, superintendents, and other administrators, including training in—

"(A) instructional leadership;

"(B) behavioral supports in the school and classroom;

"(C) paperwork reduction;

"(D) promoting improved collaboration between special education and general education teachers;

"(E) assessment and accountability;

"(F) ensuring effective learning environments; and

"(G) fostering positive relationships with parents.

"(b) PERSONNEL DEVELOPMENT; AUTHORIZED ACTIVITIES.—

"(1) IN GENERAL.—In carrying out this section, the Secretary shall support activities to prepare personnel, including activities for the preparation of personnel who will serve children with high-incidence and low-incidence disabilities, consistent with the objectives described in subsection (a).

"(2) AUTHORIZED ACTIVITIES.—Activities that may be carried out under this subsection include the following:

"(A) Supporting collaborative personnel preparation activities undertaken by institutions of higher education, local educational agencies, and other local entities—

"(i) to improve and reform their existing programs, to support effective existing programs, to support the development of new programs, and to prepare teachers, principals, administrators, and related services personnel—

"(I) to meet the diverse needs of children with disabilities for early intervention, educational, and transitional services; and

"(II) to work collaboratively in regular classroom settings; and

"(ii) to incorporate best practices and scientifically based research about preparing personnel—

"(I) so the personnel will have the knowledge and skills to improve edu-

cational results for children with disabilities; and

"(II) to implement effective teaching strategies and interventions to prevent the misidentification, overidentification, or underidentification of children as having a disability, especially minority and limited English proficient children.

"(B) Developing, evaluating, and disseminating innovative models for the recruitment, induction, retention, and assessment of highly qualified teachers to reduce teachers shortages.

"(C) Providing continuous personnel preparation, training, and professional development designed to provide support and ensure retention of teachers and personnel who teach and provide related services to children with disabilities.

"(D) Developing and improving programs for paraprofessionals to become special education teachers, related services personnel, and early intervention personnel, including interdisciplinary training to enable the paraprofessionals to improve early intervention, educational, and transitional results for children with disabilities.

"(E) Demonstrating models for the preparation of, and interdisciplinary training of, early intervention, special education, and general education personnel, to enable the personnel to acquire the collaboration skills necessary to work within teams and to improve results for children with disabilities, particularly within the general education curriculum.

"(F) Promoting effective parental involvement practices to enable the personnel to work with parents and involve parents in the education of such parents' children.

"(G) Promoting the transferability, across State and local jurisdictions, of licensure and certification of teachers, principals, and administrators working with such children.

"(H) Developing and disseminating models that prepare teachers with strategies, including positive behavioral interventions, for addressing the conduct of children with disabilities that impedes their learning and that of others in the classroom.

"(I) Developing and improving programs to enhance the ability of general education teachers, principals, school administrators, and school

board members to improve results for children with disabilities.

"(J) Supporting institutions of higher education with minority enrollments of at least 25 percent for the purpose of preparing personnel to work with children with disabilities.

"(K) Preparing personnel to work in high need elementary schools and secondary schools, including urban schools, rural schools, and schools operated by an entity described in section 7113(d)(1)(A)(ii) of the Elementary and Secondary Education Act of 1965, and schools that serve high numbers or percentages of limited English proficient children.

"(L) Developing, evaluating, and disseminating innovative models for the recruitment, induction, retention, and assessment of new, highly qualified teachers, especially from groups that are underrepresented in the teaching profession, including individuals with disabilities.

"(M) Developing and improving programs to train special education teachers to develop an expertise in autism spectrum disorders.

"(c) LOW INCIDENCE DISABILITIES; AUTHORIZED ACTIVITIES.—

"(1) IN GENERAL.—In carrying out this section, the Secretary shall support activities, consistent with the objectives described in subsection (a), that benefit children with low incidence disabilities.

"(2) AUTHORIZED ACTIVITIES.—Activities that may be carried out under this subsection include activities such as the following:

"(A) Preparing persons who—

"(i) have prior training in educational and other related service fields; and

"(ii) are studying to obtain degrees, certificates, or licensure that will enable the persons to assist children with low incidence disabilities to achieve the objectives set out in their individualized education programs described in section 614(d), or to assist infants and toddlers with low incidence disabilities to achieve the outcomes described in their individualized family service plans described in section 636.

"(B) Providing personnel from various disciplines with interdisciplinary training that will contribute to improvement in early intervention, educational, and transitional results for children with low incidence disabilities.

"(C) Preparing personnel in the innovative uses and application of technology, including universally designed technologies, assistive technology devices, and assistive technology services—

"(i) to enhance learning by children with low incidence disabilities through early intervention, educational, and transitional services; and

"(ii) to improve communication with parents.

"(D) Preparing personnel who provide services to visually impaired or blind children to teach and use Braille in the provision of services to such children.

"(E) Preparing personnel to be qualified educational interpreters, to assist children with low incidence disabilities, particularly deaf and hard of hearing children in school and school related activities, and deaf and hard of hearing infants and toddlers and preschool children in early intervention and preschool programs.

"(F) Preparing personnel who provide services to children with significant cognitive disabilities and children with multiple disabilities.

"(3) DEFINITION.—As used in this section, the term 'low incidence disability' means—

"(A) a visual or hearing impairment, or simultaneous visual and hearing impairments;

"(B) a significant cognitive impairment; or

"(C) any impairment for which a small number of personnel with highly specialized skills and knowledge are needed in order for children with that impairment to receive early intervention services or a free appropriate public education.

"(4) SELECTION OF RECIPIENTS.—In selecting recipients under this subsection, the Secretary may give preference to eligible entities submitting applications that include 1 or more of the following:

"(A) A proposal to prepare personnel in more than 1 low incidence disability, such as deafness and blindness.

"(B) A demonstration of an effective collaboration with an eligible entity and a local educational agency that promotes recruitment and subsequent retention of highly qualified personnel to serve children with disabilities.

"(5) PREPARATION IN USE OF BRAILLE.—The Secretary shall ensure that all recipients of assistance

under this subsection who will use that assistance to prepare personnel to provide services to visually impaired or blind children that can appropriately be provided in Braille will prepare those individuals to provide those services in Braille.

"(d) LEADERSHIP PREPARATION; AUTHORIZED ACTIVITIES.—

"(1) IN GENERAL.—In carrying out this section, the Secretary shall support leadership preparation activities that are consistent with the objectives described in subsection (a).

"(2) AUTHORIZED ACTIVITIES.—Activities that may be carried out under this subsection include activities such as the following:

"(A) Preparing personnel at the graduate, doctoral, and postdoctoral levels of training to administer, enhance, or provide services to improve results for children with disabilities.

"(B) Providing interdisciplinary training for various types of leadership personnel, including teacher preparation faculty, administrators, researchers, supervisors, principals, related services personnel, and other persons whose work affects early intervention, educational, and transitional services for children with disabilities.

"(e) ENHANCED SUPPORT AND TRAINING FOR BEGINNING SPECIAL EDUCATORS; AUTHORIZED ACTIVITIES.—

"(1) IN GENERAL.—In carrying out this section, the Secretary shall support personnel preparation activities that are consistent with the objectives described in subsection (a).

"(2) AUTHORIZED ACTIVITIES.—Activities that may be carried out under this subsection include—

"(A) enhancing and restructuring an existing program or developing a preservice teacher education program, to prepare special education teachers, at colleges or departments of education within the institution of higher education, by incorporating an additional 5th year clinical learning opportunity, field experience, or supervised practicum into a program of preparation and coursework for special education teachers; or

"(B) Creating or supporting professional development schools that provide—

"(i) high quality mentoring and induction opportunities with ongoing support for beginning special education teachers; or

"(ii) inservice professional development to veteran special education teachers

through the ongoing exchange of information and instructional strategies.

