

108TH CONGRESS
1ST SESSION

S. 1248

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 and Mr. KENNEDY) introduced the following bill;
which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Individuals with Dis-
5 abilities Education Improvement Act of 2003”.

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

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

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

9 **“PART A—GENERAL PROVISIONS**

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

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

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

“PART A—GENERAL PROVISIONS

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

“Sec. 602. Definitions.

“Sec. 603. Office of Special Education Programs.

“Sec. 604. Abrogation of State sovereign immunity.

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

“Sec. 606. Employment of individuals with disabilities.

“Sec. 607. Requirements for prescribing regulations.

“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 appro-
 priations.

“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 re-
search.
- “Sec. 664. Personnel development to improve services and results for chil-
dren 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 cen-
ters.

“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.

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

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

10 “(2) Before the date of the enactment of the
11 Education for All Handicapped Children Act of
12 1975 (Public Law 94–142), the educational needs of
13 millions of children with disabilities were not being
14 fully met because—

15 “(A) the children did not receive appro-
16 priate educational services;

17 “(B) the children were excluded entirely
18 from the public school system and from being
19 educated with their peers;

1 “(C) undiagnosed disabilities prevented the
2 children from having a successful educational
3 experience; or

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

7 “(3) Since the enactment and implementation
8 of the Education for All Handicapped Children Act
9 of 1975, this Act has been successful in ensuring
10 children with disabilities and the families of such
11 children access to a free appropriate public edu-
12 cation and in improving educational results for chil-
13 dren with disabilities.

14 “(4) However, the implementation of this Act
15 has been impeded by low expectations, and an insuf-
16 ficient focus on applying replicable research on prov-
17 en methods of teaching and learning for children
18 with disabilities.

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

22 “(A) having high expectations for such
23 children and ensuring their access to the gen-
24 eral education curriculum in the regular class-

1 room to the maximum extent possible in order
2 to—

3 “(i) meet developmental goals and, to
4 the maximum extent possible, the chal-
5 lenging expectations that have been estab-
6 lished for all children; and

7 “(ii) be prepared to lead productive
8 and independent adult lives, to the max-
9 imum extent possible;

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

15 “(C) coordinating this Act with other local,
16 educational service agency, State, and Federal
17 school improvement efforts, including improve-
18 ment efforts under the Elementary and Sec-
19 ondary Education Act of 2001, in order to en-
20 sure that such children benefit from such ef-
21 forts and that special education can become a
22 service for such children rather than a place
23 where they are sent;

24 “(D) providing appropriate special edu-
25 cation and related services, and aids and sup-

ports 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 per-
sonnel have the skills and knowledge necessary
to improve the academic achievement and func-
tional performance of children with disabilities,
including the use of scientifically based instruc-
tional practices, to the maximum extent pos-
sible;

“(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 edu-
cational results; and

“(H) supporting the development and use
of technology, including assistive technology de-

1 vices and assistive technology services, to maxi-
2 mize accessibility for children with disabilities.

3 “(6) While States, local educational agencies,
4 and educational service agencies are primarily re-
5 sponsible for providing an education for all children
6 with disabilities, it is in the national interest that
7 the Federal Government have a supporting role in
8 assisting State and local efforts to educate children
9 with disabilities in order to improve results for such
10 children and to ensure equal protection of the law.

11 “(7) A more equitable allocation of resources is
12 essential for the Federal Government to meet its re-
13 sponsibility to provide an equal educational oppor-
14 tunity for all individuals.

15 “(8)(A) The Federal Government must be re-
16 sponsive to the growing needs of an increasingly
17 more diverse society.

18 “(B) America’s ethnic profile is rapidly chang-
19 ing. In the year 2000, 1 of every 3 persons in the
20 United States was a member of a minority group or
21 was limited English proficient.

22 “(C) Minority children comprise an increasing
23 percentage of public school students.

24 “(D) With such changing demographics, re-
25 cruitment efforts for special education personnel

1 should focus on increasing the participation of mi-
2 norities in the teaching profession.

3 “(9)(A) The limited English proficient popu-
4 lation is the fastest growing in our Nation, and the
5 growth is occurring in many parts of our Nation.

6 “(B) Studies have documented apparent dis-
7 crepancies in the levels of referral and placement of
8 limited English proficient children in special edu-
9 cation.

10 “(C) This poses a special challenge for special
11 education in the referral of, assessment of, and serv-
12 ices for, our Nation’s students from non-English
13 language backgrounds.

14 “(10)(A) Greater efforts are needed to prevent
15 the intensification of problems connected with
16 mislabeling and high dropout rates among minority
17 children with disabilities.

18 “(B) More minority children continue to be
19 served in special education than would be expected
20 from the percentage of minority students in the gen-
21 eral school population.

22 “(C) African-American children are over identi-
23 fied as having mental retardation and emotional dis-
24 turbance at rates greater than their white counter-
25 parts.

1 “(D) In the 1998–1999 school year, African-
2 American children represented just 14.8 percent of
3 the population aged 6 through 21, but comprised
4 20.2 percent of all children with disabilities.

5 “(E) Studies have found that schools with pre-
6 dominately Caucasian students and teachers have
7 placed disproportionately high numbers of their mi-
8 nority students into special education.

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

13 “(B) The opportunity for minority individuals,
14 organizations, and Historically Black Colleges and
15 Universities to participate fully in awards for grants
16 and contracts, boards of organizations receiving
17 funds under this Act, and peer review panels, and in
18 the training of professionals in the area of special
19 education is essential if we are to obtain greater suc-
20 cess in the education of minority children with dis-
21 abilities.

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

23 “(1)(A) to ensure that all children with disabil-
24 ities have available to them a free appropriate public
25 education that emphasizes special education and re-

1 lated services designed to meet their unique needs
2 and prepare them for employment, further edu-
3 cation, and independent living;

4 “(B) to ensure that the rights of children with
5 disabilities and parents of such children are pro-
6 tected; and

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

10 “(2) to assist States in the implementation of
11 a Statewide, comprehensive, coordinated, multidisci-
12 plinary, interagency system of early intervention
13 services for infants and toddlers with disabilities and
14 their families;

15 “(3) to ensure that educators and parents have
16 the necessary tools to improve educational results for
17 children with disabilities by supporting systemic-
18 change activities; coordinated research and personnel
19 preparation; coordinated technical assistance, dis-
20 semination, and support; and technology develop-
21 ment and media services; and

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

24 **“SEC. 602. DEFINITIONS.**

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

1 “(1) ASSISTIVE TECHNOLOGY DEVICE.—The
 2 term ‘assistive technology device’ means any item,
 3 piece of equipment, or product system, whether ac-
 4 quired commercially off the shelf, modified, or cus-
 5 tomized, that is used to increase, maintain, or im-
 6 prove functional capabilities of a child with a dis-
 7 ability.

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

13 “(A) the evaluation of the needs of such
 14 child, including a functional evaluation of the
 15 child in the child’s customary environment;

16 “(B) purchasing, leasing, or otherwise pro-
 17 viding for the acquisition of assistive technology
 18 devices by such child;

19 “(C) selecting, designing, fitting, custom-
 20 izing, adapting, applying, maintaining, repair-
 21 ing, or replacing of assistive technology devices;

22 “(D) coordinating and using other thera-
 23 pies, interventions, or services with assistive
 24 technology devices, such as those associated

1 with existing education and rehabilitation plans
 2 and programs;

3 “(E) training or technical assistance for
 4 such child, or, where appropriate, the family of
 5 such child; and

6 “(F) training or technical assistance for
 7 professionals (including individuals providing
 8 education and rehabilitation services), employ-
 9 ers, or other individuals who provide services to,
 10 employ, or are otherwise substantially involved
 11 in the major life functions of such child.

12 “(3) CHILD WITH A DISABILITY.—

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

15 “(i) with mental retardation, hearing
 16 impairments (including deafness), speech
 17 or language impairments, visual impair-
 18 ments (including blindness), serious emo-
 19 tional disturbance (hereinafter referred to
 20 as ‘emotional disturbance’), orthopedic im-
 21 pairments, autism, traumatic brain injury,
 22 other health impairments, or specific learn-
 23 ing disabilities; and

24 “(ii) who, by reason thereof, needs
 25 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—

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

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

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

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

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

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

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

ing 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 edu-

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

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

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

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

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

14 “(10) HIGHLY QUALIFIED; CONSULTATIVE
15 SERVICES.—

16 “(A) HIGHLY QUALIFIED.—The term
17 ‘highly qualified’, when used with respect to any
18 special education teacher teaching in a State,
19 means a teacher who—

20 “(i)(I) meets the definition of that
21 term in section 9101(23) of the Elemen-
22 tary and Secondary Education Act of
23 1965, including full State certification as a
24 special education teacher through a State
25 approved special education teacher prepa-

1 ration program (including certification ob-
2 tained through State or local educational
3 agency approved alternative routes); or

4 “(II) has passed a State special edu-
5 cation licensing examination and holds a li-
6 cense to teach special education in such
7 State,

8 except that when used with respect to any
9 teacher teaching in a public charter school, the
10 term means that the teacher meets the require-
11 ments set forth in the State’s statute on public
12 charter schools; and

13 “(ii) does not have certification or li-
14 censure requirements waived on an emer-
15 gency, temporary, or provisional basis;

16 “(iii) if the teacher provides only con-
17 sultative services to a regular education
18 teacher with respect to a core academic
19 subject, the special education teacher shall
20 meet the standards for subject knowledge
21 and teaching skills described in section
22 9101(23) of the Elementary and Sec-
23 ondary Education Act of 1965 that apply
24 to elementary school teachers; and

1 “(iv) if the teacher provides instruc-
 2 tion in a core academic subject to middle
 3 or secondary students who are performing
 4 at the elementary level, the teacher shall
 5 meet the standards for subject knowledge
 6 and teaching skills described in section
 7 9101(23) of the Elementary and Sec-
 8 ondary Education Act of 1965 that apply
 9 to elementary school teachers.

10 “(B) CONSULTATIVE SERVICES.—As used
 11 in subparagraph (A)(iii), the term ‘consultative
 12 services’ means—

13 “(i) consultation on adapting cur-
 14 rricula, using positive behavioral supports
 15 and interventions, and selecting appro-
 16 priate accommodations, and does not in-
 17 clude direct instruction of students; or

18 “(ii) teaching in collaboration with a
 19 regular education teacher or teachers who
 20 is or are highly qualified in the core aca-
 21 demic subjects being taught.

22 “(11) INDIAN.—The term ‘Indian’ means an in-
 23 dividual who is a member of an Indian tribe.

24 “(12) INDIAN TRIBE.—The term ‘Indian tribe’
 25 means any Federal or State Indian tribe, band,

1 rancheria, pueblo, colony, or community, including
2 any Alaska Native village or regional village corpora-
3 tion (as defined in or established under the Alaska
4 Native Claims Settlement Act).

5 “(13) INDIVIDUALIZED EDUCATION PRO-
6 GRAM.—The term ‘individualized education program’
7 or ‘IEP’ means a written statement for each child
8 with a disability that is developed, reviewed, and re-
9 vised in accordance with section 614(d).

10 “(14) INDIVIDUALIZED FAMILY SERVICE
11 PLAN.—The term ‘individualized family service plan’
12 has the meaning given such term in section 636.

13 “(15) INFANT OR TODDLER WITH A DIS-
14 ABILITY.—The term ‘infant or toddler with a dis-
15 ability’ has the meaning given such term in section
16 632.

17 “(16) INSTITUTION OF HIGHER EDUCATION.—
18 The term ‘institution of higher education’—

19 “(A) has the meaning given such term in
20 section 101 (a) and (b) of the Higher Edu-
21 cation Act of 1965; and

22 “(B) also includes any community college
23 receiving funding from the Secretary of the In-
24 terior under the Tribally Controlled College or
25 University Assistance Act of 1978.

1 “(17) LOCAL EDUCATIONAL AGENCY.—

2 “(A) The term ‘local educational agency’
 3 means a public board of education or other pub-
 4 lic authority legally constituted within a State
 5 for either administrative control or direction of,
 6 or to perform a service function for, public ele-
 7 mentary schools or secondary schools in a city,
 8 county, township, school district, or other polit-
 9 ical subdivision of a State, or for such combina-
 10 tion of school districts or counties as are recog-
 11 nized in a State as an administrative agency for
 12 its public elementary schools or secondary
 13 schools.

14 “(B) The term includes—

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

17 “(ii) any other public institution or
 18 agency having administrative control and
 19 direction of a public elementary school or
 20 secondary school.

21 “(C) The term includes an elementary
 22 school or secondary school funded by the Bu-
 23 reau of Indian Affairs, but only to the extent
 24 that such inclusion makes the school eligible for
 25 programs for which specific eligibility is not

1 provided to the school in another provision of
 2 law and the school does not have a student pop-
 3 ulation that is smaller than the student popu-
 4 lation of the local educational agency receiving
 5 assistance under this Act with the smallest stu-
 6 dent population, except that the school shall not
 7 be subject to the jurisdiction of any State edu-
 8 cational agency other than the Bureau of In-
 9 dian Affairs.

10 “(18) NATIVE LANGUAGE.—The term ‘native
 11 language’, when used with respect to an individual
 12 of limited English proficiency, means the language
 13 normally used by the individual, or in the case of a
 14 child, the language normally used by the parents of
 15 the child.

16 “(19) NONPROFIT.—The term ‘nonprofit’, as
 17 applied to a school, agency, organization, or institu-
 18 tion, means a school, agency, organization, or insti-
 19 tution owned and operated by 1 or more nonprofit
 20 corporations or associations no part of the net earn-
 21 ings of which inures, or may lawfully inure, to the
 22 benefit of any private shareholder or individual.

23 “(20) OUTLYING AREA.—The term ‘outlying
 24 area’ means the United States Virgin Islands,

1 Guam, American Samoa, and the Commonwealth of
2 the Northern Mariana Islands.

3 “(21) PARENT.—The term ‘parent’—

4 “(A) includes a legal guardian; and

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

9 “(22) PARENT ORGANIZATION.—The term ‘par-
10 ent organization’ has the meaning given such term
11 in section 671(g).

12 “(23) PARENT TRAINING AND INFORMATION
13 CENTER.—The term ‘parent training and informa-
14 tion center’ means a center assisted under section
15 671 or 672.

16 “(24) RELATED SERVICES.—The term ‘related
17 services’ means transportation, and such develop-
18 mental, corrective, and other supportive services (in-
19 cluding speech-language pathology and audiology
20 services, psychological services, physical and occupa-
21 tional therapy, recreation, including therapeutic
22 recreation, social work services, school health serv-
23 ices, counseling services, including rehabilitation
24 counseling, orientation and mobility services, and
25 medical services, except that such medical services

1 shall be for diagnostic and evaluation purposes only)
 2 as may be required to assist a child with a disability
 3 to benefit from special education, and includes the
 4 early identification and assessment of disabling con-
 5 ditions in children.

6 “(25) SECONDARY SCHOOL.—The term ‘sec-
 7 ondary school’ means a nonprofit institutional day or
 8 residential school that provides secondary education,
 9 as determined under State law, except that it does
 10 not include any education beyond grade 12.

11 “(26) SECRETARY.—The term ‘Secretary’
 12 means the Secretary of Education.

13 “(27) SPECIAL EDUCATION.—The term ‘special
 14 education’ means specially designed instruction, at
 15 no cost to parents, to meet the unique needs of a
 16 child with a disability, including—

17 “(A) instruction conducted in the class-
 18 room, in the home, in hospitals and institutions,
 19 and in other settings; and

20 “(B) instruction in physical education.

21 “(28) SPECIFIC LEARNING DISABILITY.—

22 “(A) IN GENERAL.—The term ‘specific
 23 learning disability’ means a disorder in 1 or
 24 more of the basic psychological processes in-
 25 volved in understanding or in using language,

1 spoken or written, which disorder may manifest
 2 itself in the imperfect ability to listen, think,
 3 speak, read, write, spell, or do mathematical
 4 calculations.

5 “(B) DISORDERS INCLUDED.—Such term
 6 includes such conditions as perceptual disabil-
 7 ities, brain injury, minimal brain dysfunction,
 8 dyslexia, and developmental aphasia.

9 “(C) DISORDERS NOT INCLUDED.—Such
 10 term does not include a learning problem that
 11 is primarily the result of visual, hearing, or
 12 motor disabilities, of mental retardation, of
 13 emotional disturbance, or of environmental, cul-
 14 tural, or economic disadvantage.

15 “(29) STATE.—The term ‘State’ means each of
 16 the 50 States, the District of Columbia, the Com-
 17 monwealth of Puerto Rico, and each of the outlying
 18 areas.

19 “(30) STATE EDUCATIONAL AGENCY.—The
 20 term ‘State educational agency’ means the State
 21 board of education or other agency or officer pri-
 22 marily responsible for the State supervision of public
 23 elementary schools and secondary schools, or, if
 24 there is no such officer or agency, an officer or
 25 agency designated by the Governor or by State law.

1 “(31) SUPPLEMENTARY AIDS AND SERVICES.—

2 The term ‘supplementary aids and services’ means
3 aids, services, and other supports that are provided
4 in regular education classes or other education-re-
5 lated settings to enable children with disabilities to
6 be educated with nondisabled children to the max-
7 imum extent appropriate in accordance with section
8 612(a)(5).

9 “(32) TRANSITION SERVICES.—The term ‘tran-
10 sition services’ means a coordinated set of activities
11 for a child with a disability (as defined in paragraph
12 (3)(A)) that—

13 “(A) is designed to be within a results-ori-
14 ented process, that is focused on improving the
15 academic and functional achievement of the
16 child with a disability to facilitate the child’s
17 movement from school to post-school activities,
18 including post-secondary education, vocational
19 training, integrated employment (including sup-
20 ported employment), continuing and adult edu-
21 cation, adult services, independent living, or
22 community participation;

23 “(B) is based on the individual child’s
24 needs, taking into account the child’s capacity,
25 preferences, and interests; and

1 “(C) includes instruction, related services,
2 community experiences, the development of em-
3 ployment and other post-school adult living ob-
4 jectives, and, when appropriate, acquisition of
5 daily living skills and functional vocational eval-
6 uation.

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

8 “(a) ESTABLISHMENT.—There shall be, within the
9 Office of Special Education and Rehabilitative Services in
10 the Department of Education, an Office of Special Edu-
11 cation Programs, which shall be the principal agency in
12 such Department for administering and carrying out this
13 Act and other programs and activities concerning the edu-
14 cation of children with disabilities.

15 “(b) DIRECTOR.—The Office established under sub-
16 section (a) shall be headed by a Director who shall be se-
17 lected by the Secretary and shall report directly to the As-
18 sistant Secretary for Special Education and Rehabilitative
19 Services.

20 “(c) VOLUNTARY AND UNCOMPENSATED SERV-
21 ICES.—Notwithstanding section 1342 of title 31, United
22 States Code, the Secretary is authorized to accept vol-
23 untary and uncompensated services in furtherance of the
24 purposes of this Act.

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

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

6 “(b) REMEDIES.—In a suit against a State for a vio-
7 lation of this Act, remedies (including remedies both at
8 law and in equity) are available for such a violation to
9 the same extent as those remedies are available for such
10 a violation in the suit against any public entity other than
11 a State.

12 “(c) EFFECTIVE DATE.—Subsections (a) and (b)
13 apply with respect to violations that occur in whole or part
14 after the date of enactment of the Education of the Handi-
15 capped Act Amendments of 1990.

16 **“SEC. 605. ACQUISITION OF EQUIPMENT; CONSTRUCTION**
17 **OR ALTERATION OF FACILITIES.**

18 “(a) IN GENERAL.—If the Secretary determines that
19 a program authorized under this Act will be improved by
20 permitting program funds to be used to acquire appro-
21 priate equipment, or to construct new facilities or alter
22 existing facilities, the Secretary is authorized to allow the
23 use of those funds for those purposes.

24 “(b) COMPLIANCE WITH CERTAIN REGULATIONS.—
25 Any construction of new facilities or alteration of existing

1 facilities under subsection (a) shall comply with the re-
 2 quirements of—

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

7 “(2) appendix A of subpart 101–19.6 of title
 8 41, Code of Federal Regulations (commonly known
 9 as the ‘Uniform Federal Accessibility Standards’).

10 **“SEC. 606. EMPLOYMENT OF INDIVIDUALS WITH DISABIL-**
 11 **ITIES.**

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

16 **“SEC. 607. REQUIREMENTS FOR PRESCRIBING REGULA-**
 17 **TIONS.**

18 “(a) IN GENERAL.—The Secretary may issue such
 19 regulations as are necessary to ensure that there is compli-
 20 ance with this Act.

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

24 “(1) violates or contradicts any provision of this
 25 Act; and

1 “(2) procedurally or substantively lessens the
2 protections provided to children with disabilities
3 under this Act, as embodied in regulations in effect
4 on July 20, 1983 (particularly as such protections
5 related to parental consent to initial evaluation or
6 initial placement in special education, least restric-
7 tive environment, related services, timelines, attend-
8 ance of evaluation personnel at individualized edu-
9 cation program meetings, or qualifications of per-
10 sonnel), except to the extent that such regulation re-
11 flects the clear and unequivocal intent of the Con-
12 gress in legislation.