"(3) ELIGIBLE PARTNERSHIPS.—Eligible recipients of assistance under this subsection are partnerships—

"(A) that shall consist of—

"(i) 1 or more institutions of higher education with special education personnel preparation programs; and

"(ii) 1 or more local educational agencies; and

"(iii) in the case of activities assisted under paragraph (2)(B), an elementary school or secondary school; and

"(B) that may include other entities eligible for assistance under this part, such as a State educational agency.

"(4) PRIORITY.—In awarding grants or entering into contracts or cooperative agreements under this subsection, the Secretary shall give priority to partnerships that include local educational agencies that serve—

"(A) high numbers or percentages of low-income students; or

"(B) schools that have failed to make adequate yearly progress toward enabling children with disabilities to meet academic achievement standards.

"(f) TRAINING TO SUPPORT GENERAL EDUCATORS; AUTHORIZED ACTIVITIES.—

"(1) IN GENERAL.—In carrying out this section, the Secretary shall support personnel preparation activities that are consistent with the objectives described in subsection (a).

"(2) AUTHORIZED ACTIVITIES.—Activities that may be carried out under this subsection include—

"(A) high quality professional development for general educators that develops the knowledge and skills, and enhances the ability, of general educators to—

"(i) use classroom-based techniques to identify students who may be eligible for special education services, and deliver instruction in a way that meets the individualized needs of children with disabilities through appropriate supports, accommodations, and curriculum modifications;

"(ii) use classroom-based techniques, such as scientifically based reading instruction;

"(iii) work collaboratively with special education teachers and related services personnel;

"(iv) implement strategies, such as positive behavioral interventions—

"(I) to address the behavior of children with disabilities that impedes the learning of such children and others; or

"(II) to prevent children from being misidentified as children with disabilities;

"(v) prepare children with disabilities to participate in statewide assessments (with or without accommodations) and alternate assessments, as appropriate;

"(vi) develop effective practices for ensuring that all children with disabilities are a part of all accountability systems under the Elementary and Secondary Education Act of 1965;

"(vii) work with and involve parents of children with disabilities in their child's education;

"(viii) understand how to effectively construct IEPs, participate in IEP meetings, and implement IEPs; and

"(ix) in the case of principals and superintendents, be instructional leaders and promote improved collaboration between general educators, special education teachers, and related services personnel; and

"(B) release and planning time for the activities described in this subsection.

"(3) ELIGIBLE PARTNERSHIPS.—Eligible recipients of assistance under this subsection are partnerships—

"(A) that consist of—

"(i) 1 or more institutions of higher education with special education personnel preparation programs; and

"(ii) 1 or more local educational agencies; and

"(B) that may include other entities eligible for assistance under this part, such as a State educational agency.

"(g) APPLICATIONS.—

"(1) IN GENERAL.—Any eligible entity that desires to receive a grant, or enter into a contract or cooperative agreement, under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

"(2) IDENTIFIED STATE NEEDS.—

"(A) REQUIREMENT TO ADDRESS IDENTIFIED NEEDS.—Any application under subsection (b), (c), (d), (e), or (f) shall include information demonstrating to the satisfaction of the Secretary that the activities described in the application will address needs identified by the State or States the applicant proposes to serve, consistent with the needs identified in the State plan described in section 653(a)(2).

"(B) COOPERATION WITH STATE EDUCATIONAL AGENCIES.—Any applicant that is not a local educational agency or a State educational agency shall include in the application information demonstrating to the satisfaction of the Secretary that the applicant and 1 or more State educational agencies or local educational

agencies have engaged in a cooperative effort to carry out and monitor the project to be assisted.

"(3) ACCEPTANCE BY STATES OF PERSONNEL PREPARATION REQUIREMENTS.—The Secretary may require applicants to provide assurances from 1 or more States that such States intend to accept successful completion of the proposed personnel preparation program as meeting State personnel standards for serving children with disabilities or serving infants and toddlers with disabilities.

"(h) SELECTION OF RECIPIENTS.—

"(1) IMPACT OF PROJECT.—In selecting award recipients under this section, the Secretary shall consider the impact of the proposed project described in the application in meeting the need for personnel identified by the States.

"(2) REQUIREMENT FOR APPLICANTS TO MEET STATE AND PROFESSIONAL STANDARDS.—The Secretary shall make grants and enter into contracts and cooperative agreements under this section only to eligible applicants that meet State and professionally recognized standards for the preparation of special education and related services personnel, if the purpose of the project is to assist personnel in obtaining degrees.

"(3) PREFERENCES.—In selecting recipients under this section, the Secretary may give preference to institutions of higher education that are—

"(A) educating regular education personnel to meet the needs of children with disabilities in integrated settings;

"(B) educating special education personnel to work in collaboration with regular educators in integrated settings; and

"(C) successfully recruiting and preparing individuals with disabilities and individuals from groups that are underrepresented in the profession for which the institution of higher education is preparing individuals.

"(i) SERVICE OBLIGATION.—Each application for funds under subsections (b), (c), (d), and (e) shall include an assurance that the applicant will ensure that individuals who receive assistance under the proposed project will subsequently provide special education and related services to children with disabilities for a period of 1 year for every year for which assistance was received, or repay all or part of the cost of that assistance, in accordance with regulations issued by the Secretary.

"(j) SCHOLARSHIPS.—The Secretary may include funds for scholarships, with necessary stipends and allowances, in awards under subsections (b), (c), (d), and (e).

"(k) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary for each of the fiscal years 2004 through 2009.

"SEC. 665. STUDIES AND EVALUATIONS.

"(a) STUDIES AND EVALUATIONS.—

"(1) DELEGATION.—The Secretary shall delegate to the Director of the Institute for Education Sciences responsibility to carry out this section, other than subsections (d) and (f).

"(2) ASSESSMENT.—The Secretary shall, directly or through grants, contracts, or cooperative agreements awarded on a competitive basis, assess the progress in the implementation of this Act, including the effectiveness of State and local efforts to provide—

"(A) a free appropriate public education to children with disabilities; and

"(B) early intervention services to infants and toddlers with disabilities, and infants and toddlers who would be at risk of having substantial developmental delays if early intervention services were not provided to them.

"(b) NATIONAL ASSESSMENT.—

"(1) IN GENERAL.—The Secretary shall carry out a national assessment of activities carried out with Federal funds under this Act in order—

"(A) to determine the effectiveness of this Act in achieving its purposes;

"(B) to provide timely information to the President, Congress, the States, local educational agencies, and the public on how to implement this Act more effectively; and

"(C) to provide the President and Congress with information that will be useful in developing legislation to achieve the purposes of this Act more effectively.

"(2) CONSULTATION.—The Secretary shall plan, review, and conduct the national assessment under this subsection in consultation with researchers, State practitioners, local practitioners, parents of children with disabilities, and other appropriate individuals.

"(3) SCOPE OF ASSESSMENT.—The national assessment shall assess the—

"(A) implementation of programs assisted under this Act and the impact of those programs on addressing the developmental, educational, and transitional needs of, and improving the

academic achievement and functional outcomes of, children with disabilities to enable the children to reach challenging developmental goals and challenging State academic content standards based on State academic assessments, including alternate assessments;

"(B) types of programs and services that have demonstrated the greatest likelihood of helping students reach the challenging State academic content standards and developmental goals;

"(C) implementation of the personnel preparation and professional development activities assisted under this Act and the impact on instruction, student academic achievement, and teacher qualifications to enhance the ability of special education teachers and regular education teachers to improve results for children with disabilities; and

"(D) effectiveness of schools, local educational agencies, States, and other recipients of assistance under this Act, in achieving the purposes of this Act in—

"(i) improving the academic achievement of children with disabilities and their

performance on regular statewide assessments, and the performance of children with disabilities on alternate assessments;

"(ii) improving the participation rate of children with disabilities in the general education curriculum;

"(iii) improving the transitions of children with disabilities at natural transition points;

"(iv) placing and serving children with disabilities, including minority children, in the least restrictive environment appropriate;

"(v) preventing children with disabilities, especially children with emotional disturbances and specific learning disabilities, from dropping out of school;

"(vi) addressing the reading and literacy needs of children with disabilities;

"(vii) coordinating services provided under this Act with each other, with other educational and pupil services (including preschool services), and with health and social services funded from other sources;

"(viii) improving the participation of parents of children with disabilities in the education of their children;

"(ix) resolving disagreements between education personnel and parents through alternate dispute resolution activities including mediation; and

"(x) reducing the misidentification of children, especially minority and limited English proficient children.