13 “(c) PUBLIC COMMENT PERIOD.—The Secretary
14 shall provide a public comment period of not less than 60
15 days on any regulation proposed under part B or part C
16 of this Act on which an opportunity for public comment
17 is otherwise required by law.

18 “(d) POLICY LETTERS AND STATEMENTS.—The Sec-
19 retary may not issue policy letters or other statements (in-
20 cluding letters or statements regarding issues of national
21 significance) that—

22 “(1) violate or contradict any provision of this
23 Act; or

24 “(2) establish a rule that is required for compli-
25 ance with, and eligibility under, this Act without fol-

1 lowing the requirements of section 553 of title 5,
2 United States Code.

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

8 “(1) such response is provided as informal guid-
9 ance and is not legally binding;

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

13 “(3) such response represents the interpretation
14 by the Department of Education of the applicable
15 statutory or regulatory requirements in the context
16 of the specific facts presented.

17 “(f) CORRESPONDENCE FROM DEPARTMENT OF
18 EDUCATION DESCRIBING INTERPRETATIONS OF THIS
19 ACT.—

20 “(1) IN GENERAL.—The Secretary shall, on a
21 quarterly basis, publish in the Federal Register, and
22 widely disseminate to interested entities through var-
23 ious additional forms of communication, a list of
24 correspondence from the Department of Education
25 received by individuals during the previous quarter

1 that describes the interpretations of the Department
 2 of Education of this Act or the regulations imple-
 3 mented pursuant to this Act.

4 “(2) ADDITIONAL INFORMATION.—For each
 5 item of correspondence published in a list under
 6 paragraph (1), the Secretary shall—

7 “(A) identify the topic addressed by the
 8 correspondence and shall include such other
 9 summary information as the Secretary deter-
 10 mines to be appropriate; and

11 “(B) ensure that all such correspondence
 12 is issued, where applicable, in compliance with
 13 the requirements of section 553 of title 5,
 14 United States Code.

15 **“SEC. 608. STATE ADMINISTRATION.**

16 “(a) RULEMAKING.—Each State that receives funds
 17 under this Act shall—

18 “(1) ensure that any State rules, regulations,
 19 and policies relating to this Act conform to the pur-
 20 poses of this Act; and

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

1 “(b) SUPPORT AND FACILITATION.—State rules, reg-
 2 ulations, and policies under this Act shall support and fa-
 3 cilitate local educational agency and school-level systemic
 4 reform designed to enable children with disabilities to meet
 5 the challenging State student academic achievement
 6 standards.

7 **“SEC. 609. REPORT TO CONGRESS.**

8 “The Comptroller General shall conduct a review of
 9 Federal, State, and local requirements to determine which
 10 requirements result in excessive paperwork completion
 11 burdens for teachers, related services providers, and school
 12 administrators, and shall report to Congress not later than
 13 18 months after the date of enactment of the Individuals
 14 with Disabilities Education Improvement Act of 2003 re-
 15 garding such review along with strategic proposals for re-
 16 ducing the paperwork burdens on teachers.

17 **“PART B—ASSISTANCE FOR EDU-**
 18 **CATION OF ALL CHILDREN**
 19 **WITH DISABILITIES**

20 **“SEC. 611. AUTHORIZATION; ALLOTMENT; USE OF FUNDS;**
 21 **AUTHORIZATION OF APPROPRIATIONS.**

22 “(a) GRANTS TO STATES.—

23 “(1) PURPOSE OF GRANTS.—The Secretary
 24 shall make grants to States and the outlying areas,
 25 and provide funds to the Secretary of the Interior,

1 to assist them to provide special education and re-
 2 lated services to children with disabilities in accord-
 3 ance with this part.

4 “(2) MAXIMUM AMOUNT.—The maximum
 5 amount available for awarding grants under this
 6 part for any fiscal year is—

7 “(A) the total number of children with dis-
 8 abilities in the 2002–2003 school year in the
 9 States who received special education and re-
 10 lated services and who were—

11 “(i) aged 3 through 5, if the State
 12 was eligible for a grant under section 619;
 13 and

14 “(ii) aged 6 through 21; multiplied by

15 “(B) 40 percent of the average per-pupil
 16 expenditure in public elementary schools and
 17 secondary schools in the United States; ad-
 18 justed by

19 “(C) the rate of change in the sum of—

20 “(i) 85 percent of the change in the
 21 nationwide total of the population de-
 22 scribed in (d)(3)(A)(i)(II); and

23 “(ii) 15 percent of the change in the
 24 nationwide total of the population de-
 25 scribed in (d)(3)(A)(i)(III).

1 “(b) OUTLYING AREAS AND FREELY ASSOCIATED
2 STATES.—

3 “(1) FUNDS RESERVED.—From the amount ap-
4 propriated for any fiscal year under subsection (i),
5 the Secretary shall reserve not more than 1 percent,
6 which shall be used—

7 “(A) to provide assistance to the outlying
8 areas in accordance with their respective popu-
9 lations of individuals aged 3 through 21; and

10 “(B) to provide each of the freely associ-
11 ated States grants that do not exceed the level
12 each such freely associated State received for
13 fiscal year 2003 under this part, but only if the
14 freely associated State meets the requirements
15 of section 611(b)(2)(C) as such section was in
16 effect on the day before the date of enactment
17 of the Individuals with Disabilities Education
18 Improvement Act of 2003.

19 “(2) SPECIAL RULE.—The provisions of Public
20 Law 95–134, permitting the consolidation of grants
21 by the outlying areas, shall not apply to funds pro-
22 vided to the outlying areas or the freely associated
23 States under this section.

24 “(3) DEFINITION.—As used in this subsection,
25 the term ‘freely associated States’ means the Repub-

1 lic of the Marshall Islands, the Federated States of
2 Micronesia, and the Republic of Palau.

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

8 “(d) ALLOCATIONS TO STATES.—

9 “(1) IN GENERAL.—After reserving funds for
10 studies and evaluations under section 665, and for
11 payments to the outlying areas, the freely associated
12 States, and the Secretary of the Interior under sub-
13 sections (b) and (c) for a fiscal year, the Secretary
14 shall allocate the remaining amount among the
15 States in accordance with this subsection.

16 “(2) SPECIAL RULE FOR USE OF FISCAL YEAR
17 1999 AMOUNT.—If a State received any funds under
18 this section for fiscal year 1999 on the basis of chil-
19 dren aged 3 through 5, but does not make a free ap-
20 propriate public education available to all children
21 with disabilities aged 3 through 5 in the State in
22 any subsequent fiscal year, the Secretary shall com-
23 pute the State’s amount for fiscal year 1999, solely
24 for the purpose of calculating the State’s allocation
25 in that subsequent year under paragraph (3) or (4),

1 by subtracting the amount allocated to the State for
 2 fiscal year 1999 on the basis of those children.

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

9 “(A) ALLOCATION OF INCREASE.—

10 “(i) IN GENERAL.—Except as pro-
 11 vided in subparagraph (B), the Secretary
 12 shall allocate for the fiscal year—

13 “(I) to each State the amount
 14 the State received under this section
 15 for fiscal year 1999;

16 “(II) 85 percent of any remain-
 17 ing funds to States on the basis of the
 18 States’ relative populations of children
 19 aged 3 through 21 who are of the
 20 same age as children with disabilities
 21 for whom the State ensures the avail-
 22 ability of a free appropriate public
 23 education under this part; and

24 “(III) 15 percent of those re-
 25 maining funds to States on the basis

1 of the States' relative populations of
 2 children described in subclause (II)
 3 who are living in poverty.

4 “(ii) DATA.—For the purpose of mak-
 5 ing grants under this paragraph, the Sec-
 6 retary shall use the most recent population
 7 data, including data on children living in
 8 poverty, that are available and satisfactory
 9 to the Secretary.

10 “(B) LIMITATIONS.—Notwithstanding sub-
 11 paragraph (A), allocations under this paragraph
 12 shall be subject to the following:

13 “(i) PRECEDING YEAR ALLOCATION.—
 14 No State's allocation shall be less than its
 15 allocation under this section for the pre-
 16 ceding fiscal year.

17 “(ii) MINIMUM.—No State's allocation
 18 shall be less than the greatest of—

19 “(I) the sum of—

20 “(aa) the amount the State
 21 received under this section for
 22 fiscal year 1999; and

23 “(bb) $\frac{1}{3}$ of 1 percent of the
 24 amount by which the amount ap-
 25 propriated under subsection (i)

1 for the fiscal year exceeds the
2 amount appropriated for this sec-
3 tion for fiscal year 1999;

4 “(II) the sum of—

5 “(aa) the amount the State
6 received under this section for
7 the preceding fiscal year; and

8 “(bb) that amount multi-
9 plied by the percentage by which
10 the increase in the funds appro-
11 priated for this section from the
12 preceding fiscal year exceeds 1.5
13 percent; or

14 “(III) the sum of—

15 “(aa) the amount the State
16 received under this section for
17 the preceding fiscal year; and

18 “(bb) that amount multi-
19 plied by 90 percent of the per-
20 centage increase in the amount
21 appropriated for this section
22 from the preceding fiscal year.

23 “(iii) MAXIMUM.—Notwithstanding
24 clause (ii), no State’s allocation under this
25 paragraph shall exceed the sum of—

1 “(I) the amount the State re-
2 ceived under this section for the pre-
3 ceding fiscal year; and

4 “(II) that amount multiplied by
5 the sum of 1.5 percent and the per-
6 centage increase in the amount appro-
7 priated under this section from the
8 preceding fiscal year.

9 “(C) RATABLE REDUCTION.—If the
10 amount available for allocations under this
11 paragraph is insufficient to pay those alloca-
12 tions in full, those allocations shall be ratably
13 reduced, subject to subparagraph (B)(i).

14 “(4) DECREASE IN FUNDS.—If the amount
15 available for allocations to States under paragraph
16 (1) for a fiscal year is less than the amount allo-
17 cated to the States under this section for the pre-
18 ceding fiscal year, those allocations shall be cal-
19 culated as follows:

20 “(A) AMOUNTS GREATER THAN FISCAL
21 YEAR 1999 ALLOCATIONS.—If the amount avail-
22 able for allocations is greater than the amount
23 allocated to the States for fiscal year 1999,
24 each State shall be allocated the sum of—

1 “(i) the amount the State received
2 under this section for fiscal year 1999; and

3 “(ii) an amount that bears the same
4 relation to any remaining funds as the in-
5 crease the State received under this section
6 for the preceding fiscal year over fiscal
7 year 1999 bears to the total of all such in-
8 creases for all States.

9 “(B) AMOUNTS EQUAL TO OR LESS THAN
10 FISCAL YEAR 1999 ALLOCATIONS.—

11 “(i) IN GENERAL.—If the amount
12 available for allocations under this para-
13 graph is equal to or less than the amount
14 allocated to the States for fiscal year 1999,
15 each State shall be allocated the amount
16 the State received for fiscal year 1999.

17 “(ii) RATABLE REDUCTION.—If the
18 amount available for allocations under this
19 paragraph is insufficient to make the allo-
20 cations described in clause (i), those alloca-
21 tions shall be ratably reduced.

22 “(e) STATE-LEVEL ACTIVITIES.—

23 “(1) STATE ADMINISTRATION.—

24 “(A) IN GENERAL.—For the purpose of
25 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.

1 “(C) CERTIFICATION.—Prior to expendi-
 2 ture of funds under this paragraph, the State
 3 shall certify to the Secretary that the arrange-
 4 ments to establish responsibility for services
 5 pursuant to section 612(a)(12)(A) are current.

6 “(2) OTHER STATE-LEVEL ACTIVITIES.—

7 “(A) IN GENERAL.—For the purpose of
 8 providing State-level activities, each State may
 9 reserve for each of the fiscal years 2004 and
 10 2005, not more than 10 percent of the amount
 11 that remains after subtracting the amount re-
 12 served under paragraph (1) from the amount of
 13 the State’s allocation under subsection (d) for
 14 fiscal years 2004 and 2005, respectively. For
 15 fiscal years 2006, 2007, 2008, and 2009, the
 16 State may reserve the maximum amount the
 17 State was eligible to reserve under the pre-
 18 ceding sentence for fiscal year 2005 (adjusted
 19 by the cumulative rate of inflation since fiscal
 20 year 2005 as measured by the percentage in-
 21 crease, if any, in the Consumer Price Index For
 22 All Urban Consumers, published by the Bureau
 23 of Labor Statistics of the Department of
 24 Labor).

1 “(B) REQUIRED ACTIVITIES.—Funds re-
2 served under subparagraph (A) shall be used to
3 carry out the following activities:

4 “(i) For monitoring, enforcement and
5 complaint investigation.

6 “(ii) To establish and implement the
7 mediation processes required by section
8 615(e)(1), including providing for the costs
9 of mediators and support personnel;

10 “(iii) To fund the State protection
11 and advocacy system, or other legal organi-
12 zations that have expertise in—

13 “(I) dispute resolution and due
14 process;

15 “(II) efforts to educate families
16 regarding due process;

17 “(III) voluntary mediation; and

18 “(IV) the opportunity to resolve
19 complaints.

20 “(C) AUTHORIZED ACTIVITIES.—Funds re-
21 served under subparagraph (A) may be used to
22 carry out the following activities:

23 “(i) To provide technical assistance,
24 personnel development and training.

1 “(ii) To support paperwork reduction
2 activities, including expanding the use of
3 technology in the IEP process.

4 “(iii) To assist local educational agen-
5 cies in providing positive behavioral inter-
6 ventions and supports and mental health
7 services for children with disabilities.

8 “(iv) To improve the use of technology
9 in the classroom by children with disabil-
10 ities to enhance learning.

11 “(v) To support the development and
12 use of technology, including universally de-
13 signed technologies and assistive tech-
14 nology devices, to maximize accessibility to
15 the general curriculum for students with
16 disabilities.

17 “(vi) Development and implementa-
18 tion of transition programs, including co-
19 ordination of services with agencies in-
20 volved in supporting the transition of stu-
21 dents with disabilities to post-secondary
22 activities.

23 “(vii) To assist local educational agen-
24 cies in meeting personnel shortages.

1 “(viii) To support capacity building
2 activities and improve the delivery of serv-
3 ices by local educational agencies to im-
4 prove results for children with disabilities.

5 “(ix) Alternative programming for
6 children who have been expelled from
7 school, and services for children in correc-
8 tional facilities, children enrolled in State-
9 operated or State-supported schools, and
10 children in charter schools.

11 “(x) To support the development and
12 provision of appropriate accommodations
13 for children with disabilities, or the devel-
14 opment and provision of alternate assess-
15 ments that are valid and reliable for as-
16 sessing the performance of children with
17 disabilities, in accordance with sections
18 1111(b) and 6111 of the Elementary and
19 Secondary Education Act of 1965.

20 “(3) LOCAL EDUCATIONAL AGENCY RISK
21 POOL.—

22 “(A) IN GENERAL.—For the purpose of as-
23 sisting local educational agencies (and charter
24 schools that are local educational agencies) in
25 addressing the needs of high-need children and

1 the unanticipated enrollment of other children
2 eligible for service under this part, each State
3 shall reserve for each of the fiscal years 2004
4 through 2009, 2 percent of the amount that re-
5 mains after subtracting the amount reserved
6 under paragraph (1) from the amount of the
7 State's allocation under subsection (d) for each
8 of the fiscal years 2004 through 2009, respec-
9 tively, to—

10 “(i) establish a high-cost fund; and

11 “(ii) make disbursements from the
12 high-cost fund to local educational agencies
13 in accordance with this paragraph.

14 “(B) REQUIRED DISBURSEMENTS FROM
15 THE FUND.—Each State educational agency
16 shall make disbursements from the fund estab-
17 lished under subparagraph (A) to local edu-
18 cational agencies to pay the percentage, de-
19 scribed in subparagraph (D), of the costs of
20 providing a free appropriate public education to
21 high-need children.

22 “(C) APPLICATION.—A local educational
23 agency that desires a disbursement under this
24 subsection shall submit an application to the
25 State educational agency at such time, in such

1 manner, and containing such information as the
 2 State educational agency may require. Such ap-
 3 plication shall include assurances that funds
 4 provided under this paragraph shall not be used
 5 to pay costs that otherwise would be reimburs-
 6 able as medical assistance for a child with a
 7 disability under the State medicaid program
 8 under title XIX of the Social Security Act.

9 “(D) DISBURSEMENTS.—

10 “(i) IN GENERAL.—A State edu-
 11 cational agency shall make a disbursement
 12 to a local educational agency that submits
 13 an application under subparagraph (C) in
 14 an amount that is equal to 75 percent of
 15 the costs that are in excess of 4 times the
 16 average per-pupil expenditure in the
 17 United States or in the State where the
 18 child resides (whichever average per-pupil
 19 expenditure is lower) associated with edu-
 20 cating each high need child served by such
 21 local educational agency in a fiscal year for
 22 whom such agency desires a disbursement.

23 “(ii) APPROPRIATE COSTS.—The costs
 24 associated with educating a high need child
 25 under clause (i) are only those costs associ-

1 ated with providing direct special education
2 and related services to such child that are
3 identified in such child's appropriately de-
4 veloped IEP.

5 “(E) LEGAL FEES.—The disbursements
6 under subparagraph (D) shall not support legal
7 fees, court costs, or other costs associated with
8 a cause of action brought on behalf of such
9 child to ensure a free appropriate public edu-
10 cation for such child.

11 “(F) PERMISSIBLE DISBURSEMENTS FROM
12 REMAINING FUNDS.—A State educational agen-
13 cy may make disbursements to local educational
14 agencies from any funds that are remaining in
15 the high cost fund after making the required
16 disbursements under subparagraph (D) for a
17 fiscal year for the following purposes:

18 “(i) To pay the costs associated with
19 serving children with disabilities who
20 moved into the areas served by such local
21 agencies after the budget for the following
22 school year had been finalized to assist the
23 local educational agencies in providing a
24 free appropriate public education for such
25 children in such year.

1 “(ii) To compensate local educational
2 agencies for extraordinary costs, as deter-
3 mined by the State, of any children eligible
4 for services under this part due to—

5 “(I) unexpected enrollment or
6 placement of children eligible for serv-
7 ices under this part; or

8 “(II) a significant underestimate
9 of the average cost of providing serv-
10 ices to children eligible for services
11 under this part.

12 “(G) REMAINING FUNDS.—Funds reserved
13 under subparagraph (A) in any fiscal year but
14 not expended in that fiscal year pursuant to
15 subparagraph (D) or subparagraph (F) shall—

16 “(i) be allocated to local educational
17 agencies pursuant to subparagraphs (D) or
18 (F) for the next fiscal year; or

19 “(ii) be allocated to local educational
20 agencies in the same manner as funds are
21 allocated to local educational agencies
22 under subsection (f).

23 “(H) ASSURANCE OF A FREE APPRO-
24 PRIATE PUBLIC EDUCATION.—Nothing in this
25 section shall be construed—

1 “(i) to limit or condition the right of
 2 a child with a disability who is assisted
 3 under this part to receive a free appro-
 4 priate public education pursuant to section
 5 612(a)(1) in a least restrictive environment
 6 pursuant to section 612(a)(5); or

7 “(ii) to authorize a State educational
 8 agency or local educational agency to indi-
 9 cate a limit on what is expected to be
 10 spent on the education of a child with a
 11 disability.

12 “(I) MEDICAID SERVICES NOT AF-
 13 FECTED.—Disbursements provided under this
 14 subsection shall not be used to pay costs that
 15 otherwise would be reimbursable as medical as-
 16 sistance for a child with a disability under the
 17 State medicaid program under title XIX of the
 18 Social Security Act.

19 “(J) DEFINITIONS.—In this paragraph:

20 “(i) AVERAGE PER-PUPIL EXPENDI-
 21 TURE.—The term ‘average per-pupil ex-
 22 penditure’ has the meaning given the term
 23 in section 9101 of the Elementary and
 24 Secondary Education Act of 1965.

1 “(ii) HIGH-NEED CHILD.—The term
 2 ‘high-need’, when used with respect to a
 3 child with a disability, means a child with
 4 a disability for whom a free appropriate
 5 public education in a fiscal year costs more
 6 than 4 times the average per-pupil expend-
 7 iture for such fiscal year.

8 “(K) SPECIAL RULE FOR RISK POOL AND
 9 HIGH-NEED ASSISTANCE PROGRAMS IN EFFECT
 10 AS OF JANUARY 1, 2003.—Notwithstanding the
 11 provisions of subparagraphs (A) through (J), a
 12 State may use funds reserved pursuant to this
 13 paragraph for administering and implementing
 14 a placement neutral cost-sharing and reim-
 15 bursement program of high-need, low-incidence,
 16 emergency, catastrophic, or extraordinary aid to
 17 local educational agencies that provides services
 18 to students eligible under this part based on eli-
 19 gibility criteria for such programs that were op-
 20 erative on January 1, 2003.

21 “(4) INAPPLICABILITY OF CERTAIN PROHIBI-
 22 TIONS.—A State may use funds the State reserves
 23 under paragraphs (1), (2), and (3) without regard
 24 to—

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

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

5 “(5) REPORT ON USE OF FUNDS.—As part of
6 the information required to be submitted to the Sec-
7 retary under section 612, each State shall annually
8 describe how amounts under this section—

9 “(A) will be used to meet the requirements
10 of this Act; and

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

14 “(f) SUBGRANTS TO LOCAL EDUCATIONAL AGEN-
15 CIES.—

16 “(1) SUBGRANTS REQUIRED.—Each State that
17 receives a grant under this section for any fiscal
18 year shall distribute any funds the State does not re-
19 serve under subsection (e) to local educational agen-
20 cies (including public charter schools that operate as
21 local educational agencies) in the State that have es-
22 tablished their eligibility under section 613 for use
23 in accordance with this part.

24 “(2) PROCEDURE FOR ALLOCATIONS TO LOCAL
25 EDUCATIONAL AGENCIES.—

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

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

14 “(ii) ALLOCATION OF REMAINING
15 FUNDS.—After making allocations under
16 clause (i), the State shall—

17 “(I) allocate 85 percent of any
18 remaining funds to those local edu-
19 cational agencies on the basis of the
20 relative numbers of children enrolled
21 in public and private elementary
22 schools and secondary schools within
23 the local educational agency’s jurisdic-
24 tion; and

1 “(II) allocate 15 percent of those
2 remaining funds to those local edu-
3 cational agencies in accordance with
4 their relative numbers of children liv-
5 ing in poverty, as determined by the
6 State educational agency.

7 “(3) REALLOCATION OF FUNDS.—If a State
8 educational agency determines that a local edu-
9 cational agency is adequately providing a free appro-
10 prium public education to all children with disabil-
11 ities residing in the area served by that local edu-
12 cational agency with State and local funds, the State
13 educational agency may reallocate any portion of the
14 funds under this part that are not needed by that
15 local educational agency to provide a free appro-
16 prium public education to other local educational
17 agencies in the State that are not adequately pro-
18 viding special education and related services to all
19 children with disabilities residing in the areas served
20 by those other local educational agencies.

21 “(g) DEFINITIONS.—For the purpose of this sec-
22 tion—

23 “(1) the term ‘average per-pupil expenditure in
24 public elementary schools and secondary schools in
25 the United States’ means—

1 “(A) without regard to the source of
2 funds—

3 “(i) the aggregate current expendi-
4 tures, during the second fiscal year pre-
5 ceding the fiscal year for which the deter-
6 mination is made (or, if satisfactory data
7 for that year are not available, during the
8 most recent preceding fiscal year for which
9 satisfactory data are available) of all local
10 educational agencies in the 50 States and
11 the District of Columbia; plus

12 “(ii) any direct expenditures by the
13 State for the operation of those local edu-
14 cational agencies; divided by

15 “(B) the aggregate number of children in
16 average daily attendance to whom those local
17 educational agencies provided free public edu-
18 cation during that preceding year; and

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

22 “(h) USE OF AMOUNTS BY SECRETARY OF THE IN-
23 TERIOR.—

24 “(1) PROVISION OF AMOUNTS FOR ASSIST-
25 ANCE.—

1 “(A) IN GENERAL.—The Secretary of Edu-
2 cation shall provide amounts to the Secretary of
3 the Interior to meet the need for assistance for
4 the education of children with disabilities on
5 reservations aged 5 through 21 who are en-
6 rolled in elementary schools and secondary
7 schools for Indian children operated or funded
8 by the Secretary of the Interior. The amount of
9 such payment for any fiscal year shall be equal
10 to 80 percent of the amount allotted under sub-
11 section (c) for that fiscal year.

12 “(B) CALCULATION OF NUMBER OF CHIL-
13 DREN.—In the case of Indian students aged 3
14 through 5 who are enrolled in programs affili-
15 ated with the Bureau of Indian Affairs (here-
16 after in this subsection referred to as ‘BIA’)
17 schools, and that are required by the States in
18 which such schools are located to attain or
19 maintain State accreditation, and which schools
20 had such accreditation prior to the date of en-
21 actment of the Individuals with Disabilities
22 Education Act Amendments of 1991, the school
23 shall be allowed to count those children for the
24 purpose of distribution of the funds provided
25 under this paragraph to the Secretary of the

1 Interior. The Secretary of the Interior shall be
2 responsible for meeting all of the requirements
3 of this part for these children, in accordance
4 with paragraph (2).

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

10 “(2) SUBMISSION OF INFORMATION.—The Sec-
11 retary of Education may provide the Secretary of
12 the Interior amounts under paragraph (1) for a fis-
13 cal year only if the Secretary of the Interior submits
14 to the Secretary of Education information that—

15 “(A) demonstrates that the Department of
16 the Interior meets the appropriate require-
17 ments, as determined by the Secretary of Edu-
18 cation, of sections 612 (including monitoring
19 and evaluation activities) and 613;

20 “(B) includes a description of how the Sec-
21 retary of the Interior will coordinate the provi-
22 sion of services under this part with local edu-
23 cational agencies, tribes and tribal organiza-
24 tions, and other private and Federal service
25 providers;

1 “(C) includes an assurance that there are
2 public hearings, adequate notice of such hear-
3 ings, and an opportunity for comment afforded
4 to members of tribes, tribal governing bodies,
5 and affected local school boards before the
6 adoption of the policies, programs, and proce-
7 dures described in subparagraph (A)

8 “(D) includes an assurance that the Sec-
9 retary of the Interior will provide such informa-
10 tion as the Secretary of Education may require
11 to comply with section 618;

12 “(E) includes an assurance that the Sec-
13 retary of the Interior and the Secretary of
14 Health and Human Services have entered into
15 a memorandum of agreement, to be provided to
16 the Secretary of Education, for the coordination
17 of services, resources, and personnel between
18 their respective Federal, State, and local offices
19 and with State and local educational agencies
20 and other entities to facilitate the provision of
21 services to Indian children with disabilities re-
22 siding on or near reservations (such agreement
23 shall provide for the apportionment of respon-
24 sibilities and costs including, but not limited to,
25 child find, evaluation, diagnosis, remediation or

1 therapeutic measures, and (where appropriate)
2 equipment and medical or personal supplies as
3 needed for a child to remain in school or a pro-
4 gram); and

5 “(F) includes an assurance that the De-
6 partment of the Interior will cooperate with the
7 Department of Education in its exercise of
8 monitoring and oversight of this application,
9 and any agreements entered into between the
10 Secretary of the Interior and other entities
11 under this part, and will fulfill its duties under
12 this part. Section 616(a) shall apply to the in-
13 formation described in this paragraph.

14 “(3) PAYMENTS FOR EDUCATION AND SERVICES
15 FOR INDIAN CHILDREN WITH DISABILITIES AGED 3
16 THROUGH 5.—

17 “(A) IN GENERAL.—With funds appro-
18 priated under subsection (i), the Secretary of
19 Education shall make payments to the Sec-
20 retary of the Interior to be distributed to tribes
21 or tribal organizations (as defined under section
22 4 of the Indian Self-Determination and Edu-
23 cation Assistance Act) or consortia of the above
24 to provide for the coordination of assistance for
25 special education and related services for chil-

1 dren with disabilities aged 3 through 5 on res-
2 ervations served by elementary schools and sec-
3 ondary schools for Indian children operated or
4 funded by the Department of the Interior. The
5 amount of such payments under subparagraph
6 (B) for any fiscal year shall be equal to 20 per-
7 cent of the amount allotted under subsection
8 (c).

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

18 “(C) SUBMISSION OF INFORMATION.—To
19 receive a payment under this paragraph, the
20 tribe or tribal organization shall submit such
21 figures to the Secretary of the Interior as re-
22 quired to determine the amounts to be allocated
23 under subparagraph (B). This information shall
24 be compiled and submitted to the Secretary of
25 Education.

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

17 “(E) BIENNIAL REPORT.—To be eligible to
18 receive a grant pursuant to subparagraph (A),
19 the tribe or tribal organization shall provide to
20 the Secretary of the Interior a biennial report
21 of activities undertaken under this paragraph,
22 including the number of contracts and coopera-
23 tive agreements entered into, the number of
24 children contacted and receiving services for
25 each year, and the estimated number of chil-

1 dren needing services during the 2 years fol-
2 lowing the year in which the report is made.
3 The Secretary of the Interior shall include a
4 summary of this information on a biennial basis
5 in the report to the Secretary of Education re-
6 quired under this subsection. The Secretary of
7 Education may require any additional informa-
8 tion from the Secretary of the Interior.

9 “(F) PROHIBITIONS.—None of the funds
10 allocated under this paragraph may be used by
11 the Secretary of the Interior for administrative
12 purposes, including child count and the provi-
13 sion of technical assistance.

14 “(4) PLAN FOR COORDINATION OF SERVICES.—
15 The Secretary of the Interior shall develop and im-
16 plement a plan for the coordination of services for
17 all Indian children with disabilities residing on res-
18 ervations covered under this Act. Such plan shall
19 provide for the coordination of services benefiting
20 these children from whatever source, including
21 tribes, the Indian Health Service, other BIA divi-
22 sions, and other Federal agencies. In developing the
23 plan, the Secretary of the Interior shall consult with
24 all interested and involved parties. The plan shall be
25 based on the needs of the children and the system

1 best suited for meeting those needs, and may involve
2 the establishment of cooperative agreements between
3 the BIA, other Federal agencies, and other entities.
4 The plan shall also be distributed upon request to
5 States, State and local educational agencies, and
6 other agencies providing services to infants, toddlers,
7 and children with disabilities, to tribes, and to other
8 interested parties.

9 “(5) ESTABLISHMENT OF ADVISORY BOARD.—

10 To meet the requirements of section 612(a)(20), the
11 Secretary of the Interior shall establish, under the
12 BIA, an advisory board composed of individuals in-
13 volved in or concerned with the education and provi-
14 sion of services to Indian infants, toddlers, children,
15 and youth with disabilities, including Indians with
16 disabilities, Indian parents or guardians of such chil-
17 dren, teachers, service providers, State and local
18 educational officials, representatives of tribes or trib-
19 al organizations, representatives from State Inter-
20 agency Coordinating Councils under section 641 in
21 States having reservations, and other members rep-
22 resenting the various divisions and entities of the
23 BIA. The chairperson shall be selected by the Sec-
24 retary of the Interior. The advisory board shall—

1 “(A) assist in the coordination of services
2 within the BIA and with other local, State, and
3 Federal agencies in the provision of education
4 for infants, toddlers, and children with disabili-
5 ties;

6 “(B) advise and assist the Secretary of the
7 Interior in the performance of the Secretary’s
8 responsibilities described in this subsection;

9 “(C) develop and recommend policies con-
10 cerning effective inter- and intra-agency collabo-
11 ration, including modifications to regulations,
12 and the elimination of barriers to inter- and
13 intra-agency programs and activities;

14 “(D) provide assistance and disseminate
15 information on best practices, effective program
16 coordination strategies, and recommendations
17 for improved educational programming for In-
18 dian infants, toddlers, and children with disabili-
19 ties; and

20 “(E) provide assistance in the preparation
21 of information required under paragraph
22 (2)(D).

23 “(6) ANNUAL REPORTS.—

24 “(A) IN GENERAL.—The advisory board
25 established under paragraph (5) shall prepare

1 and submit to the Secretary of the Interior and
 2 to Congress an annual report containing a de-
 3 scription of the activities of the advisory board
 4 for the preceding year.

5 “(B) AVAILABILITY.—The Secretary of the
 6 Interior shall make available to the Secretary of
 7 Education the report described in subparagraph
 8 (A).

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

13 **“SEC. 612. STATE ELIGIBILITY.**

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

19 “(1) FREE APPROPRIATE PUBLIC EDU-
 20 CATION.—

21 “(A) IN GENERAL.—A free appropriate
 22 public education is available to all children with
 23 disabilities residing in the State between the
 24 ages of 3 and 21, inclusive, including children

1 with disabilities who have been suspended or ex-
2 pelled from school.

3 “(B) LIMITATION.—The obligation to
4 make a free appropriate public education avail-
5 able to all children with disabilities does not
6 apply with respect to children—

7 “(i) aged 3 through 5 and 18 through
8 21 in a State to the extent that its applica-
9 tion to those children would be inconsistent
10 with State law or practice, or the order of
11 any court, respecting the provision of pub-
12 lic education to children in those age
13 ranges; and

14 “(ii) aged 18 through 21 to the extent
15 that State law does not require that special
16 education and related services under this
17 part be provided to children with disabil-
18 ities who, in the educational placement
19 prior to their incarceration in an adult cor-
20 rectional facility—

21 “(I) were not actually identified
22 as being a child with a disability
23 under section 602(3); or

1 “(II) did not have an individual-
2 ized education program under this
3 part.

4 “(2) FULL EDUCATIONAL OPPORTUNITY
5 GOAL.—The State has established a goal of pro-
6 viding full educational opportunity to all children
7 with disabilities and a detailed timetable for accom-
8 plishing that goal.

9 “(3) CHILD FIND.—

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

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

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

3 “(4) INDIVIDUALIZED EDUCATION PROGRAM.—

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

9 “(5) LEAST RESTRICTIVE ENVIRONMENT.—

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

22 “(B) ADDITIONAL REQUIREMENT.—

23 “(i) IN GENERAL.—A State funding
24 mechanism shall not result in placements
25 that violate the requirements of subpara-

graph (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 se-

1 lected and administered so as not to be racially
2 or culturally discriminatory. Such materials or
3 procedures shall be provided and administered
4 in the child's native language or mode of com-
5 munication, unless it clearly is not feasible to
6 do so, and no single procedure shall be the sole
7 criterion for determining an appropriate edu-
8 cational program for a child.

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

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

15 “(9) TRANSITION FROM PART C TO PRESCHOOL
16 PROGRAMS.—Children participating in early-inter-
17 vention programs assisted under part C, and who
18 will participate in preschool programs assisted under
19 this part, experience a smooth and effective transi-
20 tion to those preschool programs in a manner con-
21 sistent with section 637(a)(8). By the third birthday
22 of such a child, an individualized education program
23 or, if consistent with sections 614(d)(2)(B) and
24 636(d), an individualized family service plan, has
25 been developed and is being implemented for the

1 child. The local educational agency will participate
 2 in transition planning conferences arranged by the
 3 designated lead agency under section 637(a)(8).

4 “(10) CHILDREN IN PRIVATE SCHOOLS.—

5 “(A) CHILDREN ENROLLED IN PRIVATE
 6 SCHOOLS BY THEIR PARENTS.—

7 “(i) IN GENERAL.—To the extent con-
 8 sistent with the number and location of
 9 children with disabilities in the State who
 10 are enrolled by their parents in private ele-
 11 mentary schools and secondary schools in
 12 the school district served by a local edu-
 13 cational agency, provision is made for the
 14 participation of those children in the pro-
 15 gram assisted or carried out under this
 16 part by providing for such children special
 17 education and related services in accord-
 18 ance with the following requirements, un-
 19 less the Secretary has arranged for serv-
 20 ices to those children under subsection (f):

21 “(I) Amounts to be expended for
 22 the provision of those services (includ-
 23 ing direct services to parentally placed
 24 children) by the local educational
 25 agency shall be equal to a propor-

1 tionate amount of Federal funds made
2 available under this part.

3 “(II) Such services may be pro-
4 vided to children with disabilities on
5 the premises of private, including reli-
6 gious, schools, to the extent consistent
7 with law.

8 “(III) Each local educational
9 agency shall maintain in its records
10 and provide to the State educational
11 agency the number of children evalu-
12 ated under this paragraph, the num-
13 ber of children determined to be a
14 child with a disability, and the num-
15 ber of children served under this sub-
16 section.

17 “(ii) CHILD-FIND REQUIREMENT.—

18 “(I) IN GENERAL.—The require-
19 ments of paragraph (3) of this sub-
20 section (relating to child find) shall
21 apply with respect to children with
22 disabilities in the State who are en-
23 rolled in private, including religious,
24 elementary schools and secondary
25 schools. Such child find process shall

1 be conducted in a comparable time pe-
2 riod as for other students attending
3 public schools in the local educational
4 agency.

5 “(II) EQUITABLE PARTICIPA-
6 TION.—The child find process shall be
7 designed to ensure the equitable par-
8 ticipation of parentally placed private
9 school children and an accurate count
10 of such children.

11 “(III) ACTIVITIES.—In carrying
12 out this clause, the local educational
13 agency, or where applicable, the State
14 educational agency, shall undertake
15 activities similar to those activities un-
16 dertaken for its public school children.

17 “(IV) COST.—The cost of car-
18 rying out this clause, including indi-
19 vidual evaluations, may not be consid-
20 ered in determining whether a local
21 education agency has met its obliga-
22 tions under clause (i).

23 “(V) COMPLETION PERIOD.—
24 Such child find process shall be com-
25 pleted in a time period comparable to

1 that for other students attending pub-
2 lic schools served by the local edu-
3 cational agency.

4 “(iii) CONSULTATION.—To ensure
5 timely and meaningful consultation, a local
6 educational agency, or where appropriate,
7 a State educational agency, shall consult,
8 with representatives of children with dis-
9 abilities parentally placed in private
10 schools, during the design and development
11 of special education and related services
12 for these children, including consultation
13 regarding—

14 “(I) the child find process and
15 how parentally placed private school
16 children suspected of having a dis-
17 ability can participate equitably, in-
18 cluding how parents, teachers, and
19 private school officials will be in-
20 formed of the process;

21 “(II) the determination of the
22 proportionate share of Federal funds
23 available to serve parentally placed
24 private school children with disabil-
25 ities under this paragraph, including

1 the determination of how the propor-
2 tionate share of those funds were cal-
3 culated;

4 “(III) the consultation process
5 among the school district, private
6 school officials, and parents of paren-
7 tally placed private school children
8 with disabilities, including how such
9 process will operate throughout the
10 school year to ensure that parentally
11 placed children with disabilities identi-
12 fied through the child find process can
13 meaningfully participate in special
14 education and related services;

15 “(IV) how, where, and by whom
16 special education and related services
17 will be provided for parentally placed
18 private school children, including a
19 discussion of alternate service delivery
20 mechanisms, how such services will be
21 apportioned if funds are insufficient
22 to serve all children, and how and
23 when these decisions will be made;
24 and

1 “(V) how, if the local educational
2 agency disagrees with the views of the
3 private school officials on the provi-
4 sion of services through a contract,
5 the local educational agency shall pro-
6 vide to the private school officials a
7 written explanation of the reasons
8 why such the local educational agency
9 chose not to use a contractor.

10 “(iv) WRITTEN AFFIRMATION.—When
11 timely and meaningful consultation as re-
12 quired by this section has occurred, the
13 local educational agency shall obtain a
14 written affirmation signed by the rep-
15 resentatives of participating private
16 schools, and if such officials do not provide
17 such affirmations within a reasonable pe-
18 riod of time, the local educational agency
19 shall forward the documentation of the
20 consultation process to the State edu-
21 cational agency.

22 “(v) COMPLIANCE.—

23 “(I) IN GENERAL.—A private
24 school official shall have the right to
25 complain to the State educational

1 agency that the local educational
2 agency did not engage in consultation
3 that was meaningful and timely, or
4 did not give due consideration to the
5 views of the private school official.

6 “(II) PROCEDURE.—If the pri-
7 vate school official wishes to complain,
8 the official shall provide the basis of
9 the noncompliance with this section by
10 the local educational agency to the
11 State educational agency, and the
12 local educational agency shall forward
13 the appropriate documentation to the
14 State educational agency. If the pri-
15 vate school official is dissatisfied with
16 the decision of the State educational
17 agency, such official may complain to
18 the Secretary by providing the basis
19 of the noncompliance with this section
20 by the local educational agency to the
21 Secretary, and the State educational
22 agency shall forward the appropriate
23 documentation to the Secretary.

24 “(vi) PROVISION OF EQUITABLE SERV-
25 ICES.—

1 “(I) DIRECT SERVICES.—To the
2 extent practicable, the local edu-
3 cational agency shall provide direct
4 services to children with disabilities
5 parentally placed in private schools.

6 “(II) DIRECTLY OR THROUGH
7 CONTRACTS.—A public agency may
8 provide special education and related
9 services directly or through contracts
10 with public and private agencies, orga-
11 nizations, and institutions.

12 “(III) SECULAR, NEUTRAL, NON-
13 IDEOLOGICAL.—Special education and
14 related services provided to children
15 with disabilities attending private
16 schools, including materials and
17 equipment, shall be secular, neutral,
18 and nonideological.

19 “(vii) PUBLIC CONTROL OF FUNDS.—
20 The control of funds used to provide spe-
21 cial education and related services under
22 this section, and title to materials, equip-
23 ment, and property purchased with those
24 funds, shall be in a public agency for the
25 uses and purposes provided in this Act,

1 and a public agency shall administer the
2 funds and property.

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

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

18 “(ii) STANDARDS.—In all cases de-
19 scribed in clause (i), the State educational
20 agency shall determine whether such
21 schools and facilities meet standards that
22 apply to State and local educational agen-
23 cies and that children so served have all
24 the rights the children would have if served
25 by such agencies.