"(4) INTERIM AND FINAL REPORTS.—The Secretary shall submit to the President and Congress—

"(A) an interim report that summarizes the preliminary findings of the national assessment not later than 3 years after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2003; and

"(B) a final report of the findings of the assessment not later than 5 years after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2003.

"(c) STUDY ON ENSURING ACCOUNTABILITY FOR STUDENTS WITH SIGNIFICANT DISABILITIES.—The Secretary shall carry out a national study or studies to examine—

"(1) the criteria that States use to determine eligibility for alternate assessments and the number and type of children who take those assessments;

"(2) the validity and reliability of alternate assessment instruments and procedures;

"(3) the alignment of alternate assessments with State academic content and achievement standards or with alternate academic achievement standards; and

"(4) the use and effectiveness of alternate assessments in appropriately measuring student progress and outcomes specific to individualized instructional need.

"(d) ANNUAL REPORT.—The Secretary shall provide an annual report to Congress that—

"(1) summarizes the research conducted under section 662;

"(2) analyzes and summarizes the data reported by the States and the Secretary of the Interior under section 618;

"(3) summarizes the studies and evaluations conducted under this section and the timeline for their completion;

"(4) describes the extent and progress of the national assessment; and

"(5) describes the findings and determinations resulting from reviews of State implementation of this Act.

"(e) AUTHORIZED ACTIVITIES.—In carrying out this section, the Secretary may support objective studies, evaluations, and assessments, including studies that—

"(1) analyze measurable impact, outcomes, and results achieved by State educational agencies and local educational agencies through their activities to reform policies, procedures, and practices designed to improve educational and transitional services and results for children with disabilities;

"(2) analyze State and local needs for professional development, parent training, and other appropriate activities that can reduce the need for disciplinary actions involving children with disabilities;

"(3) assess educational and transitional services and results for children with disabilities from minority backgrounds, including—

"(A) data on—

"(i) the number of minority children who are referred for special education evaluation;

"(ii) the number of minority children who are receiving special education and re-

lated services and their educational or other service placement;

"(iii) the number of minority children who graduated from secondary programs with a regular diploma in the standard number of years; and

"(iv) the number of minority children who drop out of the educational system; and

"(B) the performance of children with disabilities from minority backgrounds on State assessments and other performance indicators established for all students;

"(4) measure educational and transitional services and results of children with disabilities served under this Act, including longitudinal studies that—

"(A) examine educational and transitional services and results for children with disabilities who are 3 through 17 years of age and are receiving special education and related services under this Act, using a national, representative sample of distinct age cohorts and disability categories; and

"(B) examine educational results, transition services, 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

"(5) identify and report on the placement of children with disabilities by disability category.

"(f) STUDY.—The Secretary shall study, and report to Congress regarding, the extent to which States adopt policies described in section 635(b)(1) and on the effects of those policies.

"(g) RESERVATION FOR STUDIES AND EVALUATIONS.—

"(1) IN GENERAL.—Except as provided in paragraph (2) and notwithstanding any other provision of this Act, the Secretary may reserve not more than ½ of 1 percent of the amount appropriated under parts B and C for each fiscal year to carry out this section, of which not more than $3,000,000 shall be available to carry out subsection (c).

"(2) MAXIMUM AMOUNT.—The maximum amount the Secretary may reserve under paragraph (1) for any fiscal year is $40,000,000, increased by the cumulative rate of inflation since fiscal year 2003.

"Subpart 3—Supports To Improve Results for Children With Disabilities

"SEC. 670. PURPOSES.

"The purposes of this subpart are to ensure that—

"(1) children with disabilities and their parents receive training and information on their rights, responsibilities, and protections under this Act, in order to develop the skills necessary to cooperatively and effectively participate in planning and decision making relating to early intervention, educational, and transitional services;

"(2) parents, teachers, administrators, early intervention personnel, related services personnel, and transition personnel receive coordinated and accessible technical assistance and information to assist them in improving early intervention, educational, and transitional services and results for children with disabilities and their families; and

"(3) appropriate technology and media are researched, developed, and demonstrated, to improve and implement early intervention, educational, and transitional services and results for children with disabilities and their families.

"SEC. 671. PARENT TRAINING AND INFORMATION CENTERS.

"(a) PROGRAM AUTHORIZED.—The Secretary may award grants to, and enter into contracts and cooperative

agreements with, parent organizations to support parent training and information centers to carry out activities under this section.

"(b) REQUIRED ACTIVITIES.—Each parent training and information center that receives assistance under this section shall—

"(1) provide training and information that meets the needs of parents of children with disabilities living in the area served by the center, particularly underserved parents and parents of children who may be inappropriately identified, to enable their children with disabilities to—

"(A) meet developmental and functional goals, and challenging academic achievement goals that have been established for all children; and

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

"(2) serve the parents of infants, toddlers, and children with the full range of disabilities described in section 602(3);

"(3) assist parents to—

"(A) better understand the nature of their children's disabilities and their educational, developmental, and transitional needs;

"(B) communicate effectively and work collaboratively with personnel responsible for providing special education, early intervention services, transition services, and related services;

"(C) participate in decisionmaking processes and the development of individualized education programs under part B and individualized family service plans under part C;

"(D) obtain appropriate information about the range, type, and quality of options, programs, services, technologies, and research based practices and interventions, and resources available to assist children with disabilities and their families in school and at home;

"(E) understand the provisions of this Act for the education of, and the provision of early intervention services to, children with disabilities; and

"(F) participate in school reform activities;

"(4) in States where the State elects to contract with the parent training and information center, contract with State educational agencies to provide, con-

sistent with subparagraphs (B) and (D) of section 615(e)(2), individuals who meet with parents to explain the mediation process to the parents;

"(5) assist parents in resolving disputes in the most expeditious and effective way possible, including encouraging the use, and explaining the benefits, of alternative methods of dispute resolution, such as the mediation process described in section 615(e);

"(6) assist parents and students with disabilities to understand their rights and responsibilities under this Act, including those under section 615(m) on the student's reaching the age of majority;

"(7) assist parents to understand the availability of, and how to effectively use, procedural safeguards under this Act;

"(8) assist parents in understanding, preparing for, and participating in, the process described in section 615(f)(1)(B);

"(9) establish cooperative partnerships with community parent resource centers funded under section 672;

"(10) network with appropriate clearinghouses, including organizations conducting national dissemination activities under section 663, and with other national, State, and local organizations and agencies,

such as protection and advocacy agencies, that serve parents and families of children with the full range of disabilities described in section 602(3); and

"(11) annually report to the Secretary on—

"(A) the number and demographics of parents to whom the center provided information and training in the most recently concluded fiscal year;

"(B) the effectiveness of strategies used to reach and serve parents, including underserved parents of children with disabilities; and

"(C) the number of parents served who have resolved disputes through alternative methods of dispute resolution.

"(c) OPTIONAL ACTIVITIES.—A parent training and information center that receives assistance under this section may provide information to teachers and other professionals to assist the teachers and professionals in improving results for children with disabilities.

"(d) APPLICATION REQUIREMENTS.—Each application for assistance under this section shall identify with specificity the special efforts that the parent organization will undertake—

"(1) to ensure that the needs for training and information of underserved parents of children with dis-

abilities in the area to be served are effectively met; and

"(2) to work with community based organizations.

"(e) DISTRIBUTION OF FUNDS.—

"(1) IN GENERAL.—The Secretary shall—

"(A) make at least 1 award to a parent organization in each State for a parent training and information center which is designated as the statewide parent training and information center; or

"(B) in the case of a large State, make awards to multiple parent training and information centers, but only if the centers demonstrate that coordinated services and supports will occur among the multiple centers.

"(2) SELECTION REQUIREMENT.—The Secretary shall select among applications submitted by parent organizations in a State in a manner that ensures the most effective assistance to parents, including parents in urban and rural areas, in the State.

"(f) QUARTERLY REVIEW.—

"(1) MEETINGS.—The board of directors of each parent organization that receives an award under this section shall meet at least once in each calendar

quarter to review the activities for which the award was made.

"(2) CONTINUATION AWARD.—When an organization requests a continuation award under this section, the board of directors shall submit to the Secretary a written review of the parent training and information program conducted by the organization during the preceding fiscal year.

"(g) DEFINITION OF PARENT ORGANIZATION.—As used in this section, the term 'parent organization' means a private nonprofit organization (other than an institution of higher education) that—

"(1) has a board of directors—

"(A) the majority of whom are parents of children with disabilities ages birth through 26;

"(B) that includes—

"(i) individuals working in the fields of special education, related services, and early intervention; and

"(ii) individuals with disabilities;

"(C) the parent and professional members of which are broadly representative of the population to be served; and

"(2) has as its mission serving families of children and youth with disabilities who—

"(A) are ages birth through 26; and

"(B) have the full range of disabilities described in section 602(3).

"SEC. 672. COMMUNITY PARENT RESOURCE CENTERS.

"(a) IN GENERAL.—The Secretary may award grants to, and enter into contracts and cooperative agreements with, local parent organizations to support parent training and information centers that will help ensure that underserved parents of children with disabilities, including low income parents, parents of children with limited English proficiency, and parents with disabilities, have the training and information the parents need to enable the parents to participate effectively in helping their children with disabilities—

"(1) to meet developmental and functional goals, and challenging academic achievement goals that have been established for all children; and

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

"(b) REQUIRED ACTIVITIES.—Each community parent resource center assisted under this section shall—

"(1) provide training and information that meets the training and information needs of parents of children with disabilities proposed to be served by the grant, contract, or cooperative agreement;

"(2) carry out the activities required of parent training and information centers under paragraphs (2) through (9) of section 671(b);

"(3) establish cooperative partnerships with the parent training and information centers funded under section 671; and

"(4) be designed to meet the specific needs of families who experience significant isolation from available sources of information and support.

"(c) DEFINITION.—As used in this section, the term 'local parent organization' means a parent organization, as defined in section 671(g), that—

"(1) has a board of directors the majority of whom are parents of children with disabilities ages birth through 26 from the community to be served; and

"(2) has as its mission serving parents of children with disabilities who—

"(A) are ages birth through 26; and

"(B) have the full range of disabilities described in section 602(3).

"SEC. 673. TECHNICAL ASSISTANCE FOR PARENT TRAINING AND INFORMATION CENTERS.

"(a) IN GENERAL.—The Secretary may make an award to 1 parent organization (as defined in section

671(g)) that receives assistance under section 671 to enable the parent organization to provide technical assistance for developing, assisting, and coordinating parent training and information programs carried out by parent training and information centers receiving assistance under sections 671 and 672.

"(b) AUTHORIZED ACTIVITIES.—The Secretary may provide technical assistance to a parent training and information center under this section in areas such as—

"(1) effective national coordination of parent training efforts, which includes encouraging collaborative efforts among award recipients under sections 671 and 672;

"(2) dissemination of information, scientifically based research, and research based practices and interventions;

"(3) promotion of the use of technology, including universally designed technologies, assistive technology devices, and assistive technology services;

"(4) reaching underserved populations;

"(5) including children with disabilities in general education programs;

"(6) facilitation of transitions from—

"(A) early intervention services to preschool;

"(B) preschool to elementary school;

"(C) elementary school to secondary school; and

"(D) secondary school to postsecondary environments; and

"(7) promotion of alternative methods of dispute resolution, including mediation.

"(c) REGIONAL PARENT CENTERS.—The recipient of the award described in section 673(a) shall establish no fewer than 4 regional centers from the parent training and information centers and community parent resource centers receiving assistance under sections 671 and 672 for the purpose of carrying out the authorized activities described in subsection (b). These regional centers shall be selected on the basis of the center's—

"(1) willingness to be a regional parent center;

"(2) demonstrated expertise in the delivery of required parent training and information center activities described in section 671(b);

"(3) demonstrated capacity to deliver the authorized activities described in subsection (b);

"(4) history of collaboration with other parent training and information centers, community parent resource centers, regional resource centers, clearinghouses, and other projects; and

"(5) geographic location.

"(d) COLLABORATION WITH THE RESOURCE CENTERS.—The recipient of the award described in subsection (a), in conjunction with the regional parent centers described in subsection (c), shall develop collaborative agreements with the geographically appropriate Regional Resource Center to further parent and professional collaboration.

"SEC. 674. TECHNOLOGY DEVELOPMENT, DEMONSTRATION, AND UTILIZATION; AND MEDIA SERVICES.

"(a) IN GENERAL.—The Secretary, on a competitive basis, shall award grants to, and enter into contracts and cooperative agreements with, eligible entities to support activities described in subsections (b) and (c).

"(b) TECHNOLOGY DEVELOPMENT, DEMONSTRATION, AND USE.—

"(1) IN GENERAL.—In carrying out this section, the Secretary shall support activities to promote the development, demonstration, and use of technology.

"(2) AUTHORIZED ACTIVITIES.—The following activities may be carried out under this subsection:

"(A) Conducting research on and promoting the demonstration and use of innovative, emerging, and universally designed technologies for children with disabilities, by improving the

transfer of technology from research and development to practice.

"(B) Supporting research, development, and dissemination of technology with universal design features, so that the technology is accessible to the broadest range of individuals with disabilities without further modification or adaptation.

"(C) Demonstrating the use of systems to provide parents and teachers with information and training concerning early diagnosis of, intervention for, and effective teaching strategies for, young children with reading disabilities.

"(D) Supporting the use of Internet-based communications for students with cognitive disabilities in order to maximize their academic and functional skills.

"(c) EDUCATIONAL MEDIA SERVICES; OPTIONAL ACTIVITIES.—

"(1) IN GENERAL.—In carrying out this section, the Secretary shall support—

"(A) educational media activities that are designed to be of educational value in the classroom setting to children with disabilities;

"(B) providing video description, open captioning, or closed captioning, that is appropriate for use in the classroom setting, of—

"(i) television programs;

"(ii) videos;

"(iii) other materials, including programs and materials associated with new and emerging technologies, such as CDs, DVDs, video streaming, and other forms of multimedia; or

"(iv) news (but only until September 30, 2006);

"(C) distributing materials described in subparagraphs (A) and (B) through such mechanisms as a loan service; and

"(D) providing free educational materials, including textbooks, in accessible media for visually impaired and print disabled students in elementary schools and secondary schools.

"(2) LIMITATION.—The video description, open captioning, or closed captioning described in paragraph (1)(B) shall only be provided when the description or captioning has not been previously provided by the producer or distributor, or has not been fully funded by other sources.

"(d) APPLICATIONS.—Any eligible entity that wishes to receive a grant, or enter into a contract or cooperative agreement, under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

"(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary for each of the fiscal years 2004 through 2009.

"SEC. 675. ACCESSIBILITY OF INSTRUCTIONAL MATERIALS.