1 “(C) PAYMENT FOR EDUCATION OF CHIL-
2 DREN ENROLLED IN PRIVATE SCHOOLS WITH-
3 OUT CONSENT OF OR REFERRAL BY THE PUB-
4 LIC AGENCY.—

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

15 “(ii) REIMBURSEMENT FOR PRIVATE
16 SCHOOL PLACEMENT.—If the parents of a
17 child with a disability, who previously re-
18 ceived special education and related serv-
19 ices under the authority of a public agency,
20 enroll the child in a private elementary
21 school or secondary school without the con-
22 sent of or referral by the public agency, a
23 court or a hearing officer may require the
24 agency to reimburse the parents for the
25 cost of that enrollment if the court or

1 hearing officer finds that the agency had
2 not made a free appropriate public edu-
3 cation available to the child in a timely
4 manner prior to that enrollment.

5 “(iii) LIMITATION ON REIMBURSE-
6 MENT.—The cost of reimbursement de-
7 scribed in clause (ii) may be reduced or de-
8 nied—

9 “(I) if—

10 “(aa) at the most recent
11 IEP meeting that the parents at-
12 tended prior to removal of the
13 child from the public school, the
14 parents did not inform the IEP
15 Team that they were rejecting
16 the placement proposed by the
17 public agency to provide a free
18 appropriate public education to
19 their child, including stating their
20 concerns and their intent to en-
21 roll their child in a private school
22 at public expense; or

23 “(bb) 10 business days (in-
24 cluding any holidays that occur
25 on a business day) prior to the

1 removal of the child from the
2 public school, the parents did not
3 give written notice to the public
4 agency of the information de-
5 scribed in division (aa);

6 “(II) if, prior to the parents’ re-
7 moval of the child from the public
8 school, the public agency informed the
9 parents, through the notice require-
10 ments described in section 615(b)(3),
11 of its intent to evaluate the child (in-
12 cluding a statement of the purpose of
13 the evaluation that was appropriate
14 and reasonable), but the parents did
15 not make the child available for such
16 evaluation; or

17 “(III) upon a judicial finding of
18 unreasonableness with respect to ac-
19 tions taken by the parents.

20 “(iv) EXCEPTION.—Notwithstanding
21 the notice requirement in clause (iii)(I),
22 the cost of reimbursement—

23 “(I) shall not be reduced or de-
24 nied for failure to provide such notice
25 if—

1 “(aa) the school prevented
2 the parent from providing such
3 notice; or

4 “(bb) the parents had not
5 received notice, pursuant to sec-
6 tion 615, of the notice require-
7 ment in clause (iii)(I); and

8 “(II) may, in the discretion of a
9 court or a hearing officer, not be re-
10 duced or denied for failure to provide
11 such notice if—

12 “(aa) the parent is illiterate
13 and cannot write in English; or

14 “(bb) compliance with clause
15 (iii)(I) would likely have resulted
16 in physical or serious emotional
17 harm to the child.

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

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

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

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

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

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

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

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

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

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

3 “(A) ESTABLISHING RESPONSIBILITY FOR
4 SERVICES.—The Chief Executive Officer of a
5 State or designee of the officer shall ensure
6 that an interagency agreement or other mecha-
7 nism for interagency coordination is in effect
8 between each public agency described in sub-
9 paragraph (B) and the State educational agen-
10 cy, in order to ensure that all services described
11 in subparagraph (B)(i) that are needed to en-
12 sure a free appropriate public education are
13 provided, including the provision of such serv-
14 ices during the pendency of any dispute under
15 clause (iii). Such agreement or mechanism shall
16 include the following:

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

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

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

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

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

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

3 “(B) OBLIGATION OF PUBLIC AGENCY.—

4 “(i) IN GENERAL.—If any public
5 agency other than an educational agency is
6 otherwise obligated under Federal or State
7 law, or assigned responsibility under State
8 policy, pursuant to subparagraph (A), or
9 pursuant to an agreement under para-
10 graph (C), to provide or pay for any serv-
11 ices that are also considered special edu-
12 cation or related services (such as, but not
13 limited to, services described in section
14 602(1) relating to assistive technology de-
15 vices, 602(2) relating to assistive tech-
16 nology services, 602(24) relating to related
17 services, 602(31) relating to supplementary
18 aids and services, and 602(32) relating to
19 transition services) that are necessary for
20 ensuring a free appropriate public edu-
21 cation to children with disabilities within
22 the State, such public agency shall fulfill
23 that obligation or responsibility, either di-
24 rectly or through contract or other ar-
25 rangement pursuant to subparagraph (A).

1 “(ii) REIMBURSEMENT FOR SERVICES
 2 BY PUBLIC AGENCY.—If a public agency
 3 other than an educational agency fails to
 4 provide or pay for the special education
 5 and related services described in clause (i),
 6 the local educational agency (or State
 7 agency responsible for developing the
 8 child’s IEP) shall provide or pay for such
 9 services to the child. Such local educational
 10 agency or State agency is authorized to
 11 claim reimbursement for the services from
 12 the public agency that failed to provide or
 13 pay for such services and such public agen-
 14 cy shall reimburse the local educational
 15 agency or State agency pursuant to the
 16 terms of the interagency agreement or
 17 other mechanism described in subpara-
 18 graph (A)(i) according to the procedures
 19 established in such agreement pursuant to
 20 subparagraph (A)(ii).

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

23 “(i) State statute or regulation;

24 “(ii) signed agreements between re-
 25 spective agency officials that clearly iden-

1 tify the responsibilities of each agency re-
 2 lating to the provision of services; or

3 “(iii) other appropriate written meth-
 4 ods as determined by the Chief Executive
 5 Officer of the State or designee of the offi-
 6 cer and approved by the Secretary through
 7 the review and approval of the State’s plan
 8 pursuant to this section.

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

16 “(14) PERSONNEL STANDARDS.—

17 “(A) IN GENERAL.—The State educational
 18 agency has established and maintains standards
 19 to ensure that personnel necessary to carry out
 20 this part are appropriately and adequately pre-
 21 pared and trained, including that those per-
 22 sonnel have the content knowledge and skills to
 23 serve children with disabilities.

24 “(B) RELATED SERVICES PERSONNEL AND
 25 PARAPROFESSIONALS.—The standards under

1 subparagraph (A) include standards for related
2 services personnel and paraprofessionals that—

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

10 “(ii) allow paraprofessionals and as-
11 sistants who are appropriately trained and
12 supervised, in accordance with State law,
13 regulation, or written policy, in meeting
14 the requirements of this part to be used to
15 assist in the provision of special education
16 and related services under this part to chil-
17 dren with disabilities.

18 “(C) STANDARDS FOR SPECIAL EDUCATION
19 TEACHERS.—The standards described in sub-
20 paragraph (A) shall ensure that each special
21 education teacher in the State who teaches in
22 an elementary, middle, or secondary school is
23 highly qualified not later than the 2006–2007
24 school year.

1 “(D) POLICY.—In implementing this sec-
 2 tion, a State shall adopt a policy that includes
 3 a requirement that local educational agencies in
 4 the State take measurable steps to recruit, hire,
 5 train, and retain highly qualified personnel to
 6 provide special education and related services
 7 under this part to children with disabilities.

8 “(15) PERFORMANCE GOALS AND INDICA-
 9 TORS.—The State—

10 “(A) has established goals for the perform-
 11 ance of children with disabilities in the State
 12 that—

13 “(i) promote the purposes of this Act,
 14 as stated in section 601(d);

15 “(ii) are the same as the State’s defi-
 16 nition of adequate yearly progress, includ-
 17 ing the State’s objectives for progress by
 18 children with disabilities, under section
 19 1111(b)(2)(C) of the Elementary and Sec-
 20 ondary Education Act of 1965;

21 “(iii) address drop out rates, as well
 22 as such other factors as the State may de-
 23 termine; and

1 “(iv) are consistent, to the extent ap-
 2 propriate, with any other goals and stand-
 3 ards for children established by the State;

4 “(B) has established performance indica-
 5 tors the State will use to assess progress toward
 6 achieving the goals described in subparagraph
 7 (A), including measurable annual objectives for
 8 progress by children with disabilities under sec-
 9 tion 1111(b)(2)(C)(v)(II)(cc) of the Elementary
 10 and Secondary Education Act of 1965; and

11 “(C) will annually report to the Secretary
 12 and the public on the progress of the State, and
 13 of children with disabilities in the State, toward
 14 meeting the goals established under subpara-
 15 graph (A).

16 “(16) PARTICIPATION IN ASSESSMENTS.—

17 “(A) IN GENERAL.— All children with dis-
 18 abilities are included in all general State and
 19 districtwide assessment programs and account-
 20 ability systems, including assessments and ac-
 21 countability systems described under section
 22 1111 of the Elementary and Secondary Edu-
 23 cation Act of 1965, with appropriate accom-
 24 modations, alternate assessments where nec-

1 essary, and as indicated in their respective indi-
2 vidualized education programs.

3 “(B) ACCOMMODATION GUIDELINES.—The
4 State (or, in the case of a districtwide assess-
5 ment, the local educational agency) has devel-
6 oped guidelines for the provision of appropriate
7 accommodations.

8 “(C) ALTERNATE ASSESSMENTS.—

9 “(i) IN GENERAL.—The State (or, in
10 the case of a districtwide assessment, the
11 local educational agency) has developed
12 and implemented guidelines for the partici-
13 pation of children with disabilities in alter-
14 nate assessments for those children who
15 cannot participate in regular assessments
16 under subparagraph (B) as indicated in
17 their respective individualized education
18 programs.

19 “(ii) REQUIREMENTS FOR ALTERNATE
20 ASSESSMENTS.—The guidelines under
21 clause (i) shall provide for alternate assess-
22 ments that—

23 “(I) are aligned with the State’s
24 challenging academic content and aca-
25 demic achievement standards; or

1 “(II) measure the achievement of
2 students against alternate academic
3 achievement standards that are
4 aligned with the State’s academic con-
5 tent standards.

6 “(iii) CONDUCT OF ALTERNATIVE AS-
7 SESSMENTS.—The State conducts the al-
8 ternate assessments described in this sub-
9 paragraph.

10 “(D) REPORTS.—The State educational
11 agency (or, in the case of a districtwide assess-
12 ment, the local educational agency) makes
13 available to the public, and reports to the public
14 with the same frequency and in the same detail
15 as it reports on the assessment of nondisabled
16 children, the following:

17 “(i) The number of children with dis-
18 abilities participating in regular assess-
19 ments, and the number of those children
20 who were provided accommodations in
21 order to participate in those assessments.

22 “(ii) The number of children with dis-
23 abilities participating in alternate assess-
24 ments described in subparagraph (C)(ii)(I).

1 “(iii) The number of children with
2 disabilities participating in alternate as-
3 sessments described in subparagraph
4 (C)(ii)(II).

5 “(iv) The performance of children
6 with disabilities on regular assessments
7 and on alternate assessments (if the num-
8 ber of children with disabilities partici-
9 pating in those assessments is sufficient to
10 yield statistically reliable information and
11 reporting that information will not reveal
12 personally identifiable information about
13 an individual student), compared with the
14 achievement of all children, including chil-
15 dren with disabilities, on those assess-
16 ments.

17 “(E) UNIVERSAL DESIGN.—The State edu-
18 cational agency (or, in the case of a districtwide
19 assessment, the local educational agency) shall,
20 to the extent possible, use universal design prin-
21 ciples in developing and administering any as-
22 sessments under this paragraph.

23 “(17) SUPPLEMENTATION OF STATE, LOCAL,
24 AND OTHER FEDERAL FUNDS.—

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

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

6 “(C) PROHIBITION AGAINST SUPPLANTATION AND CONDITIONS FOR WAIVER BY SEC-
7 RETARY.—Except as provided in section 613,
8 funds paid to a State under this part will be
9 used to supplement the level of Federal, State,
10 and local funds (including funds that are not
11 under the direct control of State or local edu-
12 cational agencies) expended for special edu-
13 cation and related services provided to children
14 with disabilities under this part and in no case
15 to supplant such Federal, State, and local
16 funds, except that, where the State provides
17 clear and convincing evidence that all children
18 with disabilities have available to them a free
19 appropriate public education, the Secretary may
20 waive, in whole or in part, the requirements of
21 this subparagraph if the Secretary concurs with
22 the evidence provided by the State.
23
24

1 “(18) MAINTENANCE OF STATE FINANCIAL
2 SUPPORT.—

3 “(A) IN GENERAL.—The State does not re-
4 duce the amount of State financial support for
5 special education and related services for chil-
6 dren with disabilities, or otherwise made avail-
7 able because of the excess costs of educating
8 those children, below the amount of that sup-
9 port for the preceding fiscal year.

10 “(B) REDUCTION OF FUNDS FOR FAILURE
11 TO MAINTAIN SUPPORT.—The Secretary shall
12 reduce the allocation of funds under section 611
13 for any fiscal year following the fiscal year in
14 which the State fails to comply with the re-
15 quirement of subparagraph (A) by the same
16 amount by which the State fails to meet the re-
17 quirement.

18 “(C) WAIVERS FOR EXCEPTIONAL OR UN-
19 CONTROLLABLE CIRCUMSTANCES.—The Sec-
20 retary may waive the requirement of subpara-
21 graph (A) for a State, for 1 fiscal year at a
22 time, if the Secretary determines that—

23 “(i) granting a waiver would be equi-
24 table due to exceptional or uncontrollable
25 circumstances such as a natural disaster or

1 a precipitous and unforeseen decline in the
2 financial resources of the State; or

3 “(ii) the State meets the standard in
4 paragraph (17)(C) for a waiver of the re-
5 quirement to supplement, and not to sup-
6 plant, funds received under this part.

7 “(D) SUBSEQUENT YEARS.—If, for any
8 year, a State fails to meet the requirement of
9 subparagraph (A), including any year for which
10 the State is granted a waiver under subpara-
11 graph (C), the financial support required of the
12 State in future years under subparagraph (A)
13 shall be the amount that would have been re-
14 quired in the absence of that failure and not
15 the reduced level of the State’s support.

16 “(E) REGULATIONS.—

17 “(i) IN GENERAL.—The Secretary
18 shall, by regulation, establish procedures
19 (including objective criteria and consider-
20 ation of the results of compliance reviews
21 of the State conducted by the Secretary)
22 for determining whether to grant a waiver
23 under subparagraph (C)(ii).

24 “(ii) TIMELINE.—The Secretary shall
25 publish proposed regulations under clause

1 (i) not later than 6 months after the date
2 of enactment of the Individuals with Dis-
3 abilities Education Improvement Act of
4 2003, and shall issue final regulations
5 under clause (i) not later than 1 year after
6 such date of enactment.

7 “(19) PUBLIC PARTICIPATION.—Prior to the
8 adoption of any policies and procedures needed to
9 comply with this section (including any amendments
10 to such policies and procedures), the State ensures
11 that there are public hearings, adequate notice of
12 the hearings, and an opportunity for comment avail-
13 able to the general public, including individuals with
14 disabilities and parents of children with disabilities.

15 “(20) STATE ADVISORY PANEL.—

16 “(A) IN GENERAL.—The State has estab-
17 lished and maintains an advisory panel for the
18 purpose of providing policy guidance with re-
19 spect to special education and related services
20 for children with disabilities in the State.

21 “(B) MEMBERSHIP.—Such advisory panel
22 shall consist of members appointed by the Gov-
23 ernor, or any other official authorized under
24 State law to make such appointments, that is
25 representative of the State population and that

1 is composed of individuals involved in, or con-
2 cerned with, the education of children with dis-
3 abilities, including—

4 “(i) parents of children with disabil-
5 ities ages birth through 26;

6 “(ii) individuals with disabilities;

7 “(iii) teachers;

8 “(iv) representatives of institutions of
9 higher education that prepare special edu-
10 cation and related services personnel;

11 “(v) State and local education offi-
12 cials;

13 “(vi) administrators of programs for
14 children with disabilities;

15 “(vii) representatives of other State
16 agencies involved in the financing or deliv-
17 ery of related services to children with dis-
18 abilities;

19 “(viii) representatives of private
20 schools and public charter schools;

21 “(ix) at least 1 representative of a vo-
22 cational, community, or business organiza-
23 tion concerned with the provision of transi-
24 tion services to children with disabilities;
25 and

1 “(x) representatives from the State
2 juvenile and adult corrections agencies.

3 “(C) SPECIAL RULE.—A majority of the
4 members of the panel shall be individuals with
5 disabilities ages birth through 26 or parents of
6 such individuals.

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

8 “(i) advise the State educational agen-
9 cy of unmet needs within the State in the
10 education of children with disabilities;

11 “(ii) comment publicly on any rules or
12 regulations proposed by the State regard-
13 ing the education of children with disabil-
14 ities;

15 “(iii) advise the State educational
16 agency in developing evaluations and re-
17 porting on data to the Secretary under sec-
18 tion 618;

19 “(iv) advise the State educational
20 agency in developing corrective action
21 plans to address findings identified in Fed-
22 eral monitoring reports under this part;
23 and

24 “(v) advise the State educational
25 agency in developing and implementing

1 policies relating to the coordination of serv-
2 ices for children with disabilities.

3 “(21) SUSPENSION AND EXPULSION RATES.—

4 “(A) IN GENERAL.—The State educational
5 agency examines data to determine if signifi-
6 cant discrepancies are occurring in the rate of
7 long-term suspensions and expulsions of chil-
8 dren with disabilities—

9 “(i) among local educational agencies
10 in the State; or

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

13 “(B) REVIEW AND REVISION OF POLI-
14 CIES.—If such discrepancies are occurring, the
15 State educational agency reviews and, if appro-
16 priate, revises (or requires the affected State or
17 local educational agency to revise) its policies,
18 procedures, and practices relating to the devel-
19 opment and implementation of IEPs, the use of
20 behavioral interventions, and procedural safe-
21 guards, to ensure that such policies, procedures,
22 and practices comply with this Act.

23 “(22) INSTRUCTIONAL MATERIALS.—

24 “(A) IN GENERAL.—The State adopts the
25 national instructional materials accessibility

1 standard for the purposes of providing instruc-
2 tional materials to blind persons or other per-
3 sons with print disabilities in a timely manner
4 after the publication of the standard by the
5 Secretary in the Federal Register.

6 “(B) PURCHASE REQUIREMENT.—Not
7 later than 2 years after the date of the enact-
8 ment of the Individuals with Disabilities Edu-
9 cation Improvement Act of 2003, the State edu-
10 cational agency, when purchasing instructional
11 materials for use in public elementary and sec-
12 ondary schools within the State, requires the
13 publisher of the instructional materials, as a
14 part of any purchase agreement that is made,
15 renewed, or revised, to prepare and supply elec-
16 tronic files containing the contents of the in-
17 structional materials using the national instruc-
18 tional materials accessibility standard.

19 “(C) DEFINITION.—For purposes of this
20 paragraph, the term ‘instructional materials’
21 means printed textbooks and related core mate-
22 rials that are written and published primarily
23 for use in elementary school and secondary
24 school instruction and are required by a State

1 educational agency or local educational agency
2 for use by pupils in the classroom.

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

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

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

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

16 “(1) IN GENERAL.—If a State has on file with
17 the Secretary policies and procedures that dem-
18 onstrate that such State meets any requirement of
19 subsection (a), including any policies and procedures
20 filed under this part as in effect before the effective
21 date of the Individuals with Disabilities Education
22 Improvement Act of 2003, the Secretary shall con-
23 sider such State to have met such requirement for
24 purposes of receiving a grant under this part.

1 “(2) MODIFICATIONS MADE BY STATE.—Sub-
2 ject to paragraph (3), an application submitted by a
3 State in accordance with this section shall remain in
4 effect until the State submits to the Secretary such
5 modifications as the State determines necessary.
6 This section shall apply to a modification to an ap-
7 plication to the same extent and in the same manner
8 as this section applies to the original plan.

9 “(3) MODIFICATIONS REQUIRED BY THE SEC-
10 RETARY.—If, after the effective date of the Individ-
11 uals with Disabilities Education Improvement Act of
12 2003, the provisions of this Act are amended (or the
13 regulations developed to carry out this Act are
14 amended), there is a new interpretation of this Act
15 by a Federal court or a State’s highest court, or
16 there is an official finding of noncompliance with
17 Federal law or regulations, then the Secretary may
18 require a State to modify its application only to the
19 extent necessary to ensure the State’s compliance
20 with this part.

21 “(d) APPROVAL BY THE SECRETARY.—

22 “(1) IN GENERAL.—If the Secretary determines
23 that a State is eligible to receive a grant under this
24 part, the Secretary shall notify the State of that de-
25 termination.

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

5 “(A) with reasonable notice; and

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

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

13 “(f) BY-PASS FOR CHILDREN IN PRIVATE
14 SCHOOLS.—

15 “(1) IN GENERAL.—If, on the date of enact-
16 ment of the Education of the Handicapped Act
17 Amendments of 1983, a State educational agency
18 was prohibited by law from providing for the equi-
19 table participation in special programs of children
20 with disabilities enrolled in private elementary
21 schools and secondary schools as required by sub-
22 section (a)(10)(A), or if the Secretary determines
23 that a State educational agency, local educational
24 agency, or other entity has substantially failed or is
25 unwilling to provide for such equitable participation,

1 then the Secretary shall, notwithstanding such provi-
 2 sion of law, arrange for the provision of services to
 3 such children through arrangements which shall be
 4 subject to the requirements of such subsection.