"(a) INSTRUCTIONAL MATERIALS ACCESSIBILITY STANDARD.—

"(1) ACCESSIBILITY STANDARD.—Not later than 180 days after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2003, the Secretary shall, by rulemaking, promulgate an Instructional Materials Accessibility Standard which shall constitute the technical standards to be used by publishers for the preparation of electronic files for States under section 612(a)(22).

"(2) RELATIONSHIP TO OTHER LAWS.—For purposes of this section:

"(A) AUTHORIZED ENTITY.—Notwithstanding the provisions of section 106 of title 17, United States Code, it is not an infringement of

copyright for an authorized entity to reproduce or to distribute copies of the electronic files described in section 612(a)(22)(B), containing the contents of the print instructional materials using the Instructional Materials Accessibility Standard, if such copies are used solely for reproduction or distribution of the contents of such print instructional materials in specialized formats designed exclusively for use by the blind or other persons with print disabilities.

"(B) PUBLISHER.—Notwithstanding the provisions of section of 106 of title 17, United States Code, it is not an infringement of copyright for a publisher to create and distribute copies of the electronic files described in section 612(a)(22)(B), containing the contents of the print instructional materials using the Instructional Material Accessibility Standard, if such copies are used solely for reproduction or distribution of the contents of such print instructional materials in specialized formats designed exclusively for use by the blind or other persons with print disabilities.

"(C) COPIES.—Copies of the electronic files containing the contents of the print instructional

materials using the Instructional Materials Accessibility Standard shall be made in compliance with the provisions of section 121(b) of title 17, United States Code, regarding the reproduction and distribution of copyrighted print instructional materials in specialized formats.

"(3) DEFINITIONS.—In this section:

"(A) INSTRUCTIONAL MATERIALS ACCESSIBILITY STANDARD.—The term 'Instructional Materials Accessibility Standard' means the technical standards described in paragraph (2), to be used in the preparation of electronic files suitable and used solely for efficient conversion into specialized formats.

"(B) BLIND OR OTHER PERSONS WITH PRINT DISABILITIES.—The term 'blind or other persons with print disabilities' means children served under this Act and who may qualify in accordance with the Act entitled "An Act to provide books for the adult blind", approved March 3, 1931 (2 U.S.C. 135a; 46 Stat. 1487) to receive books and other publications produced in specialized formats.

"(C) SPECIALIZED FORMATS.—The term 'specialized formats' has the meaning given the

term in section 121(c)(3) of title 17, United States Code, and for the purposes of this section, includes synthesized speech, digital audio, and large print.

"(D) PRINT INSTRUCTIONAL MATERIALS.—The term 'print instructional materials' means printed textbooks and related printed core materials that are written and published primarily for use in elementary school and secondary school instruction and are required by a State educational agency or local educational agency for use by pupils in the classroom.

"(E) AUTHORIZED ENTITY.—The term 'authorized entity' has the meaning given the term in section 121(c)(1) of title 17, United States Code.

"(4) APPLICABILITY.—This section shall apply to print instructional materials published and copyrighted after the date on which the final rule establishing the Instructional Materials Accessibility Standard is published in the Federal Register.

"(b) NATIONAL INSTRUCTIONAL MATERIALS ACCESS CENTER.—

"(1) ESTABLISHMENT.—Not later than 2 years after the date of enactment of the Individuals with

Disabilities Education Improvement Act of 2003, the Secretary shall establish a center, to be known as the National Instructional Materials Access Center, which shall coordinate the acquisition and distribution of print instructional materials prepared in the Instructional Materials Accessibility Standard described in subsection (a)(2).

"(2) RESPONSIBILITIES.—The duties of the National Instructional Materials Access Center are the following:

"(A) To receive and maintain a catalog of print instructional materials made available under section 612(a)(22) and section 613(a)(6).

"(B) To provide authorized entities with access to such print instructional materials, free of charge, in accordance with such terms and procedures as the National Instructional Materials Access Center may prescribe.

"(C) To develop, adopt, and publish procedures to protect against copyright infringement and otherwise to administratively assure compliance with title 17, United States Code, with respect to the print instructional materials provided under section 612(a)(22) and section 613(a)(6).

"(3) CONTRACT AUTHORIZED.—To assist in carrying out paragraph (1), the Secretary shall award, on a competitive basis, a contract renewable on a biennial basis with a nonprofit organization, or with a consortium of such organizations, determined by the Secretary to be best qualified to carry out the responsibilities described in paragraph (2). The contractor shall report directly to the Assistant Secretary for Special Education and Rehabilitative Services.

"(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subsection such sums as may be necessary.

"SEC. 676. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated to carry out sections 671, 672, 673, and 663 such sums as may be necessary for each of the fiscal years 2004 through 2009.

"Subpart 4—Interim Alternative Educational Settings, Behavioral Supports, and Whole School Interventions

"SEC. 681. PURPOSE.

"The purpose of this subpart is to authorize resources to foster a safe learning environment that supports academic achievement for all students by improving the quality of interim alternative educational settings, providing more

behavioral supports in schools, and supporting whole school interventions.

"SEC. 682. DEFINITION OF ELIGIBLE ENTITY.

"In this subpart, the term 'eligible entity' means—

"(1) a local educational agency; or

"(2) a consortium consisting of a local educational agency and 1 or more of the following entities:

"(A) another local educational agency;

"(B) a community-based organization with a demonstrated record of effectiveness in helping children with disabilities who have behavioral challenges succeed;

"(C) an institution of higher education;

"(D) a mental health provider; or

"(E) an educational service agency.

"SEC. 683. PROGRAM AUTHORIZED.

"The Secretary is authorized to award grants, on a competitive basis, to eligible entities to enable the eligible entities—

"(1) to establish or expand behavioral supports and whole school behavioral interventions by providing for effective, research-based practices, including—

"(A) comprehensive, early screening efforts for students at risk for emotional and behavioral difficulties;

"(B) training for school staff on early identification, prereferral, and referral procedures;

"(C) training for administrators, teachers, related services personnel, behavioral specialists, and other school staff in whole school positive behavioral interventions and supports, behavioral intervention planning, and classroom and student management techniques;

"(D) joint training for administrators, parents, teachers, related services personnel, behavioral specialists, and other school staff on effective strategies for positive behavioral interventions and behavior management strategies that focus on the prevention of behavior problems;

"(E) developing or implementing specific curricula, programs, or interventions aimed at addressing behavioral problems;

"(F) stronger linkages between school-based services and community-based resources, such as community mental health and primary care providers; or

"(G) using behavioral specialists, related services personnel, and other staff necessary to implement behavioral supports; or

"(2) to improve interim alternative educational settings by—

"(A) improving the training of administrators, teachers, related services personnel, behavioral specialists, and other school staff (including ongoing mentoring of new teachers);

"(B) attracting and retaining a high quality, diverse staff;

"(C) providing for on-site counseling services;

"(D) using research-based interventions, curriculum, and practices;

"(E) allowing students to use instructional technology that provides individualized instruction;

"(F) ensuring that the services are fully consistent with the goals of the individual student's IEP;

"(G) promoting effective case management and collaboration among parents, teachers, physicians, related services personnel, behavioral

specialists, principals, administrators, and other school staff;

"(H) promoting interagency coordination and coordinated service delivery among schools, juvenile courts, child welfare agencies, community mental health providers, primary care providers, public recreation agencies, and community-based organizations; or

"(I) providing for behavioral specialists to help students transitioning from interim alternative educational settings reintegrate into their regular classrooms.

"SEC. 684. PROGRAM EVALUATIONS.

"(a) REPORT AND EVALUATION.—Each eligible entity receiving a grant under this subpart shall prepare and submit annually to the Secretary a report on the outcomes of the activities assisted under the grant.

"(b) BEST PRACTICES ON WEBSITE.—The Secretary shall make available on the Department's website information for parents, teachers, and school administrators on best practices for interim alternative educational settings, behavior supports, and whole school intervention.