5 “(2) PAYMENTS.—

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

14 “(i) the total amount received by the
 15 State under this part for such fiscal year;
 16 by

17 “(ii) the number of children with dis-
 18 abilities served in the prior year, as re-
 19 ported to the Secretary by the State under
 20 section 618.

21 “(B) WITHHOLDING OF CERTAIN
 22 AMOUNTS.—Pending final resolution of any in-
 23 vestigation or complaint that may result in a
 24 determination under this subsection, the Sec-
 25 retary may withhold from the allocation of the

1 affected State educational agency the amount
2 the Secretary estimates will be necessary to pay
3 the cost of services described in subparagraph
4 (A).

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

12 “(3) NOTICE AND HEARING.—

13 “(A) IN GENERAL.—The Secretary shall
14 not take any final action under this subsection
15 until the State educational agency affected by
16 such action has had an opportunity, for at least
17 45 days after receiving written notice thereof,
18 to submit written objections and to appear be-
19 fore the Secretary or the Secretary’s designee
20 to show cause why such action should not be
21 taken.

22 “(B) REVIEW OF ACTION.—If a State edu-
23 cational agency is dissatisfied with the Sec-
24 retary’s final action after a proceeding under
25 subparagraph (A), such agency may, not later

1 than 60 days after notice of such action, file
2 with the United States court of appeals for the
3 circuit in which such State is located a petition
4 for review of that action. A copy of the petition
5 shall be forthwith transmitted by the clerk of
6 the court to the Secretary. The Secretary there-
7 upon shall file in the court the record of the
8 proceedings on which the Secretary based the
9 Secretary's action, as provided in section 2112
10 of title 28, United States Code.

11 “(C) REVIEW OF FINDINGS OF FACT.—The
12 findings of fact by the Secretary, if supported
13 by substantial evidence, shall be conclusive, but
14 the court, for good cause shown, may remand
15 the case to the Secretary to take further evi-
16 dence, and the Secretary may thereupon make
17 new or modified findings of fact and may mod-
18 ify the Secretary's previous action, and shall file
19 in the court the record of the further pro-
20 ceedings. Such new or modified findings of fact
21 shall likewise be conclusive if supported by sub-
22 stantial evidence.

23 “(D) JURISDICTION OF COURT OF AP-
24 PEALS; REVIEW BY UNITED STATES SUPREME
25 COURT.—Upon the filing of a petition under

1 subparagraph (B), the United States court of
 2 appeals shall have jurisdiction to affirm the ac-
 3 tion of the Secretary or to set it aside, in whole
 4 or in part. The judgment of the court shall be
 5 subject to review by the Supreme Court of the
 6 United States upon certiorari or certification as
 7 provided in section 1254 of title 28, United
 8 States Code.

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

10 “(a) IN GENERAL.—A local educational agency is eli-
 11 gible for assistance under this part for a fiscal year if such
 12 agency submits a plan that provides assurances to the
 13 State educational agency that the local educational agency
 14 meets each of the following conditions:

15 “(1) CONSISTENCY WITH STATE POLICIES.—
 16 The local educational agency, in providing for the
 17 education of children with disabilities within its ju-
 18 risdiction, has in effect policies, procedures, and pro-
 19 grams that are consistent with the State policies and
 20 procedures established under section 612.

21 “(2) USE OF AMOUNTS.—

22 “(A) IN GENERAL.—Amounts provided to
 23 the local educational agency under this part
 24 shall be expended in accordance with the appli-
 25 cable provisions of this part and—

1 “(i) shall be used only to pay the ex-
2 cess costs of providing special education
3 and related services to children with dis-
4 abilities;

5 “(ii) shall be used to supplement
6 State, local, and other Federal funds and
7 not to supplant such funds; and

8 “(iii) shall not be used, except as pro-
9 vided in subparagraphs (B) and (C), to re-
10 duce the level of expenditures for the edu-
11 cation of children with disabilities made by
12 the local educational agency from local
13 funds below the level of those expenditures
14 for the preceding fiscal year.

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

19 “(i) the voluntary departure, by re-
20 tirement or otherwise, or departure for just
21 cause, of special education personnel;

22 “(ii) a decrease in the enrollment of
23 children with disabilities;

24 “(iii) the termination of the obligation
25 of the agency, consistent with this part, to

1 provide a program of special education to
 2 a particular child with a disability that is
 3 an exceptionally costly program, as deter-
 4 mined by the State educational agency, be-
 5 cause the child—

6 “(I) has left the jurisdiction of
 7 the agency;

8 “(II) has reached the age at
 9 which the obligation of the agency to
 10 provide a free appropriate public edu-
 11 cation to the child has terminated; or

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

14 “(iv) the termination of costly expend-
 15 itures for long-term purchases, such as the
 16 acquisition of equipment or the construc-
 17 tion of school facilities.

18 “(C) TREATMENT OF FEDERAL FUNDS IN
 19 CERTAIN FISCAL YEARS.—

20 “(i) 8 PERCENT RULE.—Notwith-
 21 standing clauses (ii) and (iii) of subpara-
 22 graph (A), a local educational agency may
 23 treat as local funds, for the purposes of
 24 such clauses, not more than 8 percent of

1 the amount of funds the local educational
2 agency receives under this part.

3 “(ii) 40 PERCENT RULE.—Notwith-
4 standing clauses (ii) and (iii) of subpara-
5 graph (A), for any fiscal year for which
6 States are allocated the maximum amount
7 of grants pursuant to section 611(a)(2), a
8 local educational agency may treat as local
9 funds, for the purposes of such clauses, not
10 more than 40 percent of the amount of
11 funds the local educational agency receives
12 under this part, subject to clause (iv).

13 “(iii) EARLY INTERVENING
14 PREREFERRAL SERVICES.—

15 “(I) 8 PERCENT RULE.—If a
16 local educational agency exercises au-
17 thority pursuant to clause (i), the 8
18 percent funds shall be counted toward
19 the percentage and amount of funds
20 that may be used to provide early in-
21 tervening prereferral services pursu-
22 ant to subsection (f).

23 “(II) 40 PERCENT RULE.—If a
24 local educational agency exercises au-
25 thority pursuant to clause (ii), the

1 local educational agency shall use an
2 amount of the 40 percent funds from
3 clause (ii) that represents 15 percent
4 of the total amount of funds the local
5 educational agency receives under this
6 part, to provide early intervening
7 prereferral services pursuant to sub-
8 section (f).

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

13 “(I) clauses (ii) and (iii) of sub-
14 paragraph (A); and

15 “(II) the provision of the local
16 share of costs for title XIX of the So-
17 cial Security Act.

18 “(v) PROHIBITION.—If a State edu-
19 cational agency determines that a local
20 educational agency is unable to establish
21 and maintain programs of free appropriate
22 public education that meet the require-
23 ments of this subsection, then the State
24 educational agency shall prohibit the local
25 educational agency from treating funds re-

ceived 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

1 “(ii)(I) the amount received by the
2 local educational agency under this part
3 for that fiscal year; divided by

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

6 “(3) PERSONNEL DEVELOPMENT.—The local
7 educational agency shall ensure that all personnel
8 necessary to carry out this part are appropriately
9 and adequately prepared, consistent with the re-
10 quirements of section 612(a)(14) of this Act and
11 section 2122 of the Elementary and Secondary Edu-
12 cation Act of 1965.

13 “(4) PERMISSIVE USE OF FUNDS.—

14 “(A) USES.—Notwithstanding paragraph
15 (2)(A) or section 612(a)(17)(B) (relating to
16 commingled funds), funds provided to the local
17 educational agency under this part may be used
18 for the following activities:

19 “(i) SERVICES AND AIDS THAT ALSO
20 BENEFIT NONDISABLED CHILDREN.—For
21 the costs of special education and related
22 services, and supplementary aids and serv-
23 ices, provided in a regular class or other
24 education-related setting to a child with a
25 disability in accordance with the individual-

1 ized education program of the child, even
 2 if 1 or more nondisabled children benefit
 3 from such services.

4 “(ii) EARLY INTERVENING SERV-
 5 ICES.—To develop and implement com-
 6 prehensive, coordinated, early intervening
 7 educational services in accordance with
 8 subsection (f).

9 “(B) CASE MANAGEMENT AND ADMINIS-
 10 TRATION.—A local educational agency may use
 11 funds received under this part to purchase ap-
 12 propriate technology, for recordkeeping, data
 13 collection, and related case management activi-
 14 ties of teachers and related services personnel
 15 providing services described in the individual-
 16 ized education program of children with disabil-
 17 ities, that is necessary to the implementation of
 18 such case management activities.

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

24 “(A) serves children with disabilities at-
 25 tending those charter schools in the same man-

1 ner as the local educational agency serves chil-
2 dren with disabilities in its other schools, in-
3 cluding providing supplementary and related
4 services on site at the charter school to the
5 same extent to which the local educational
6 agency has a policy or practice of providing
7 such services on the site to its other public
8 schools; and

9 “(B) provides funds under this part to
10 those charter schools on the same basis, includ-
11 ing proportional distribution based on relative
12 enrollment of children with disabilities, and at
13 the same time, as the local educational agency
14 distributes State, local, or a combination of
15 State and local, funds to those charter schools
16 under the State’s charter school law.

17 “(6) PURCHASE OF INSTRUCTIONAL MATE-
18 RIALS.—Not later than 2 years after the date of the
19 enactment of the Individuals with Disabilities Edu-
20 cation Improvement Act of 2003, the local edu-
21 cational agency, when purchasing instructional mate-
22 rials for use in public elementary schools or sec-
23 ondary schools served by the local educational agen-
24 cy, requires the publisher of the instructional mate-
25 rials, as a part of any purchase agreement that is

1 made, renewed, or revised, to prepare and supply
 2 electronic files containing the contents of the in-
 3 structional materials using the national instructional
 4 materials accessibility standard described in section
 5 612(a)(22).

6 “(7) INFORMATION FOR STATE EDUCATIONAL
 7 AGENCY.—The local educational agency shall provide
 8 the State educational agency with information nec-
 9 essary to enable the State educational agency to
 10 carry out its duties under this part, including, with
 11 respect to paragraphs (15) and (16) of section
 12 612(a), information relating to the performance of
 13 children with disabilities participating in programs
 14 carried out under this part.

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

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

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

1 ment of subsection (a), including any policies and
2 procedures filed under this part as in effect before
3 the effective date of the Individuals with Disabilities
4 Education Improvement Act of 2003, the State edu-
5 cational agency shall consider such local educational
6 agency or State agency, as the case may be, to have
7 met such requirement for purposes of receiving as-
8 sistance under this part.

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

16 “(3) MODIFICATIONS REQUIRED BY STATE
17 EDUCATIONAL AGENCY.—If, after the effective date
18 of the Individuals with Disabilities Education Im-
19 provement Act of 2003, the provisions of this Act
20 are amended (or the regulations developed to carry
21 out this Act are amended), there is a new interpreta-
22 tion of this Act by Federal or State courts, or there
23 is an official finding of noncompliance with Federal
24 or State law or regulations, then the State edu-
25 cational agency may require a local educational

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

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

13 “(d) LOCAL EDUCATIONAL AGENCY COMPLIANCE.—

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

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

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

14 “(e) JOINT ESTABLISHMENT OF ELIGIBILITY.—

15 “(1) JOINT ESTABLISHMENT.—

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

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

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

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

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

22 “(B) be jointly responsible for imple-
23 menting programs that receive assistance under
24 this part.

1 “(4) REQUIREMENTS FOR EDUCATIONAL SERV-
2 ICE AGENCIES.—

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

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

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

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

20 “(f) EARLY INTERVENING SERVICES.—

21 “(1) IN GENERAL.—A local educational agency
22 may not use more than 15 percent of the amount
23 such agency receives under this part for any fiscal
24 year, less any amount treated as local funds pursu-
25 ant to subsection (a)(2)(C), if any, in combination

1 with other amounts (which may include amounts
2 other than education funds), to develop and imple-
3 ment comprehensive, coordinated, early intervening
4 educational services, which may include interagency
5 financing structures, for students in kindergarten
6 through grade 12 (with a particular emphasis on
7 students in kindergarten through grade 3) who have
8 not been identified as needing special education or
9 related services but who require additional academic
10 and behavioral support to succeed in a general edu-
11 cation environment.

12 “(2) ACTIVITIES.—In implementing comprehen-
13 sive, coordinated, early intervening educational serv-
14 ices under this subsection, a local educational agency
15 may carry out activities that include—

16 “(A) professional development (which may
17 be provided by entities other than local edu-
18 cational agencies) for teachers and other school
19 staff to enable such personnel to deliver sci-
20 entifically based academic and behavioral inter-
21 ventions, including scientifically based literacy
22 instruction, and, where appropriate, instruction
23 on the use of adaptive and instructional soft-
24 ware;

1 “(B) providing educational and behavioral
2 evaluations, services, and supports, including
3 scientifically based literacy instruction; and

4 “(C) developing and implementing inter-
5 agency financing structures for the provision of
6 such services and supports.

7 “(3) CONSTRUCTION.—Nothing in this sub-
8 section shall be construed to either limit or create a
9 right to a free appropriate public education under
10 this part.

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

16 “(A) the number of children served under
17 this subsection; and

18 “(B) the number of children served under
19 this subsection who are subsequently referred to
20 special education.

21 “(5) COORDINATION WITH CERTAIN PROJECTS
22 UNDER ELEMENTARY AND SECONDARY EDUCATION
23 ACT OF 1965.—Funds made available to carry out
24 this subsection may be used to carry out comprehen-
25 sive, coordinated, early intervening educational serv-

1 ices aligned with activities funded by, and carried
 2 out under, the Elementary and Secondary Education
 3 Act of 1965 if such funds are used to supplement,
 4 and not supplant, funds made available under the
 5 Elementary and Secondary Education Act of 1965
 6 for the activities and services assisted under this
 7 subsection.

8 “(g) DIRECT SERVICES BY THE STATE EDU-
 9 CATIONAL AGENCY.—

10 “(1) IN GENERAL.—A State educational agency
 11 shall use the payments that would otherwise have
 12 been available to a local educational agency or to a
 13 State agency to provide special education and re-
 14 lated services directly to children with disabilities re-
 15 siding in the area served by that local educational
 16 agency, or for whom that State agency is respon-
 17 sible, if the State educational agency determines
 18 that the local educational agency or State agency, as
 19 the case may be—

20 “(A) has not provided the information
 21 needed to establish the eligibility of such agency
 22 under this section;

23 “(B) is unable to establish and maintain
 24 programs of free appropriate public education
 25 that meet the requirements of subsection (a);

1 “(C) is unable or unwilling to be consoli-
 2 dated with 1 or more local educational agencies
 3 in order to establish and maintain such pro-
 4 grams; or

5 “(D) has 1 or more children with disabil-
 6 ities who can best be served by a regional or
 7 State program or service delivery system de-
 8 signed to meet the needs of such children.

9 “(2) MANNER AND LOCATION OF EDUCATION
 10 AND SERVICES.—The State educational agency may
 11 provide special education and related services under
 12 paragraph (1) in such manner and at such locations
 13 (including regional or State centers) as the State
 14 agency considers appropriate. Such education and
 15 services shall be provided in accordance with this
 16 part.

17 “(h) STATE AGENCY ELIGIBILITY.—Any State agen-
 18 cy that desires to receive a subgrant for any fiscal year
 19 under section 611(f) shall demonstrate to the satisfaction
 20 of the State educational agency that—

21 “(1) all children with disabilities who are par-
 22 ticipating in programs and projects funded under
 23 this part receive a free appropriate public education,
 24 and that those children and their parents are pro-

1 vided all the rights and procedural safeguards de-
2 scribed in this part; and

3 “(2) the agency meets such other conditions of
4 this section as the Secretary determines to be appro-
5 priate.

6 “(i) DISCIPLINARY INFORMATION.—The State may
7 require that a local educational agency include in the
8 records of a child with a disability a statement of any cur-
9 rent or previous disciplinary action that has been taken
10 against the child and transmit such statement to the same
11 extent that such disciplinary information is included in,
12 and transmitted with, the student records of nondisabled
13 children. The statement may include a description of any
14 behavior engaged in by the child that required disciplinary
15 action, a description of the disciplinary action taken, and
16 any other information that is relevant to the safety of the
17 child and other individuals involved with the child. If the
18 State adopts such a policy, and the child transfers from
19 1 school to another, the transmission of any of the child’s
20 records shall include both the child’s current individual-
21 ized education program and any such statement of current
22 or previous disciplinary action that has been taken against
23 the child.

24 “(j) STATE AGENCY FLEXIBILITY.—

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

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

17 “(A) 8 PERCENT RULE.—A State edu-
 18 cational agency may treat not more than 8 per-
 19 cent of the funds the State educational agency
 20 receives under this part as general funds to
 21 support any educational purpose described in
 22 the Elementary and Secondary Education Act
 23 of 1965, needs-based student or teacher higher
 24 education programs, or the non-Federal share
 25 of costs of title XIX of the Social Security Act.

1 “(B) 40 PERCENT RULE.—For any fiscal
2 year for which States are allocated the max-
3 imum amount of grants pursuant to section
4 611(a)(2), a State educational agency may
5 treat not more than 40 percent of the amount
6 of funds the State educational agency receives
7 under this part as general funds to support any
8 educational purpose described in the Elemen-
9 tary and Secondary Education Act of 1965,
10 needs-based student or teacher higher education
11 programs, or the non-Federal share of costs of
12 title XIX of the Social Security Act, subject to
13 subparagraph (C).

14 “(C) REQUIREMENT.—A State educational
15 agency may exercise its authority pursuant to
16 subparagraph (B) only if the State educational
17 agency uses an amount of the 40 percent funds
18 from subparagraph (B) that represents 15 per-
19 cent of the total amount of funds the State edu-
20 cational agency receives under this part, to pro-
21 vide, or to pay or reimburse local educational
22 agencies for providing, early intervening
23 prereferral services pursuant to subsection (f).

24 “(2) PROHIBITION.—Notwithstanding sub-
25 section (a), if the Secretary determines that a State

1 educational agency is unable to establish, maintain,
 2 or oversee programs of free appropriate public edu-
 3 cation that meet the requirements of this part, then
 4 the Secretary shall prohibit the State educational
 5 agency from treating funds allocated under this part
 6 as general funds pursuant to paragraph (1).

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

14 **“SEC. 614. EVALUATIONS, ELIGIBILITY DETERMINATIONS,**
 15 **INDIVIDUALIZED EDUCATION PROGRAMS,**
 16 **AND EDUCATIONAL PLACEMENTS.**

17 “(a) EVALUATIONS AND REEVALUATIONS.—

18 “(1) INITIAL EVALUATIONS.—

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

1 “(B) REQUEST FOR INITIAL EVALUA-
2 TION.—Consistent with subparagraph (D), ei-
3 ther a parent of a child, or a State educational
4 agency, other State agency, or local educational
5 agency may initiate a request for an initial eval-
6 uation to determine if the child is a child with
7 a disability.

8 “(C) PROCEDURES.—Such initial evalua-
9 tion shall consist of procedures—

10 “(i) to determine whether a child is a
11 child with a disability (as defined in sec-
12 tion 602(3)) within 60 days of receiving
13 parental consent for the evaluation, or, if
14 the State has established a timeframe
15 within which the evaluation must be con-
16 ducted, within such timeframe; and

17 “(ii) to determine the educational
18 needs of such child.

19 “(D) PARENTAL CONSENT.—

20 “(i) IN GENERAL.—The agency pro-
21 posing to conduct an initial evaluation to
22 determine if the child qualifies as a child
23 with a disability as defined in section
24 602(3) (A) or (B) shall obtain an informed
25 consent from the parent of such child be-

1 fore the evaluation is conducted. Parental
2 consent for evaluation shall not be con-
3 strued as consent for placement for receipt
4 of special education and related services.

5 “(ii) REFUSAL.—If the parents of
6 such child refuse consent for the evalua-
7 tion, the agency may continue to pursue an
8 evaluation by utilizing the mediation and
9 due process procedures under section 615,
10 except to the extent inconsistent with State
11 law relating to parental consent.

12 “(iii) REFUSAL OR FAILURE TO CON-
13 SENT.—If the parent of a child does not
14 provide informed consent to the receipt of
15 special education and related services, or
16 the parent fails to respond to a request to
17 provide the consent, the local educational
18 agency shall not be considered to be in vio-
19 lation of the requirement to make available
20 a free appropriate public education to the
21 child.

22 “(2) REEVALUATIONS.—

23 “(A) IN GENERAL.—A local educational
24 agency shall ensure that a reevaluation of each

1 child with a disability is conducted in accord-
 2 ance with subsections (b) and (c)—

3 “(i) if the local educational agency de-
 4 termines that the educational or related
 5 services needs, including improved aca-
 6 demic achievement and functional perform-
 7 ance, of the child warrant a reevaluation;
 8 or

9 “(ii) if the child’s parents or teacher
 10 requests a reevaluation.

11 “(B) LIMITATION.—A reevaluation con-
 12 ducted under subparagraph (A) shall occur—

13 “(i) not more than once a year, unless
 14 the parent and the local educational agen-
 15 cy agree otherwise; and

16 “(ii) at least once every 3 years, un-
 17 less the parent and the local educational
 18 agency agree that a reevaluation is unnec-
 19 essary.