"SEC. 685. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated to carry out this subpart $50,000,000 for fiscal year 2004 and such sums

as may be necessary for each of the 5 succeeding fiscal years.".

TITLE II—AMENDMENTS TO THE REHABILITATION ACT OF 1973

SEC. 201. FINDINGS.

Section 2(a) of the Rehabilitation Act of 1973 (29 U.S.C. 701(a)) is amended—

(1) in paragraph (5), by striking "and" at the end;

(2) in paragraph (6), by striking the period and inserting "; and"; and

(3) by adding at the end the following:

"(7) there is a substantial need to improve and expand services for students with disabilities under this Act.".

SEC. 202. DEFINITIONS.

Section 7 of the Rehabilitation Act of 1973 (29 U.S.C. 705) is amended—

(1) by redesignating paragraphs (35) through (39) as paragraphs (36), (37), (38), (40), and (41), respectively;

(2) in subparagraph (A)(ii) of paragraph (36) (as redesignated in paragraph (1)), by striking "paragraph (36)(C)" and inserting "paragraph (37)(C)";

(3) by inserting after paragraph (34) the following:

"(35)(A) The term 'student with a disability' means an individual with a disability who—

"(i) is not younger than 14 and not older than 21;

"(ii) has been determined to be eligible under section 102(a) for assistance under this title; and

"(iii)(I) is eligible for, and is receiving, special education under part B of the Individuals with Disabilities Education Act (20 U.S.C. 1411 et seq.); or

"(II) is an individual with a disability, for purposes of section 504.

"(B) The term 'students with disabilities' means more than 1 student with a disability."; and

(4) by inserting after paragraph (38) the following:

"(39) The term 'transition services expansion year' means—

"(A) the first fiscal year for which the amount appropriated under section 100(b) exceeds the amount appropriated under section

100(b) for fiscal year 2004 by not less than $100,000,000; and

"(B) each fiscal year subsequent to that first fiscal year.".

SEC. 203. STATE PLAN.

(a) ASSESSMENT AND STRATEGIES.—Section 101(a)(15) of the Rehabilitation Act of 1973 (29 U.S.C. 721(a)(15)) is amended—

(1) in subparagraph (A)(i)—

(A) in subclause (II), by striking "and" at the end;

(B) in subclause (III), by adding "and" at the end; and

(C) by adding at the end the following:

"(IV) in a transition services expansion year, students with disabilities, including their need for transition services;"; and

(2) in subparagraph (D)—

(A) by redesignating clauses (iii), (iv), and (v) as clauses (iv), (v), and (vi), respectively; and

(B) by inserting after clause (ii) the following:

"(iii) in a transition services expansion year, the methods to be used to improve and expand vocational rehabilitation services for students with disabilities, including the coordination of services designed to facilitate the transition of such students from the receipt of educational services in school to the receipt of vocational rehabilitation services under this title or to postsecondary education or employment;".

(b) SERVICES FOR STUDENTS WITH DISABILITIES.—Section 101(a) of the Rehabilitation Act of 1973 (29 U.S.C. 721(a)) is amended by adding at the end the following:

"(25) SERVICES FOR STUDENTS WITH DISABILITIES.—The State plan for a transition services expansion year shall provide an assurance satisfactory to the Secretary that the State—

"(A) has developed and implemented strategies to address the needs identified in the assessment described in paragraph (15), and achieve the goals and priorities identified by the State, to improve and expand vocational rehabilitation services for students with disabilities on a statewide basis in accordance with paragraph (15); and

"(B) from funds reserved under section 110A, shall carry out programs or activities designed to improve and expand vocational rehabilitation services for students with disabilities that—

"(i) facilitate the transition of the students with disabilities from the receipt of educational services in school, to the receipt of vocational rehabilitation services under this title, including, at a minimum, those services specified in the interagency agreement required in paragraph (11)(D);

"(ii) improve the achievement of post-school goals of students with disabilities, including improving the achievement through participation in meetings regarding individualized education programs developed under section 614 of the Individuals with Disabilities Education Act (20 U.S.C. 1414);

"(iii) provide vocational guidance, career exploration services, and job search skills and strategies and technical assistance to students with disabilities;

"(iv) support the provision of training and technical assistance to State and local educational agency and designated State agency personnel responsible for the planning and provision of services to students with disabilities; and

"(v) support outreach activities to students with disabilities who are eligible for, and need, services under this title.".

SEC. 204. SCOPE OF SERVICES.

Section 103 of the Rehabilitation Act of 1973 (29 U.S.C. 723) is amended—

(1) in subsection (a), by striking paragraph (15) and inserting the following:

"(15) transition services for students with disabilities, that facilitate the achievement of the employment outcome identified in the individualized plan for employment, including, in a transition services expansion year, services described in clauses (i) through (iii) of section 101(a)(25)(B);"; and

(2) in subsection (b), by striking paragraph (6) and inserting the following:

"(6)(A)(i) Consultation and technical assistance services to assist State and local educational agencies in planning for the transition of students with dis-

abilities from school to post-school activities, including employment.

"(ii) In a transition services expansion year, training and technical assistance described in section 101(a)(25)(B)(iv).

"(B) In a transition services expansion year, services for groups of individuals with disabilities who meet the requirements of clauses (i) and (iii) of section 7(35)(A), including services described in clauses (i), (ii), (iii), and (v) of section 101(a)(25)(B), to assist in the transition from school to post-school activities.".

SEC. 205. STANDARDS AND INDICATORS.

Section 106(a) of the Rehabilitation Act of 1973 (29 U.S.C. 726(a)) is amended by striking paragraph (1)(C) and all that follows through paragraph (2) and inserting the following:

"(2) MEASURES.—The standards and indicators shall include outcome and related measures of program performance that—

"(A) facilitate the accomplishment of the purpose and policy of this title;

"(B) to the maximum extent practicable, are consistent with the core indicators of performance, and corresponding State adjusted lev-

els of performance, established under section 136(b) of the Workforce Investment Act of 1998 (29 U.S.C. 2871(b)); and

"(C) include measures of the program's performance with respect to the transition to post-school activities, and achievement of the post-school goals, of students with disabilities served under the program.".

SEC. 206. RESERVATION FOR EXPANDED TRANSITION SERVICES.

The Rehabilitation Act of 1973 is amended by inserting after section 110 (29 U.S.C. 730) the following:

"SEC. 110A. RESERVATION FOR EXPANDED TRANSITION SERVICES.

"(a) RESERVATION.—From the State allotment under section 110 in a transition services expansion year, each State shall reserve an amount calculated by the Commissioner under subsection (b) to carry out programs and activities under sections 101(a)(25)(B) and 103(b)(6).

"(b) CALCULATION.—The Commissioner shall calculate the amount to be reserved for such programs and activities for a fiscal year by each State by multiplying $50,000,000 by the percentage determined by dividing—

"(1) the amount allotted to that State under section 110 for the prior fiscal year; by

"(2) the total amount allotted to all States under section 110 for that prior fiscal year.".

SEC. 207. CONFORMING AMENDMENT.

Section 1(b) of the Rehabilitation Act of 1973 is amended by inserting after the item relating to section 110 the following:

"Sec. 110A. Reservation for expanded transition services.".

TITLE III—NATIONAL CENTER FOR SPECIAL EDUCATION RESEARCH

SEC. 301. NATIONAL CENTER FOR SPECIAL EDUCATION RESEARCH.

(a) AMENDMENT.—The Education Sciences Reform Act of 2002 (20 U.S.C. 9501 et seq.) is amended—

(1) by redesignating part E as part F; and

(2) by inserting after part D the following:

"PART E—NATIONAL CENTER FOR SPECIAL EDUCATION RESEARCH

"SEC. 175. ESTABLISHMENT.

"(a) ESTABLISHMENT.—There is established in the Institute a National Center for Special Education Research.

"(b) MISSION.—The mission of the National Center for Special Education Research (in this part referred to as the 'Special Education Research Center') is—

"(1) to sponsor research to expand knowledge and understanding of the needs of infants, toddlers,

and children with disabilities in order to improve the developmental, educational, and transitional results of such individuals;

"(2) to sponsor research to improve services provided under, and support the implementation of, the Individuals with Disabilities Education Act; and

"(3) to evaluate the implementation and effectiveness of the Individuals with Disabilities Education Act in coordination with the National Center for Education Evaluation and Regional Assistance.

"(c) APPLICABILITY OF EDUCATION SCIENCES REFORM ACT OF 2002.—Parts A and F, and the standards for peer review of applications and for the conduct and evaluation of research under sections 133(a) and 134, respectively, shall apply to the Secretary, the Director, and the Commissioner in carrying out this part.

"SEC. 176. COMMISSIONER FOR SPECIAL EDUCATION RESEARCH.

"The Special Education Research Center shall be headed by a Commissioner for Special Education Research (in this part referred to as 'the Special Education Research Commissioner') who shall have substantial knowledge of the Special Education Research Center's activities, including a high level of expertise in the fields of research, research

management, and the education of children with disabilities.

"SEC. 177. DUTIES.

"(a) GENERAL DUTIES.—The Special Education Research Center shall carry out research activities under this part consistent with the mission described in section 175(b), such as activities that—

"(1) improve services provided under the Individuals with Disabilities Education Act in order to improve—

"(A) academic achievement, functional outcomes, and educational results for children with disabilities; and

"(B) developmental outcomes for infants and toddlers;

"(2) identify scientifically based educational practices that support learning and improve academic achievement, functional outcomes, and educational results for all students with disabilities;

"(3) examine the special needs of preschool aged children, infants, and toddlers with disabilities, including factors that may result in developmental delays;

"(4) identify scientifically based related services and interventions that promote participation and

progress in the general education curriculum and general education settings;

"(5) improve the alignment, compatibility, and development of valid and reliable assessments, including alternate assessments, as required by section 1111(b) of the Elementary and Secondary Education Act of 1965;

"(6) examine State content standards and alternate assessments for students with significant cognitive impairment in terms of academic achievement, individualized instructional need, appropriate education settings, and improved post-school results;

"(7) examine the educational, developmental, and transitional needs of children with high incidence and low incidence disabilities;

"(8) examine the extent to which overidentification and underidentification of children with disabilities occurs, and the causes thereof;

"(9) improve reading and literacy skills of children with disabilities;

"(10) examine and improve secondary and post-secondary education and transitional outcomes and results for children with disabilities;

"(11) examine methods of early intervention for children with disabilities, including children with multiple or complex developmental delays;

"(12) examine and incorporate universal design concepts in the development of standards, assessments, curricula, and instructional methods as a method to improve educational and transitional results for children with disabilities;

"(13) improve the preparation of personnel, including early intervention personnel, who provide educational and related services to children with disabilities to increase the academic achievement and functional performance of students with disabilities;

"(14) examine the excess costs of educating a child with a disability and expenses associated with high cost special education and related services;

"(15) help parents improve educational results for their children, particularly related to transition issues; and

"(16) address the unique needs of children with significant cognitive disabilities.

"(b) STANDARDS.—The Commissioner of Special Education Research shall ensure that activities assisted under this section—

"(1) conform to high standards of quality, integrity, accuracy, validity, and reliability;

"(2) are carried out in conjunction with the standards for the conduct and evaluation of all research and development established by the National Center for Education Research; and

"(3) are objective, secular, neutral, and nonideological, and are free of partisan political influence, and racial, cultural, gender, regional, or disability bias.

"(c) PLAN.—The Commissioner of Special Education Research shall propose to the Director a research plan, developed in collaboration with the Assistant Secretary for Special Education and Rehabilitative Services, that—

"(1) is consistent with the priorities and mission of the Institute and the mission of the Special Education Research Center;

"(2) is carried out, updated, and modified, as appropriate;

"(3) is consistent with the purpose of the Individuals with Disabilities Education Act;

"(4) contains an appropriate balance across all age ranges and types of children with disabilities;

"(5) provides for research that is objective and uses measurable indicators to assess its progress and results;

"(6) is coordinated with the comprehensive plan developed under section 661 of the Individuals with Disabilities Education Act; and

"(7) provides that the research conducted under part D of the Individuals with Disabilities Education Act is relevant to special education practice and policy.

"(d) GRANTS, CONTRACTS, AND COOPERATIVE AGREEMENTS.—In carrying out the duties under this section, the Director may award grants to, or enter into contracts or cooperative agreements with, eligible entities.

"(e) APPLICATIONS.—An eligible entity that wishes to receive a grant, or enter into a contract or cooperative agreement, under this part shall submit an application to the Director at such time, in such manner, and containing such information as the Director may require.

"(f) DISSEMINATION.—The Special Education Research Center shall—

"(1) synthesize and disseminate, through the National Center for Education Evaluation and Regional Assistance, the findings and results of special edu-

cation research conducted or supported by the Special Education Research Center; and

"(2) assist the Director in the preparation of a biennial report, as described in section 119.

"(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this part such sums as may be necessary for each of fiscal years 2004 through 2009.".

(b) CONFORMING AMENDMENTS.—

(1) EDUCATION SCIENCES REFORM ACT OF 2002.—The Education Sciences Reform Act of 2002 (20 U.S.C. 9501 et seq.) is amended—

(C) in section 111(b)(1)(A) (20 U.S.C. 9511(b)(1)(A)), by inserting "and special education" after "early childhood education".

(B) in section 111(c)(3) (20 U.S.C. 9511(c)(3))—

(i) in subparagraph (B), by striking "and" after the semicolon;

(ii) in subparagraph (C), by striking the period and inserting "; and"; and

(iii) by adding at the end the following:

"(D) the National Center for Special Education Research (as described in part E).";

(C) in section 115(a) (20 U.S.C. 9515(a)), by striking "including those" and all that follows through "such as" and inserting "including those associated with the goals and requirements of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.), the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.), and the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.), such as"; and

(D) in section 116(c)(4)(A)(ii) (20 U.S.C. 9516(c)(4)(A)(ii) is amended by inserting "special education experts," after "early childhood experts,".

(2) ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965.—Section 1117(a)(3) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6317(a)(3)) is amended by striking "part E" and inserting "part D".

(c) TRANSITION PROVISIONS.—

(1) ORDERLY TRANSITION.—Notwithstanding any other provision of law, the Secretary of Education shall take such steps as are necessary to provide for the orderly transition to, and implementation of, part E of the Education Science Reform Act of 2002, as enacted by subsection (a), from research ac-

tivities carried out under section 672 of the Individuals with Disabilities Education Act (as such section was in effect on the day before the date of enactment of this Act).

(2) CONTINUATION OF AWARDS.—The Secretary of Education shall continue research awards made under section 672 of the Individuals with Disabilities Education Act (as such section was in effect on the day before the date of enactment of this Act) that are in effect on the day before the date of enactment of this Act in accordance with the terms of those awards.

(d) EFFECTIVE DATES.—Notwithstanding any other provision of law—

(1) the amendments made by subsections (a) and (b) of this section shall take effect on October 1, 2004; and

(2) section 672 of the Individuals with Disabilities Education Act (as such section was in effect on the day before the date of enactment of this Act) shall remain in effect through September 30, 2004.

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

SEC. 401. COMMISSION ON UNIVERSAL DESIGN AND THE ACCESSIBILITY OF CURRICULUM AND INSTRUCTIONAL MATERIALS.