20 “(b) EVALUATION PROCEDURES.—

21 “(1) NOTICE.—The local educational agency
 22 shall provide notice to the parents of a child with a
 23 disability, in accordance with subsections (b)(3),
 24 (b)(4), and (c) of section 615, that describes any

1 evaluation procedures such agency proposes to con-
2 duct.

3 “(2) CONDUCT OF EVALUATION.—In con-
4 ducting the evaluation, the local educational agency
5 shall—

6 “(A) use a variety of assessment tools and
7 strategies to gather relevant functional, develop-
8 mental, and academic information, including in-
9 formation provided by the parent, that may as-
10 sist in determining—

11 “(i) whether the child is a child with
12 a disability; and

13 “(ii) the content of the child’s individ-
14 ualized education program, including infor-
15 mation related to enabling the child to be
16 involved in and progress in the general
17 curriculum, or for preschool children, to
18 participate in appropriate activities;

19 “(B) not use any single procedure, meas-
20 ure, or assessment as the sole criterion for de-
21 termining whether a child is a child with a dis-
22 ability or determining an appropriate edu-
23 cational program for the child; and

24 “(C) use technically sound instruments
25 that may assess the relative contribution of cog-

1 nitive and behavioral factors, in addition to
2 physical or developmental factors.

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

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

7 “(i) are selected and administered so
8 as not to be discriminatory on a racial or
9 cultural basis;

10 “(ii) are provided and administered,
11 to the extent practicable, in the language
12 and form most likely to yield accurate in-
13 formation on what the child knows and can
14 do academically, developmentally, and
15 functionally;

16 “(iii) are used for purposes for which
17 the assessments or measures are valid and
18 reliable;

19 “(iv) are administered by trained and
20 knowledgeable personnel; and

21 “(v) are administered in accordance
22 with any instructions provided by the pro-
23 ducer of such tests;

24 “(B) the child is assessed in all areas of
25 suspected disability; and

1 “(C) assessment tools and strategies that
 2 provide relevant information that directly as-
 3 sists persons in determining the educational
 4 needs of the child are provided.

5 “(4) DETERMINATION OF ELIGIBILITY.—Upon
 6 completion of administration of tests and other eval-
 7 uation materials—

8 “(A) the determination of whether the
 9 child is a child with a disability as defined in
 10 section 602(3) shall be made by a team of
 11 qualified professionals and the parent of the
 12 child in accordance with paragraph (5); and

13 “(B) a copy of the evaluation report and
 14 the documentation of determination of eligibility
 15 shall be given to the parent.

16 “(5) SPECIAL RULE FOR ELIGIBILITY DETER-
 17 MINATION.—In making a determination of eligibility
 18 under paragraph (4)(A), a child shall not be deter-
 19 mined to be a child with a disability if the deter-
 20 minant factor for such determination is—

21 “(A) lack of scientifically based instruction
 22 in reading;

23 “(B) lack of instruction in mathematics; or

24 “(C) limited English proficiency.

25 “(6) SPECIFIC LEARNING DISABILITIES.—

1 “(A) IN GENERAL.—Notwithstanding sec-
2 tion 607, when determining whether a child has
3 a specific learning disability as defined in sec-
4 tion 602, a local educational agency shall not be
5 required to take into consideration whether a
6 child has a severe discrepancy between achieve-
7 ment and intellectual ability in oral expression,
8 listening comprehension, written expression,
9 basic reading skill, reading comprehension,
10 mathematical calculation, or mathematical rea-
11 soning.

12 “(B) ADDITIONAL AUTHORITY.—In deter-
13 mining whether a child has a specific learning
14 disability, a local educational agency may use a
15 process that determines if the child responds to
16 scientific, research-based intervention.

17 “(c) ADDITIONAL REQUIREMENTS FOR EVALUATION
18 AND REEVALUATIONS.—

19 “(1) REVIEW OF EXISTING EVALUATION
20 DATA.—As part of an initial evaluation (if appro-
21 priate) and as part of any reevaluation under this
22 section, the IEP Team described in subsection
23 (d)(1)(B) and other qualified professionals, as ap-
24 propriate, shall—

1 “(A) review existing evaluation data on the
2 child, including evaluations and information
3 provided by the parents of the child, current
4 classroom-based assessments, and observations,
5 and teacher and related services providers ob-
6 servations; and

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

10 “(i) whether the child has a particular
11 category of disability, as described in sec-
12 tion 602(3), or, in case of a reevaluation of
13 a child, whether the child continues to have
14 such a disability;

15 “(ii) the present levels of performance
16 and educational needs of the child;

17 “(iii) whether the child needs special
18 education and related services, or in the
19 case of a reevaluation of a child, whether
20 the child continues to need special edu-
21 cation and related services; and

22 “(iv) whether any additions or modi-
23 fications to the special education and re-
24 lated services are needed to enable the
25 child to meet the measurable annual goals

1 set out in the individualized education pro-
2 gram of the child and to participate, as ap-
3 propriate, in the general curriculum.

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

8 “(3) PARENTAL CONSENT.—Each local edu-
9 cational agency shall obtain informed parental con-
10 sent, in accordance with subsection (a)(1)(D), prior
11 to conducting any reevaluation of a child with a dis-
12 ability, except that such informed parental consent
13 need not be obtained if the local educational agency
14 can demonstrate that the local educational agency
15 had taken reasonable measures to obtain such con-
16 sent and the child’s parent has failed to respond.

17 “(4) REQUIREMENTS IF ADDITIONAL DATA ARE
18 NOT NEEDED.—If the IEP Team and other qualified
19 professionals, as appropriate, determine that no ad-
20 ditional data are needed to determine whether the
21 child is or continues to be a child with a disability
22 the local educational agency—

23 “(A) shall notify the child’s parents of—

24 “(i) that determination and the rea-
25 sons for the determination; and

1 “(ii) the right of such parents to re-
2 quest an assessment to determine whether
3 the child is or continues to be a child with
4 a disability; and

5 “(B) shall not be required to conduct such
6 an assessment unless requested by the child’s
7 parents.

8 “(5) EVALUATIONS BEFORE CHANGE IN ELIGI-
9 BILITY.—

10 “(A) IN GENERAL.—Except as provided in
11 subparagraph (B), a local educational agency
12 shall evaluate a child with a disability in ac-
13 cordance with this section before determining
14 that the child is no longer a child with a dis-
15 ability.

16 “(B) EXCEPTION.—

17 “(i) IN GENERAL.—The evaluation de-
18 scribed in subparagraph (A) shall not be
19 required before the termination of a child’s
20 eligibility under this part due to gradua-
21 tion from secondary school with a regular
22 diploma, or to exceeding the age eligibility
23 for a free appropriate public education
24 under State law.

1 “(ii) SUMMARY OF PERFORMANCE.—

2 For a child whose eligibility under this
 3 part terminates under circumstances de-
 4 scribed in clause (i), a local educational
 5 agency shall provide the child with a sum-
 6 mary of the child’s academic achievement
 7 and functional performance, which shall in-
 8 clude any further recommendations on how
 9 to assist the child in meeting the child’s
 10 postsecondary goals.

11 “(d) INDIVIDUALIZED EDUCATION PROGRAMS.—

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

13 “(A) INDIVIDUALIZED EDUCATION PRO-
 14 GRAM.—

15 “(i) IN GENERAL.—The term ‘individ-
 16 ualized education program’ or ‘IEP’ means
 17 a written statement for each child with a
 18 disability that is developed, reviewed, and
 19 revised in accordance with this section and
 20 that includes—

21 “(I) a statement of the child’s
 22 present levels of academic achieve-
 23 ment and functional performance, in-
 24 cluding—

1 “(aa) how the child’s dis-
2 ability affects the child’s involve-
3 ment and progress in the general
4 curriculum; or

5 “(bb) for preschool children,
6 as appropriate, how the disability
7 affects the child’s participation in
8 appropriate activities;

9 “(II) a statement of measurable
10 annual goals, including academic and
11 functional goals, designed to—

12 “(aa) meet the child’s needs
13 that result from the child’s dis-
14 ability to enable the child to be
15 involved in and make progress in
16 the general curriculum; and

17 “(bb) meet each of the
18 child’s other educational needs
19 that result from the child’s dis-
20 ability;

21 “(III) a statement of how the
22 child’s progress toward the annual
23 goals described in subclause (II) will
24 be measured, including through the
25 use of quarterly or other periodic re-

1 ports, concurrent with the issuance of
2 report cards, that delineate the
3 progress the child is making toward
4 meeting the annual goals;

5 “(IV) a statement of the special
6 education and related services, and
7 supplementary aids and services, to be
8 provided to the child, or on behalf of
9 the child, and a statement of the pro-
10 gram modifications or supports for
11 school personnel that will be provided
12 for the child—

13 “(aa) to advance appro-
14 priately toward attaining the an-
15 nual goals;

16 “(bb) to be involved in and
17 make progress in the general cur-
18 riculum in accordance with sub-
19 clause (I) and to participate in
20 extracurricular and other nonaca-
21 demic activities; and

22 “(cc) to be educated and
23 participate with other children
24 with disabilities and nondisabled

1 children in the activities de-
2 scribed in this paragraph;

3 “(V) an explanation of the ex-
4 tent, if any, to which the child will not
5 participate with nondisabled children
6 in the regular class and in the activi-
7 ties described in subclause (IV)(cc);

8 “(VI)(aa) a statement of any in-
9 dividual appropriate accommodations
10 that are necessary to measure the
11 academic achievement and functional
12 performance of the child on State and
13 districtwide assessments consistent
14 with section 612(a)(16)(A); and

15 “(bb) if the IEP Team deter-
16 mines that the child shall take an al-
17 ternate assessment on a particular
18 State or districtwide assessment of
19 student achievement, a statement of
20 why—

21 “(AA) the child cannot par-
22 ticipate in the regular assess-
23 ment; and

1 “(BB) the particular alter-
2 nate assessment selected is ap-
3 propriate for the child;

4 “(VII) the projected date for the
5 beginning of the services and modi-
6 fications described in subclause (IV),
7 and the anticipated frequency, loca-
8 tion, and duration of those services
9 and modifications; and

10 “(VIII) beginning not later than
11 the first IEP to be in effect when the
12 child is 14, and updated annually
13 thereafter—

14 “(aa) appropriate measur-
15 able postsecondary goals based
16 upon age appropriate transition
17 assessments related to training,
18 education, employment, and,
19 where appropriate, independent
20 living skills;

21 “(bb) the transition services
22 (including courses of study) need-
23 ed by the child to reach those
24 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 sec-
tion; 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 PRO-
GRAM TEAM.—The term ‘individualized edu-

1 cation program team’ or ‘IEP Team’ means a
2 group of individuals composed of—

3 “(i) the parents of a child with a dis-
4 ability;

5 “(ii) at least 1 regular education
6 teacher of such child (if the child is, or
7 may be, participating in the regular edu-
8 cation environment);

9 “(iii) at least 1 special education
10 teacher, or where appropriate, at least 1
11 special education provider of such child;

12 “(iv) a representative of the local edu-
13 cational agency who—

14 “(I) is qualified to provide, or su-
15 pervise the provision of, specially de-
16 signed instruction to meet the unique
17 needs of children with disabilities;

18 “(II) is knowledgeable about the
19 general curriculum; and

20 “(III) is knowledgeable about the
21 availability of resources of the local
22 educational agency;

23 “(v) an individual who can interpret
24 the instructional implications of evaluation

1 results, who may be a member of the team
2 described in clauses (ii) through (vi);

3 “(vi) at the discretion of the parent or
4 the agency, other individuals who have
5 knowledge or special expertise regarding
6 the child, including related services per-
7 sonnel as appropriate; and

8 “(vii) whenever appropriate, the child
9 with a disability.

10 “(C) IEP TEAM ATTENDANCE.—

11 “(i) ATTENDANCE NOT NECESSARY.—
12 A member of the IEP Team shall not be
13 required to attend an IEP meeting, in
14 whole or in part, if the parent of a child
15 with a disability and the local educational
16 agency agree that the attendance of such
17 member is not necessary because no modi-
18 fication to the member’s area of the cur-
19 riculum or related services is being modi-
20 fied or discussed in the meeting.

21 “(ii) EXCUSAL.—A member of the
22 IEP Team may be excused from attending
23 an IEP meeting, in whole or in part, when
24 the meeting involves a modification to or

1 discussion of the member's area of the cur-
2 rriculum or related services, if—

3 “(I) the parent and the local edu-
4 cational agency consent to the excusal;
5 and

6 “(II) the member submits input
7 into the development of the IEP prior
8 to the meeting.

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

11 “(A) IN GENERAL.—At the beginning of
12 each school year, each local educational agency,
13 State educational agency, or other State agen-
14 cy, as the case may be, shall have in effect, for
15 each child with a disability in its jurisdiction,
16 an individualized education program, as defined
17 in paragraph (1)(A).

18 “(B) PROGRAM FOR CHILD AGED 3
19 THROUGH 5.—In the case of a child with a dis-
20 ability aged 3 through 5 (or, at the discretion
21 of the State educational agency, a 2-year-old
22 child with a disability who will turn age 3 dur-
23 ing the school year), an individualized family
24 service plan that contains the material de-
25 scribed in section 636, and that is developed in

1 accordance with this section, may serve as the
 2 IEP of the child if using that plan as the IEP
 3 is—

4 “(i) consistent with State policy; and

5 “(ii) agreed to by the agency and the
 6 child’s parents.

7 “(3) DEVELOPMENT OF IEP.—

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

11 “(i) the strengths of the child;

12 “(ii) the concerns of the parents for
 13 enhancing the education of their child;

14 “(iii) the results of the initial evalua-
 15 tion or most recent evaluation of the child;
 16 and

17 “(iv) the academic, developmental,
 18 and functional needs of the child.

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

21 “(i) in the case of a child whose be-
 22 havior impedes the child’s learning or that
 23 of others, provide for positive behavioral
 24 interventions and supports, and other
 25 strategies to address that behavior;

1 “(ii) in the case of a child with limited
2 English proficiency, consider the language
3 needs of the child as such needs relate to
4 the child’s IEP;

5 “(iii) in the case of a child who is
6 blind or visually impaired—

7 “(I) provide for instruction in
8 Braille and the use of Braille unless
9 the IEP Team determines, after an
10 evaluation of the child’s reading and
11 writing skills, needs, and appropriate
12 reading and writing media (including
13 an evaluation of the child’s future
14 needs for instruction in Braille or the
15 use of Braille), that instruction in
16 Braille or the use of Braille is not ap-
17 propriate for the child; and

18 “(II) consider, when appropriate,
19 instructional services related to func-
20 tional performance skills, orientation
21 and mobility, and skills in the use of
22 assistive technology devices, including
23 low vision devices;

24 “(iv) in the case of a child who is deaf
25 or hard of hearing, consider the child’s lan-

guage 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

1 remainder of the school year, and instead de-
 2 velop a written document to amend or modify
 3 the child's current IEP.

4 “(E) CONSOLIDATION OF IEP TEAM MEET-
 5 INGS.—To the extent possible, the local edu-
 6 cational agency shall encourage the consolida-
 7 tion of reevaluations of a child with IEP Team
 8 meetings for the child.

9 “(4) REVIEW AND REVISION OF IEP.—

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

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

17 “(ii) revise the IEP as appropriate to
 18 address—

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

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

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

4 “(IV) the child’s anticipated
 5 needs; or

6 “(V) other matters.

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

13 “(5) THREE-YEAR IEP.—

14 “(A) DEVELOPMENT OF 3-YEAR IEP.—The
 15 local educational agency may offer a child with
 16 a disability who has reached the age of 18, the
 17 option of developing a comprehensive 3-year
 18 IEP. With the consent of the parent, when ap-
 19 propriate, the IEP Team shall develop an IEP,
 20 as described in paragraphs (1) and (3), that is
 21 designed to serve the child for the final 3-year
 22 transition period, which includes a statement
 23 of—

24 “(i) measurable goals that will enable
 25 the child to be involved in and make

1 progress in the general education cur-
 2 riculum and that will meet the child's tran-
 3 sitional and postsecondary needs that re-
 4 sult from the child's disability; and

5 “(ii) measurable annual goals for
 6 measuring progress toward meeting the
 7 postsecondary goals described in clause (i).

8 “(B) REVIEW AND REVISION OF 3-YEAR
 9 IEP.—

10 “(i) REQUIREMENT.—Each year the
 11 local educational agency shall ensure that
 12 the IEP Team—

13 “(I) provides an annual review of
 14 the child's IEP to determine the
 15 child's current levels of progress and
 16 determine whether the annual goals
 17 for the child are being achieved; and

18 “(II) revises the IEP, as appro-
 19 priate, to enable the child to continue
 20 to meet the measurable transition
 21 goals set out in the IEP.

22 “(ii) COMPREHENSIVE REVIEW.—If
 23 the review under clause (i) determines that
 24 the child is not making sufficient progress
 25 toward the goals described in subpara-

graph (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:

1 “(i) The requirements contained in
2 section 612(a)(16) and paragraph
3 (1)(A)(i)(V) (relating to participation of
4 children with disabilities in general assess-
5 ments).

6 “(ii) The requirements of items (aa)
7 and (bb) of paragraph (1)(A)(i)(VII) (re-
8 lating to transition planning and transition
9 services), do not apply with respect to such
10 children whose eligibility under this part
11 will end, because of their age, before they
12 will be released from prison.

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

22 “(e) EDUCATIONAL PLACEMENTS.—Each local edu-
23 cational agency or State educational agency shall ensure
24 that the parents of each child with a disability are mem-

1 bers of any group that makes decisions on the educational
2 placement of their child.

3 “(f) ALTERNATIVE MEANS OF MEETING PARTICIPA-
4 TION.—When conducting IEP Team meetings and place-
5 ment meetings pursuant to this section, the parent of a
6 child with a disability and a local educational agency may
7 agree to use alternative means of meeting participation,
8 such as video conferences and conference calls.

9 **“SEC. 615. PROCEDURAL SAFEGUARDS.**

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

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

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

1 and to obtain an independent educational evaluation
2 of the child;

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

13 “(3) written prior notice to the parents of the
14 child, in accordance with subsection (c)(1), whenever
15 the local educational agency—

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

17 “(B) refuses to initiate or change,
18 the identification, evaluation, or educational place-
19 ment of the child, or the provision of a free appro-
20 priate public education to the child;

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

1 “(5) an opportunity for mediation in accordance
2 with subsection (e);

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

8 “(7)(A) procedures that require either party, or
9 the attorney representing a party, to provide due
10 process complaint notice in accordance with sub-
11 section (c)(2) (which shall remain confidential)—

12 “(i) to the other party, in the complaint
13 filed under paragraph (6), and forward a copy
14 of such notice to the State educational agency;
15 and

16 “(ii) that shall include—

17 “(I) the name of the child, the ad-
18 dress of the residence of the child, and the
19 name of the school the child is attending;

20 “(II) a description of the nature of
21 the problem of the child relating to such
22 proposed initiation or change, including
23 facts relating to such problem; and

1 “(III) a proposed resolution of the
 2 problem to the extent known and available
 3 to the party at the time; and

4 “(B) a requirement that a party may not have
 5 a due process hearing until the party, or the attor-
 6 ney representing the party, files a notice that meets
 7 the requirements of subparagraph (A)(ii);

8 “(8) a requirement that the local educational
 9 agency shall send a prior written notice pursuant to
 10 subsection (c)(1) in response to a parent’s due proc-
 11 ess complaint notice under paragraph (7) if the local
 12 educational agency has not sent such a prior written
 13 notice to the parent regarding the subject matter
 14 contained in the parent’s due process complaint no-
 15 tice; and

16 “(9) procedures that require the State edu-
 17 cational agency to develop a model form to assist
 18 parents in filing a complaint and due process com-
 19 plaint notice in accordance with paragraphs (6) and
 20 (7), respectively.

21 “(c) NOTIFICATION REQUIREMENTS.—

22 “(1) CONTENT OF PRIOR WRITTEN NOTICE.—
 23 The prior written notice of the local educational
 24 agency required by subsection (b)(3) shall include—

1 “(A) a description of the action proposed
2 or refused by the agency;

3 “(B) an explanation of why the agency
4 proposes or refuses to take the action;

5 “(C) a description of any other options
6 that the agency considered and the reasons why
7 those options were rejected;

8 “(D) a description of each evaluation pro-
9 cedure, test, record, or report the agency used
10 as a basis for the proposed or refused action;

11 “(E) a description of any other factors
12 that are relevant to the agency’s proposal or re-
13 fusal;

14 “(F) a statement that the parents of a
15 child with a disability have protection under the
16 procedural safeguards of this part and, if this
17 notice is not an initial referral for evaluation,
18 the means by which a copy of a description of
19 the procedural safeguards can be obtained; and

20 “(G) sources for parents to contact to ob-
21 tain assistance in understanding the provisions
22 of this part.

23 “(2) DUE PROCESS COMPLAINT NOTICE.—

24 “(A) IN GENERAL.—The due process com-
25 plaint notice required under subsection

1 (b)(7)(A) shall be deemed to be sufficient un-
 2 less the party receiving the notice notifies the
 3 hearing officer in writing that the party believes
 4 the notice has not met the requirements of that
 5 subsection.