(a) ESTABLISHMENT AND PURPOSE.—

(1) ESTABLISHMENT.—There is established a Commission (hereafter in this section referred to as the "Commission") to study, evaluate, and make appropriate recommendations to the Congress and to the Secretary on universal design and accessibility of curriculum and instructional materials for use by all children, with a particular focus on children with disabilities, in elementary schools and secondary schools.

(2) PURPOSE.—The purpose of the Commission is—

(A) to survey the issues related to improving access to curriculum and instructional materials for children with disabilities, with and without assistive technologies;

(B) to study the benefits, current or potential costs, and challenges of developing and im-

plementing a standard definition of the term universal design as a means to achieve accessibility of curriculum and instructional materials, and as the Commission determines necessary, to recommend a definition for the term universal design, or other terms, taking into consideration educational objectives, investment of resources, state of technology, and effect on development of curriculum and instructional materials;

(C) to examine issues related to the need for and current availability and accessibility of curriculum and instructional materials for use in elementary schools and secondary schools by children with disabilities, gaps in or conflicts among relevant technical standards, educational quality, availability of instructional materials, technical standards, intellectual property rights, and the economic and technical feasibility of implementing any recommended definitions; and

(D) to provide the Congress and the Secretary, not later than 24 months after the date of enactment of this Act, the report described in subsection (d).

(b) MEMBERSHIP.—

(1) COMPOSITION.—The Commission shall be composed of 21 members, of which—

(A) 3 members shall be appointed by the Majority Leader of the Senate;

(B) 2 members shall be appointed by the Minority Leader of the Senate;

(C) 3 members shall be appointed by the Speaker of the House of Representatives;

(D) 2 members shall be appointed by the Minority Leader of the House;

(E) 8 members shall be appointed by the Secretary including representatives of States, local educational agencies, publishers of instructional material, individuals with disabilities, technical standard setting bodies, and authorized entities as defined in section 121(c)(1) of title 17, United States Code; and

(F) 3 members shall be appointed by the Registrar of Copyrights.

(2) EXPERTISE OF COMMISSIONERS.—All members of the Commission shall be individuals who have been appointed on the basis of technical qualifications, professional expertise, and demonstrated knowledge and shall include at least 4 representatives of each of the following:

(A) publishers of instructional materials, including of textbooks, software, and other print, electronic, or digital curricular materials;

(B) elementary and secondary education, including teachers, special educators, and State and local education officials or administrators;

(C) researchers in the fields of disabilities, technology, and accessible media;

(D) experts in intellectual property rights; and

(E) advocates of children with disabilities, including parents of blind, visually impaired, deaf, hearing impaired, physically challenged, cognitively impaired, or learning disabled, or representatives of organizations that advocate for such children.

(3) DATE.—The appointment of the members of the Commission shall be made not later than 60 days after the date of enactment of this Act.

(4) PERIOD OF APPOINTMENT AND VACANCIES.—Members shall be appointed for the life of the Commission. Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as the original appointment.

(5) INITIAL MEETING.—Not later than 45 days after the date on which all members of the Commission have been appointed, the Commission shall hold the Commission's first meeting.

(6) MEETINGS.—The Commission shall meet at the call of the Chairperson.

(7) QUORUM.—A majority of the members of the Commission shall constitute a quorum, but a lesser number of members may hold hearings.

(8) CHAIRPERSON AND VICE CHAIRPERSON.—The Commission shall select a chairperson and vice chairperson from among the members of the Commission.

(c) DUTIES OF THE COMMISSION.—The Commission shall study and make recommendations to Congress and the Secretary regarding—

(1) the purposes of the Commission described in subsection (a)(2);

(2) priority topics for additional research;

(3) the availability and accessibility of curricula and instructional materials, including print, software, CD–ROM, video, and Internet, for use in elementary schools and secondary schools by children with disabilities, including—

(A) the numbers of affected children with disabilities, by grade, age, and type of disability;

(B) the technical and other means by which such materials are made accessible, such as assistive technologies, electronic versions, large print, closed captioning, video description, and Braille, and any conflicts between relevant technical standards by which instructional materials are made accessible;

(C) the steps taken by State and local educational agencies to support accessibility, including through State adoption and procurement policies, the acquisition and integration of assistive technology, and any State and local requirements or standards;

(D) timeliness of receipt of such materials by children with disabilities; and

(E) continued barriers to access to such materials; and

(4) the potential and likely effects of providing accessible or universally designed materials for all students in elementary schools and secondary schools, with a particular focus on children with disabilities, including—

(A) an analysis of the current and potential costs to develop and provide accessible instructional materials, with and without specialized

formats, to publishers, States, local educational agencies, schools, and others, broken down by—

(i) type of disability, including physical, sensory, and cognitive disability;

(ii) type of instructional materials, including by grade and by basal and supplemental materials; and

(iii) type of media, including print, electronic, software, web-based, audio, and video; and

(B) an analysis of the effects of any recommended definitions regarding—

(i) the availability and quality of instructional materials for nondisabled students, and innovation in the development and delivery of these materials;

(ii) State learning content standards that are media-, skill-, or pedagogically-based and may therefore be compromised;

(iii) prices of instructional materials and the impact of the definitions on State and local budgets; and

(iv) intellectual property rights in connection with the development, distribution,

and use of curriculum and instructional materials.

(d) PUBLIC HEARINGS.—As part of the study conducted under this subsection, the Commission shall hold public hearings, including through the use of the Internet or other technologies, for the purposes referred to in subsection (a).

(e) REPORT.—

(1) INTERIM REPORT.—Not later than 12 months after the establishment of the Commission, the Commission shall provide to the Secretary and Congress an interim report on the Commission's activities during the Commission's first year and any preliminary findings.

(2) FINAL REPORT.—Not later than 24 months after the establishment of the Commission, the Commission shall submit a report to the Secretary and Congress that shall contain—

(A) recommendations determined necessary regarding definitions of the terms described in subsection (a)(2)(B);

(B) recommendations for additional research; and

(C) a detailed statement of the findings and conclusions of the Commission resulting from the

study of the issues identified in subsection (a)(2)(C).

(f) POWERS OF THE COMMISSION.—

(1) AUTHORITY OF COMMISSION.—The Commission may hold such hearings, convene and act at such times and places, take such testimony, and receive such evidence, as the Commission considers necessary to carry out the responsibilities of the Commission.

(2) USE OF MAIL.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(3) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property.

(4) COMPENSATION.—Except as provided in paragraph (5), each member of the Commission who is not an officer or employee of the Federal Government shall serve without compensation. All members of the Commission who are officers or employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States.

(5) PER DIEM.—The members of the Commission shall be allowed travel expenses, including per diem

in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(6) EMPLOYMENT AND COMPENSATION OF EMPLOYEES.—Except as otherwise provided in this section and consistent with section 3161 of title 5, United States Code, the Chairperson may appoint, fix the compensation of, and terminate an executive director and such additional employees as may be necessary to enable the Commission to perform the Commission's duties.

(7) DETAILING OF FEDERAL EMPLOYEES.—Any Federal Government employee may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(8) TEMPORARY AND INTERMITTENT SERVICES.—The Chairperson of the Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals that do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V

of the Executive Schedule under section 5316 of such title.

(g) TERMINATION OF THE COMMISSION.—The Commission shall terminate on the date that is 90 days after the date on which the Commission submits its final report under subsection (e)(2).

(h) AUTHORIZATION OF APPROPRIATIONS.—

(1) AUTHORIZATION.—There are authorized to be appropriated $750,000 for fiscal year 2004, and such sums as necessary for fiscal year 2005 to carry out the provisions of this section.

(2) AVAILABILITY.—Any sums appropriated under the authorization contained in this subsection shall remain available, without fiscal year limitation, until expended.

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108TH CONGRESS
1ST SESSION

S. 1248

[Report No. 108–185]

A BILL

To reauthorize the Individuals with Disabilities Education Act, and for other purposes.

NOVEMBER 3, 2003

Reported with an amendment