6 “(B) TIMING.—The party sending a hear-
 7 ing officer notification under subparagraph (A)
 8 shall send the notification within 20 days of re-
 9 ceiving the complaint.

10 “(C) DETERMINATION.—Within 5 days of
 11 receipt of the notification provided under sub-
 12 paragraph (B), the hearing officer shall make a
 13 determination on the face of the notice of
 14 whether the notification meets the requirements
 15 of subsection (b)(7)(A).

16 “(d) PROCEDURAL SAFEGUARDS NOTICE.—

17 “(1) IN GENERAL.—A copy of the procedural
 18 safeguards available to the parents of a child with
 19 a disability shall be given to the parents only 1 time
 20 a year, except that a copy also shall be given to the
 21 parents—

22 “(A) upon initial referral or parental re-
 23 quest for evaluation;

24 “(B) upon registration of a complaint
 25 under subsection (b)(6);

1 “(C) at any individualized education pro-
2 gram meeting required in accordance with sub-
3 section (k)(1); and

4 “(D) upon request by a parent.

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

12 “(A) independent educational evaluation;

13 “(B) prior written notice;

14 “(C) parental consent;

15 “(D) access to educational records;

16 “(E) opportunity to present complaints, in-
17 cluding the time period in which to make those
18 complaints;

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

21 “(G) procedures for students who are sub-
22 ject to placement in an interim alternative edu-
23 cational setting;

1 “(H) requirements for unilateral placement
 2 by parents of children in private schools at pub-
 3 lic expense;

4 “(I) mediation;

5 “(J) due process hearings, including re-
 6 quirements for disclosure of evaluation results
 7 and recommendations;

8 “(K) State-level appeals (if applicable in
 9 that State);

10 “(L) civil actions, including the time pe-
 11 riod in which to file such actions; and

12 “(M) attorney’s fees.

13 “(e) MEDIATION.—

14 “(1) IN GENERAL.—Any State educational
 15 agency or local educational agency that receives as-
 16 sistance under this part shall ensure that procedures
 17 are established and implemented to allow parties to
 18 disputes involving any matter, including matters
 19 arising prior to the filing of a complaint pursuant to
 20 subsection (b)(6), to resolve such disputes through a
 21 mediation process.

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

24 “(A) The procedures shall ensure that the
 25 mediation process—

1 “(i) is voluntary on the part of the
2 parties;

3 “(ii) is not used to deny or delay a
4 parent’s right to a due process hearing
5 under subsection (f), or to deny any other
6 rights afforded under this part; and

7 “(iii) is conducted by a qualified and
8 impartial mediator who is trained in effec-
9 tive mediation techniques.

10 “(B) OPPORTUNITY TO MEET WITH A DIS-
11 INTERESTED PARTY.—A local educational agen-
12 cy or a State agency may establish procedures
13 to offer to parents who choose not to use the
14 mediation process, an opportunity to meet, at a
15 time and location convenient to the parents,
16 with a disinterested party who is under contract
17 with—

18 “(i) a parent training and information
19 center or community parent resource cen-
20 ter in the State established under section
21 671 or 672; or

22 “(ii) an appropriate alternative dis-
23 pute resolution entity,
24 to encourage the use, and explain the benefits,
25 of the mediation process to the parents.

1 “(C) LIST OF QUALIFIED MEDIATORS.—

2 The State shall maintain a list of individuals
3 who are qualified mediators and knowledgeable
4 in laws and regulations relating to the provision
5 of special education and related services.

6 “(D) COSTS.—The State shall bear the
7 cost of the mediation process, including the
8 costs of meetings described in subparagraph
9 (B).

10 “(E) SCHEDULING AND LOCATION.—Each
11 session in the mediation process shall be sched-
12 uled in a timely manner and shall be held in a
13 location that is convenient to the parties to the
14 dispute.

15 “(F) WRITTEN MEDIATION AGREEMENT.—
16 An agreement reached by the parties to the dis-
17 pute in the mediation process shall be set forth
18 in a written mediation agreement that is en-
19 forceable in any State court of competent juris-
20 diction or in a district court of the United
21 States.

22 “(G) MEDIATION DISCUSSIONS.—Discus-
23 sions that occur during the mediation process
24 shall be confidential and may not be used as
25 evidence in any subsequent due process hear-

ings 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;

1 “(II) which shall include a rep-
2 resentative of the public agency who
3 has decisionmaking authority on be-
4 half of such agency; and

5 “(III) which may not include an
6 attorney of the local educational agen-
7 cy unless the parent is accompanied
8 by an attorney; and

9 “(IV) where the parents of the
10 child discuss their complaint, and the
11 specific issues that form the basis of
12 the complaint, and the local edu-
13 cational agency is provided the oppor-
14 tunity to resolve the complaint,
15 unless the parents and the local edu-
16 cational agency agree in writing to waive
17 such meeting, or agree to use the medi-
18 ation process described in subsection (e).

19 “(ii) HEARING.—If the local edu-
20 cational agency has not resolved the com-
21 plaint to the satisfaction of the parents
22 within 15 days of the receipt of the com-
23 plaint, the due process hearing may occur,
24 and all of the applicable timelines for a

1 due process hearing under this part shall
2 commence.

3 “(iii) WRITTEN SETTLEMENT AGREE-
4 MENT.—In the case that an agreement is
5 reached to resolve the complaint at such
6 meeting, the agreement shall be set forth
7 in a written settlement agreement that is
8 enforceable in any State court of com-
9 petent jurisdiction or in a district court of
10 the United States and signed by both the
11 parent and a representative of the public
12 agency who has decisionmaking authority
13 on behalf of such agency.

14 “(2) DISCLOSURE OF EVALUATIONS AND REC-
15 OMMENDATIONS.—

16 “(A) IN GENERAL.—Not less than 5 busi-
17 ness days prior to a hearing conducted pursu-
18 ant to paragraph (1), each party shall disclose
19 to all other parties all evaluations completed by
20 that date, and recommendations based on the
21 offering party’s evaluations, that the party in-
22 tends to use at the hearing.

23 “(B) FAILURE TO DISCLOSE.—A hearing
24 officer may bar any party that fails to comply
25 with subparagraph (A) from introducing the

1 relevant evaluation or recommendation at the
2 hearing without the consent of the other party.

3 “(3) LIMITATIONS ON HEARING.—

4 “(A) PERSON CONDUCTING HEARING.—A
5 hearing officer conducting a hearing pursuant
6 to paragraph (1)(A) shall, at a minimum—

7 “(i) not be—

8 “(I) an employee of the State
9 educational agency or the local edu-
10 cational agency involved in the edu-
11 cation or care of the child; or

12 “(II) a person having a personal
13 or professional interest that conflicts
14 with the person’s objectivity in the
15 hearing;

16 “(ii) possess a fundamental under-
17 standing of this Act, Federal and State
18 regulations pertaining to this Act, and in-
19 terpretations of this Act by State and Fed-
20 eral courts;

21 “(iii) possess the knowledge and abil-
22 ity to conduct hearings in accordance with
23 appropriate, standard legal practice; and

24 “(iv) possess the knowledge and abil-
25 ity to render and write decisions in accord-

1 ance with appropriate, standard legal prac-
2 tice.

3 “(B) SUBJECT MATTER OF HEARING.—
4 The party requesting the due process hearing
5 shall not be allowed to raise issues at the due
6 process hearing that were not raised in the no-
7 tice filed under subsection (b)(7), unless the
8 other party agrees otherwise.

9 “(C) RULE OF CONSTRUCTION.—Nothing
10 in this section shall be construed to preclude a
11 parent from filing a separate due process com-
12 plaint on an issue separate from a due process
13 complaint already filed.

14 “(D) STATUTE OF LIMITATIONS.—A par-
15 ent or public agency shall request an impartial
16 due process hearing within 2 years of the date
17 the parent or public agency knew or should
18 have known about the alleged action that forms
19 the basis of the complaint, or, if the State has
20 an explicit time limitation for requesting such a
21 hearing under this part, in such time as the
22 State law allows.

23 “(E) EXCEPTION TO THE STATUTE OF
24 LIMITATIONS.—The statute of limitations de-
25 scribed in subparagraph (D) shall not apply if

1 the parent was prevented from requesting the
2 hearing due to—

3 “(i) failure of the local educational
4 agency to provide prior written or proce-
5 dural safeguards notices;

6 “(ii) false representations that the
7 local educational agency was attempting to
8 resolve the problem forming the basis of
9 the complaint; or

10 “(iii) the local educational agency’s
11 withholding of information from parents.

12 “(F) DECISION OF HEARING OFFICER.—

13 “(i) IN GENERAL.—Subject to clause
14 (ii), a decision made by a hearing officer
15 shall be made on substantive grounds
16 based on a determination of whether the
17 child received a free appropriate public
18 education.

19 “(ii) PROCEDURAL ISSUES.—In mat-
20 ters alleging a procedural violation, a hear-
21 ing officer may find that a child did not re-
22 ceive a free appropriate public education
23 only if the procedural inadequacies—

1 “(I) compromised the child’s
2 right to an appropriate public edu-
3 cation;

4 “(II) seriously hampered the par-
5 ents’ opportunity to participate in the
6 process; or

7 “(III) caused a deprivation of
8 educational benefits.

9 “(iii) ENFORCEABILITY.—A decision
10 made by the hearing officer is enforceable
11 in any State court of competent jurisdic-
12 tion or in a district court of the United
13 States, unless either party appeals such de-
14 cision under the provision of subsection (g)
15 or (i)(2).

16 “(G) RULE OF CONSTRUCTION.—Nothing
17 in this section shall be construed to affect the
18 right of a parent to file a complaint with the
19 State educational agency.

20 “(g) APPEAL.—If the hearing required by subsection
21 (f) is conducted by a local educational agency, any party
22 aggrieved by the findings and decision rendered in such
23 a hearing may appeal such findings and decision to the
24 State educational agency. Such State educational agency
25 shall conduct an impartial review of such decision. The

1 officer conducting such review shall make an independent
2 decision upon completion of such review.

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

6 “(1) the right to be accompanied and advised
7 by counsel and by individuals with special knowledge
8 or training with respect to the problems of children
9 with disabilities;

10 “(2) the right to present evidence and confront,
11 cross-examine, and compel the attendance of wit-
12 nesses;

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

16 “(4) the right to a written, or, at the option of
17 the parents, electronic findings of fact and decisions,
18 which findings and decisions—

19 “(A) shall be made available to the public
20 consistent with the requirements of section
21 617(c) (relating to the confidentiality of data,
22 information, and records); and

23 “(B) shall be transmitted to the advisory
24 panel established pursuant to section
25 612(a)(20).

1 “(i) ADMINISTRATIVE PROCEDURES.—

2 “(1) IN GENERAL.—

3 “(A) DECISION MADE IN HEARING.—A de-
4 cision made in a hearing conducted pursuant to
5 subsection (f) or (k) shall be final, except that
6 any party involved in such hearing may appeal
7 such decision under the provisions of subsection
8 (g) and paragraph (2).

9 “(B) DECISION MADE AT APPEAL.—A de-
10 cision made under subsection (g) shall be final,
11 except that any party may bring an action
12 under paragraph (2).

13 “(2) RIGHT TO BRING CIVIL ACTION.—

14 “(A) IN GENERAL.—Any party aggrieved
15 by the findings and decision made under sub-
16 section (f) or (k) who does not have the right
17 to an appeal under subsection (g), and any
18 party aggrieved by the findings and decision
19 under this subsection, shall have the right to
20 bring a civil action with respect to the com-
21 plaint presented pursuant to this section, which
22 action may be brought in any State court of
23 competent jurisdiction or in a district court of
24 the United States, without regard to the
25 amount in controversy.

1 “(B) LIMITATION.—The party bringing the
 2 action shall have 90 days from the date of the
 3 decision of the hearing officer to bring such an
 4 action, or, if the State has an explicit time limi-
 5 tation for bringing such action under this part,
 6 in such time as the State law allows.

7 “(C) ADDITIONAL REQUIREMENTS.—In
 8 any action brought under this paragraph, the
 9 court—

10 “(i) shall receive the records of the
 11 administrative proceedings;

12 “(ii) shall hear additional evidence at
 13 the request of a party; and

14 “(iii) basing its decision on the pre-
 15 ponderance of the evidence, shall grant
 16 such relief as the court determines is ap-
 17 propriate.

18 “(3) JURISDICTION OF DISTRICT COURTS; AT-
 19 TORNEYS’ FEES.—

20 “(A) IN GENERAL.—The district courts of
 21 the United States shall have jurisdiction of ac-
 22 tions brought under this section without regard
 23 to the amount in controversy.

24 “(B) AWARD OF ATTORNEYS’ FEES.—In
 25 any action or proceeding brought under this

1 section, the court, in its discretion, may award
 2 reasonable attorneys' fees as part of the costs
 3 to the parents of a child with a disability who
 4 is the prevailing party.

5 “(C) DETERMINATION OF AMOUNT OF AT-
 6 TORNEYS' FEES.—Fees awarded under this
 7 paragraph shall be based on rates prevailing in
 8 the community in which the action or pro-
 9 ceeding arose for the kind and quality of serv-
 10 ices furnished. No bonus or multiplier may be
 11 used in calculating the fees awarded under this
 12 subsection.

13 “(D) PROHIBITION OF ATTORNEYS' FEES
 14 AND RELATED COSTS FOR CERTAIN SERV-
 15 ICES.—

16 “(i) IN GENERAL.—Attorneys' fees
 17 may not be awarded and related costs may
 18 not be reimbursed in any action or pro-
 19 ceeding under this section for services per-
 20 formed subsequent to the time of a written
 21 offer of settlement to a parent if—

22 “(I) the offer is made within the
 23 time prescribed by Rule 68 of the
 24 Federal Rules of Civil Procedure or,
 25 in the case of an administrative pro-

1 ceeding, at any time more than 10
2 days before the proceeding begins;

3 “(II) the offer is not accepted
4 within 10 days; and

5 “(III) the court or administrative
6 hearing officer finds that the relief fi-
7 nally obtained by the parents is not
8 more favorable to the parents than
9 the offer of settlement.

10 “(ii) IEP TEAM MEETINGS.—Attor-
11 neys’ fees may not be awarded relating to
12 any meeting of the IEP Team unless such
13 meeting is convened as a result of an ad-
14 ministrative proceeding or judicial action,
15 or, at the discretion of the State, for a me-
16 diation described in subsection (e).

17 “(iii) OPPORTUNITY TO RESOLVE
18 COMPLAINTS.—A meeting conducted pur-
19 suant to subsection (f)(1)(B)(i) shall not
20 be considered—

21 “(I) a meeting convened as a re-
22 sult of an administrative hearing or
23 judicial action; or

1 “(II) an administrative hearing
2 or judicial action for purposes of this
3 paragraph.

4 “(E) EXCEPTION TO PROHIBITION ON AT-
5 TORNEYS’ FEES AND RELATED COSTS.—Not-
6 withstanding subparagraph (D), an award of
7 attorneys’ fees and related costs may be made
8 to a parent who is the prevailing party and who
9 was substantially justified in rejecting the set-
10 tlement offer.

11 “(F) REDUCTION IN AMOUNT OF ATTOR-
12 NEYS’ FEES.—Except as provided in subpara-
13 graph (G), whenever the court finds that—

14 “(i) the parent, or the parent’s attor-
15 ney, during the course of the action or pro-
16 ceeding, unreasonably protracted the final
17 resolution of the controversy;

18 “(ii) the amount of the attorneys’ fees
19 otherwise authorized to be awarded unrea-
20 sonably exceeds the hourly rate prevailing
21 in the community for similar services by
22 attorneys of reasonably comparable skill,
23 reputation, and experience;

1 “(iii) the time spent and legal services
 2 furnished were excessive considering the
 3 nature of the action or proceeding; or

4 “(iv) the attorney representing the
 5 parent did not provide to the local edu-
 6 cational agency the appropriate informa-
 7 tion in the notice of the complaint de-
 8 scribed in subsection (b)(7)(A),
 9 the court shall reduce, accordingly, the amount
 10 of the attorneys’ fees awarded under this sec-
 11 tion.

12 “(G) EXCEPTION TO REDUCTION IN
 13 AMOUNT OF ATTORNEYS’ FEES.—The provi-
 14 sions of subparagraph (F) shall not apply in
 15 any action or proceeding if the court finds that
 16 the State or local educational agency unreason-
 17 ably protracted the final resolution of the action
 18 or proceeding or there was a violation of this
 19 section.

20 “(j) MAINTENANCE OF CURRENT EDUCATIONAL
 21 PLACEMENT.—Except as provided in subsection (k)(4),
 22 during the pendency of any proceedings conducted pursu-
 23 ant to this section, unless the State or local educational
 24 agency and the parents otherwise agree, the child shall
 25 remain in the then-current educational placement of such

1 child, or, if applying for initial admission to a public
2 school, shall, with the consent of the parents, be placed
3 in the public school program until all such proceedings
4 have been completed.

5 “(k) PLACEMENT IN ALTERNATIVE EDUCATIONAL
6 SETTING.—

7 “(1) AUTHORITY OF SCHOOL PERSONNEL.—

8 “(A) IN GENERAL.—School personnel
9 under this section may order a change in the
10 placement of a child with a disability who vio-
11 lates a code of student conduct to an appro-
12 priate interim alternative educational setting,
13 another setting, or suspension, for not more
14 than 10 school days (to the extent such alter-
15 natives are applied to children without disabili-
16 ties).

17 “(B) ADDITIONAL AUTHORITY.—If school
18 personnel seek to order a change in placement
19 that would exceed 10 school days and the be-
20 havior that gave rise to the violation of the
21 school code is determined not to be a manifesta-
22 tion of the child’s disability pursuant to sub-
23 paragraph (C), the relevant disciplinary proce-
24 dures applicable to children without disabilities
25 may be applied to the child in the same manner

1 in which the procedures would be applied to
 2 children without disabilities, except as provided
 3 in section 612(a)(1).

4 “(C) MANIFESTATION DETERMINATION.—

5 “(i) IN GENERAL.—Except as pro-
 6 vided in subparagraphs (A) and (D), with-
 7 in 10 school days of any decision to change
 8 the placement of a child with a disability
 9 because of a violation of a code of student
 10 conduct, the IEP Team shall review all rel-
 11 evant information in the student’s file, any
 12 information provided by the parents, and
 13 teacher observations, to determine—

14 “(I) if the conduct in question
 15 was the result of the child’s disability;
 16 or

17 “(II) if the conduct in question
 18 resulted from the failure to implement
 19 the IEP or develop and implement be-
 20 havioral interventions as required by
 21 section 614(d)(3)(B)(i).

22 “(ii) MANIFESTATION.—If the IEP
 23 Team determines that either subclause (I)
 24 or (II) of clause (i) is applicable for the

1 child, the conduct shall be determined to
2 be a manifestation of the child's disability.

3 “(D) SPECIAL CIRCUMSTANCES.—In cases
4 where a child carries or possesses a weapon at
5 school or a school function, possesses or uses
6 drugs or sells or solicits the sale of drugs while
7 at school or a school function, or has committed
8 serious bodily injury upon another person while
9 at school or at a school function, school per-
10 sonnel may remove a student to an interim al-
11 ternative educational setting for not more than
12 45 school days, without regard to whether the
13 behavior is determined to be a manifestation of
14 the child's disability.

15 “(E) SERVICES.—A child with a disability
16 who is removed from the child's current place-
17 ment under subparagraph (B) or (D) shall—

18 “(i) continue to receive educational
19 services pursuant to section 612(a)(1), so
20 as to enable the child to continue to par-
21 ticipate in the general education cur-
22 riculum, although in another setting, and
23 to progress toward meeting the goals set
24 out in the child's IEP; and

1 “(ii) receive behavioral intervention
 2 services as described in section
 3 614(d)(3)(B)(i) designed to address the be-
 4 havior violation so that the violation does
 5 not recur.

6 “(2) DETERMINATION OF SETTING.—The alter-
 7 native educational setting shall be determined by the
 8 IEP Team.

9 “(3) APPEAL.—

10 “(A) IN GENERAL.—The parent of a child
 11 with a disability who disagrees with any deci-
 12 sion regarding disciplinary action, placement, or
 13 the manifestation determination under this sub-
 14 section may request a hearing.

15 “(B) AUTHORITY OF HEARING OFFICER.—

16 “(i) IN GENERAL.—If a parent of a
 17 child with a disability disagrees with a de-
 18 cision as described in subparagraph (A),
 19 the hearing officer may determine whether
 20 the decision regarding such action was ap-
 21 propriate.

22 “(ii) CHANGE OF PLACEMENT
 23 ORDER.—A hearing officer under this sec-
 24 tion may order a change in placement of a
 25 child with a disability to an appropriate in-

1 interim alternative educational setting for
 2 not more than 45 school days if the hear-
 3 ing officer determines that maintaining the
 4 current placement of such child is substan-
 5 tially likely to result in injury to the child
 6 or to others.

7 “(4) PLACEMENT DURING APPEALS.—When a
 8 parent requests a hearing regarding a disciplinary
 9 procedure described in paragraph (1)(B) or chal-
 10 lenges the interim alternative educational setting or
 11 manifestation determination—

12 “(A) the child shall remain in the interim
 13 alternative educational setting pending the deci-
 14 sion of the hearing officer or until the expira-
 15 tion of the time period provided for in para-
 16 graph (1)(B), whichever occurs first, unless the
 17 parent and the State or local educational agen-
 18 cy agree otherwise; and

19 “(B) the State or local educational agency
 20 shall arrange for an expedited hearing which
 21 shall occur within 20 school days of the date
 22 the hearing is requested.

23 “(5) PROTECTIONS FOR CHILDREN NOT YET
 24 ELIGIBLE FOR SPECIAL EDUCATION AND RELATED
 25 SERVICES.—

1 “(A) IN GENERAL.—A child who has not
2 been determined to be eligible for special edu-
3 cation and related services under this part and
4 who has engaged in behavior that violates a
5 code of student conduct, may assert any of the
6 protections provided for in this part if the local
7 educational agency had knowledge (as deter-
8 mined in accordance with this paragraph) that
9 the child was a child with a disability before the
10 behavior that precipitated the disciplinary ac-
11 tion occurred.

12 “(B) BASIS OF KNOWLEDGE.—A local edu-
13 cational agency shall be deemed to have knowl-
14 edge that a child is a child with a disability if,
15 before the behavior that precipitated the dis-
16 ciplinary action occurred—

17 “(i) the parent of the child has ex-
18 pressed concern in writing (unless the par-
19 ent is illiterate or has a disability that pre-
20 vents compliance with the requirements
21 contained in this clause) to personnel of
22 the appropriate educational agency that
23 the child is in need of special education
24 and related services;

1 “(ii) the parent of the child has re-
2 requested an evaluation of the child pursuant
3 to section 614;

4 “(iii) the teacher of the child, or other
5 personnel of the local educational agency,
6 has expressed concern about a pattern of
7 behavior demonstrated by the child, to the
8 director of special education of such agen-
9 cy or to other administrative personnel of
10 the agency; or

11 “(iv) the child has engaged in a pat-
12 tern of behavior that should have alerted
13 personnel of the local educational agency
14 that the child may be in need of special
15 education and related services.

16 “(C) EXCEPTION.—A local educational
17 agency shall not be deemed to have knowledge
18 that the child has a disability if the parent of
19 the child has not agreed to allow an evaluation
20 of the child pursuant to section 614.

21 “(D) CONDITIONS THAT APPLY IF NO
22 BASIS OF KNOWLEDGE.—

23 “(i) IN GENERAL.—If a local edu-
24 cational agency does not have knowledge
25 that a child is a child with a disability (in

1 accordance with subparagraph (B) or (C))
2 prior to taking disciplinary measures
3 against the child, the child may be sub-
4 jected to disciplinary measures applied to
5 children without disabilities who engaged
6 in comparable behaviors consistent with
7 clause (ii).

8 “(ii) LIMITATIONS.—If a request is
9 made for an evaluation of a child during
10 the time period in which the child is sub-
11 jected to disciplinary measures under para-
12 graph (1), the evaluation shall be con-
13 ducted in an expedited manner. If the child
14 is determined to be a child with a dis-
15 ability, taking into consideration informa-
16 tion from the evaluation conducted by the
17 agency and information provided by the
18 parents, the agency shall provide special
19 education and related services in accord-
20 ance with this part, except that, pending
21 the results of the evaluation, the child shall
22 remain in the educational placement deter-
23 mined by school authorities.

24 “(6) REFERRAL TO AND ACTION BY LAW EN-
25 FORCEMENT AND JUDICIAL AUTHORITIES.—

1 “(A) CONSTRUCTION.—Nothing in this
2 part shall be construed to prohibit an agency
3 from reporting a crime committed by a child
4 with a disability to appropriate authorities or to
5 prevent State law enforcement and judicial au-
6 thorities from exercising their responsibilities
7 with regard to the application of Federal and
8 State law to crimes committed by a child with
9 a disability.

10 “(B) TRANSMITTAL OF RECORDS.—An
11 agency reporting a crime committed by a child
12 with a disability shall ensure that copies of the
13 special education and disciplinary records of the
14 child are transmitted for consideration by the
15 appropriate authorities to whom the agency re-
16 ports the crime.

17 “(7) DEFINITIONS.—For purposes of this sub-
18 section, the following definitions apply:

19 “(A) DRUG.—The term ‘drug’—

20 “(i) means a drug or other substance
21 identified under schedules I, II, III, IV, or
22 V in section 202(c) of the Controlled Sub-
23 stances Act (21 U.S.C. 812(c)); and

24 “(ii) does not include such a sub-
25 stance that is legally possessed or used

1 under the supervision of a licensed health-
2 care professional or that is legally pos-
3 sessed or used under any other authority
4 under that Act or under any other provi-
5 sion of Federal law.

6 “(B) WEAPON.—The term ‘weapon’ has
7 the meaning given the term ‘dangerous weapon’
8 under section 930(g)(2) of title 18, United
9 States Code.

10 “(C) SERIOUS BODILY INJURY.—The term
11 ‘serious bodily injury’ has the meaning given
12 the term ‘serious bodily injury’ under para-
13 graph (3) of subsection (h) of section 1365 of
14 title 18, United States Code.

15 “(I) RULE OF CONSTRUCTION.—Nothing in this title
16 shall be construed to restrict or limit the rights, proce-
17 dures, and remedies available under the Constitution, the
18 Americans with Disabilities Act of 1990, title V of the Re-
19 habilitation Act of 1973, or other Federal laws protecting
20 the rights of children with disabilities, except that before
21 the filing of a civil action under such laws seeking relief
22 that is also available under this part, the procedures under
23 subsections (f) and (g) shall be exhausted to the same ex-
24 tent as would be required had the action been brought
25 under this part.

1 “(m) TRANSFER OF PARENTAL RIGHTS AT AGE OF
2 MAJORITY.—

3 “(1) IN GENERAL.—A State that receives
4 amounts from a grant under this part may provide
5 that, when a child with a disability reaches the age
6 of majority under State law (except for a child with
7 a disability who has been determined to be incom-
8 petent under State law)—

9 “(A) the public agency shall provide any
10 notice required by this section to both the indi-
11 vidual and the parents;

12 “(B) all other rights accorded to parents
13 under this part transfer to the child;

14 “(C) the agency shall notify the individual
15 and the parents of the transfer of rights; and

16 “(D) all rights accorded to parents under
17 this part transfer to children who are incarcer-
18 ated in an adult or juvenile Federal, State, or
19 local correctional institution.

20 “(2) SPECIAL RULE.—If, under State law, a
21 child with a disability who has reached the age of
22 majority under State law, who has not been deter-
23 mined to be incompetent, but who is determined not
24 to have the ability to provide informed consent with
25 respect to the educational program of the child, the

1 State shall establish procedures for appointing the
 2 parent of the child, or if the parent is not available,
 3 another appropriate individual, to represent the edu-
 4 cational interests of the child throughout the period
 5 of eligibility of the child under this part.

6 **“SEC. 616. MONITORING, TECHNICAL ASSISTANCE, AND EN-**
 7 **FORCEMENT.**

8 “(a) FEDERAL AND STATE MONITORING.—

9 “(1) IN GENERAL.—The Secretary shall—

10 “(A) monitor implementation of this Act
 11 through—

12 “(i) oversight of the States’ exercise
 13 of general supervision, as required in sec-
 14 tion 612(a)(11); and

15 “(ii) the system of indicators, de-
 16 scribed in subsection (b)(2);

17 “(B) enforce this Act in accordance with
 18 subsection (c); and

19 “(C) require States to monitor implemen-
 20 tation of this Act by local educational agencies
 21 and enforce this Act in accordance with para-
 22 graph (3) of this subsection and subsection (c).

23 “(2) FOCUSED MONITORING.—The primary
 24 focus of Federal and State monitoring activities de-
 25 scribed in paragraph (1) shall be on improving edu-

1 cational results and functional outcomes for all chil-
2 dren with disabilities, while ensuring compliance
3 with program requirements, with a particular em-
4 phasis on those requirements that are most closely
5 related to improving educational results for children
6 with disabilities.

7 “(3) MONITORING PRIORITIES.—The Secretary
8 shall monitor, and shall require States to monitor,
9 the following priority areas:

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

12 “(B) Provision of transition services, as
13 defined in section 602(32).

14 “(C) State exercise of general supervisory
15 authority, including the effective use of com-
16 plaint resolution and mediation.

17 “(D) Overrepresentation of racial and eth-
18 nic groups in special education and related serv-
19 ices, to the extent the overrepresentation is the
20 result of inappropriate policies, procedures, and
21 practices.

22 “(4) PERMISSIVE AREAS OF REVIEW.—The Sec-
23 retary may examine other relevant information and
24 data, including data provided by States under sec-

tion 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

1 to the performance and rates for all chil-
2 dren.

3 “(B) SECRETARY’S ASSESSMENT.—Based
4 on that review and a review of the State’s com-
5 pliance plan under subparagraph (C), the Sec-
6 retary shall assess the State’s progress in im-
7 proving educational results for children with
8 disabilities.

9 “(C) STATE COMPLIANCE PLAN.—Not
10 later than 1 year after the date of the enact-
11 ment of the Individuals with Disabilities Edu-
12 cation Improvement Act of 2003, each State
13 shall have in place a compliance plan developed
14 in collaboration with the Secretary. Each
15 State’s compliance plan shall—

16 “(i) include benchmarks to measure
17 continuous progress on the priority areas
18 described in subsection (a)(3);

19 “(ii) describe strategies the State will
20 use to achieve the benchmarks; and

21 “(iii) be approved by the Secretary.

22 “(3) DATA COLLECTION AND ANALYSIS.—The
23 Secretary shall—

24 “(A) review the data collection and anal-
25 ysis capacity of States to ensure that data and

1 information determined necessary for implemen-
2 tation of this subsection is collected, analyzed,
3 and accurately reported to the Secretary; and

4 “(B) provide technical assistance to im-
5 prove the capacity of States to meet these data
6 collection requirements.

7 “(c) COMPLIANCE AND ENFORCEMENT.—

8 “(1) IN GENERAL.—The Secretary shall exam-
9 ine relevant State information and data annually, to
10 determine whether the State is making satisfactory
11 progress toward improving educational results for
12 children with disabilities using the indicators de-
13 scribed in subsection (b)(2)(A) and the benchmarks
14 established in the State compliance plan under sub-
15 section (b)(2)(C), and is in compliance with the pro-
16 visions of this Act.

17 “(2) LACK OF SATISFACTORY PROGRESS BY A
18 STATE.—

19 “(A) IN GENERAL.—If after examining
20 data, as provided in subsection (b)(2) (A) and
21 (C), the Secretary determines that a State
22 failed to make satisfactory progress in meeting
23 the indicators described in subsection (b)(2)(A)
24 or has failed to meet the benchmarks described
25 in subsection (b)(2)(C) for 2 consecutive years

1 after the State has developed its compliance
2 plan, the Secretary shall notify the State that
3 the State has failed to make satisfactory
4 progress, and shall take 1 or more of the fol-
5 lowing actions:

6 “(i) Direct the use of State level
7 funds for technical assistance, services, or
8 other expenditures to ensure that the State
9 resolves the area or areas of unsatisfactory
10 progress.

11 “(ii) Withhold not less than 20, but
12 not more than 50, percent of the State’s
13 funds for State administration and activi-
14 ties for the fiscal year under section
15 611(e), after providing the State the op-
16 portunity to show cause why the with-
17 holding should not occur, until the Sec-
18 retary determines that sufficient progress
19 has been made in improving educational
20 results for children with disabilities.

21 “(B) ADDITIONAL SECRETARIAL AC-
22 TION.—If, at the end of the 5th year after the
23 Secretary has approved the compliance plan
24 that the State has developed under subsection
25 (b)(2)(C), the Secretary determines that a

1 State failed to meet the benchmarks in the
2 State compliance plan and make satisfactory
3 progress in improving educational results for
4 children with disabilities pursuant to the indica-
5 tors described in subsection (b)(2)(A), the Sec-
6 retary shall take 1 or more of the following ac-
7 tions:

8 “(i) Seek to recover funds under sec-
9 tion 452 of the General Education Provi-
10 sions Act.

11 “(ii) After providing reasonable notice
12 and an opportunity for a hearing to the
13 State educational agency involved, with-
14 hold, in whole or in part, any further pay-
15 ments to the State under this part pursu-
16 ant to subsection (c)(5).

17 “(iii) After providing reasonable no-
18 tice and an opportunity for a hearing to
19 the State educational agency involved,
20 refer the matter for appropriate enforce-
21 ment action, which may include referral to
22 the Department of Justice.

23 “(iv) Pending the outcome of any
24 hearing to withhold payments under clause
25 (ii), the Secretary may suspend payments

1 to a recipient, suspend the authority of the
2 recipient to obligate Federal funds, or
3 both, after such recipient has been given
4 reasonable notice and an opportunity to
5 show cause why future payments or au-
6 thority to obligate Federal funds should
7 not be suspended.

8 “(C) SUBSTANTIAL NONCOMPLIANCE.—

9 Notwithstanding subparagraph (B), at any time
10 that the Secretary determines that a State is
11 not in substantial compliance with any provision
12 of this part or that there is a substantial failure
13 to comply with any condition of a local agency’s
14 or State agency’s eligibility under this part, the
15 Secretary shall take 1 or more of the following
16 actions:

17 “(i) Request that the State prepare a
18 corrective action plan or improvement plan
19 if the Secretary determines that the State
20 should be able to correct the problem with-
21 in 1 year.

22 “(ii) Identify the State as a high-risk
23 grantee and impose special conditions on
24 the State’s grant under this part.

1 “(iii) Require the State to enter into
2 a compliance agreement under section 457
3 of the General Education Provisions Act, if
4 the Secretary has reason to believe that
5 the State cannot correct the problem with-
6 in 1 year.

7 “(iv) Recovery of funds under section
8 452 of the General Education Provisions
9 Act.

10 “(v) After providing reasonable notice
11 and an opportunity for a hearing to the
12 State educational agency involved, with-
13 hold, in whole or in part, any further pay-
14 ments to the State under this part.

15 “(vi) After providing reasonable notice
16 and an opportunity for a hearing to the
17 State educational agency involved, refer
18 the matter for appropriate enforcement ac-
19 tion, which may include referral to the De-
20 partment of Justice.

21 “(vii) Pending the outcome of any
22 hearing to withhold payments under clause
23 (v), the Secretary may suspend payments
24 to a recipient, suspend the authority of the
25 recipient to obligate Federal funds, or

1 both, after such recipient has been given
2 reasonable notice and an opportunity to
3 show cause why future payments or au-
4 thority to obligate Federal funds should
5 not be suspended.

6 “(3) EGREGIOUS NONCOMPLIANCE.—At any
7 time that the Secretary determines that a State is
8 in egregious noncompliance or is willfully dis-
9 regarding the provisions of this Act, the Secretary
10 shall take such additional enforcement actions as the
11 Secretary determines to be appropriate from among
12 those actions specified in paragraph (2)(C), and, ad-
13 ditionally, may impose 1 or more of the following
14 sanctions upon that State:

15 “(A) Institute a cease and desist action
16 under section 456 of the General Education
17 Provisions Act.

18 “(B) Refer the case to the Office of the In-
19 specter General.

20 “(4) REPORT TO CONGRESS.—The Secretary
21 shall report to Congress within 30 days of taking en-
22 forcement action pursuant to paragraph (2) (B) or
23 (C), or (3), on the specific action taken and the rea-
24 sons why enforcement action was taken.

1 “(5) NATURE OF WITHHOLDING.—If the Sec-
2 retary withholds further payments under paragraphs
3 (2)(B)(ii) and (2)(C)(v), the Secretary may deter-
4 mine that such withholding will be limited to pro-
5 grams or projects, or portions thereof, affected by
6 the failure, or that the State educational agency
7 shall not make further payments under this part to
8 specified local educational agencies or State agencies
9 affected by the failure. Until the Secretary is satis-
10 fied that there is no longer any failure to make sat-
11 isfactory progress as specified in paragraph (2)(B),
12 or to comply with the provisions of this part, as
13 specified in paragraph (2)(C), payments to the State
14 under this part shall be withheld in whole or in part,
15 or payments by the State educational agency under
16 this part shall be limited to local educational agen-
17 cies and State agencies whose actions did not cause
18 or were not involved in the failure, as the case may
19 be. Any State educational agency, State agency, or
20 local educational agency that has received notice
21 under paragraph (2)(B) or (2)(C) shall, by means of
22 a public notice, take such measures as may be nec-
23 essary to bring the pendency of an action pursuant
24 to this subsection to the attention of the public with-
25 in the jurisdiction of such agency.

1 “(6) JUDICIAL REVIEW.—

2 “(A) IN GENERAL.—If any State is dissat-
3 isfied with the Secretary’s final action with re-
4 spect to the eligibility of the State under section
5 612, such State may, not later than 60 days
6 after notice of such action, file with the United
7 States court of appeals for the circuit in which
8 such State is located a petition for review of
9 that action. A copy of the petition shall be
10 forthwith transmitted by the clerk of the court
11 to the Secretary. The Secretary thereupon shall
12 file in the court the record of the proceedings
13 upon which the Secretary’s action was based, as
14 provided in section 2112 of title 28, United
15 States Code.

16 “(B) JURISDICTION; REVIEW BY UNITED
17 STATES SUPREME COURT.—Upon the filing of
18 such petition, the court shall have jurisdiction
19 to affirm the action of the Secretary or to set
20 it aside, in whole or in part. The judgment of
21 the court shall be subject to review by the Su-
22 preme Court of the United States upon certio-
23 rari or certification as provided in section 1254
24 of title 28, United States Code.

1 “(C) STANDARD OF REVIEW.—The find-
2 ings of fact by the Secretary, if supported by
3 substantial evidence, shall be conclusive, but the
4 court, for good cause shown, may remand the
5 case to the Secretary to take further evidence,
6 and the Secretary may thereupon make new or
7 modified findings of fact and may modify the
8 Secretary’s previous action, and shall file in the
9 court the record of the further proceedings.
10 Such new or modified findings of fact shall like-
11 wise be conclusive if supported by substantial
12 evidence.

13 “(d) DIVIDED STATE AGENCY RESPONSIBILITY.—
14 For purposes of this section, where responsibility for en-
15 suring that the requirements of this part are met with re-
16 spect to children with disabilities who are convicted as
17 adults under State law and incarcerated in adult prisons
18 is assigned to a public agency other than the State edu-
19 cational agency pursuant to section 612(a)(11)(C), the
20 Secretary, in instances where the Secretary finds that the
21 failure to comply substantially with the provisions of this
22 part are related to a failure by the public agency, shall
23 take appropriate corrective action to ensure compliance
24 with this part, except that—

1 “(1) any reduction or withholding of payments
2 to the State shall be proportionate to the total funds
3 allotted under section 611 to the State as the num-
4 ber of eligible children with disabilities in adult pris-
5 ons under the supervision of the other public agency
6 is proportionate to the number of eligible individuals
7 with disabilities in the State under the supervision
8 of the State educational agency; and

9 “(2) any withholding of funds under paragraph
10 (1) shall be limited to the specific agency responsible
11 for the failure to comply with this part.

12 “(e) STATE AND LOCAL MONITORING.—

13 “(1) IN GENERAL.—The State educational
14 agency shall monitor and enforce implementation of
15 this Act, implement a system of monitoring the
16 benchmarks in the State’s compliance plan under
17 subsection (b)(2)(C), and require local educational
18 agencies to monitor and enforce implementation of
19 this Act.

20 “(2) ADDITIONAL ENFORCEMENT OPTIONS.—If
21 a State educational agency determines that a local
22 educational agency is not meeting the requirements
23 of this part, including the benchmarks in the State’s
24 compliance plan, the State educational agency shall
25 prohibit the local educational agency from treating

1 funds received under this part as local funds under
2 section 613(a)(2)(C) for any fiscal year.

3 **“SEC. 617. ADMINISTRATION.**

4 “(a) RESPONSIBILITIES OF SECRETARY.—The Sec-
5 retary shall—

6 “(1) cooperate with, and (directly or by grant
7 or contract) furnish technical assistance necessary
8 to, a State in matters relating to—

9 “(A) the education of children with disabil-
10 ities; and

11 “(B) carrying out this part; and

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

14 “(b) RULES AND REGULATIONS.—In carrying out
15 the provisions of this part, the Secretary shall issue regu-
16 lations under this Act only to the extent that such regula-
17 tions are necessary to ensure that there is compliance with
18 the specific requirements of this Act.

19 “(c) CONFIDENTIALITY.—The Secretary shall take
20 appropriate action, in accordance with section 444 of the
21 General Education Provisions Act (20 U.S.C. 1232g), to
22 assure the protection of the confidentiality of any person-
23 ally identifiable data, information, and records collected
24 or maintained by the Secretary and by State and local
25 educational agencies pursuant to this part.

1 “(d) PERSONNEL.—The Secretary is authorized to
2 hire qualified personnel necessary to carry out the Sec-
3 retary’s duties under subsection (a) and under sections
4 618, 661, and 664, without regard to the provisions of
5 title 5, United States Code, relating to appointments in
6 the competitive service and without regard to chapter 51
7 and subchapter III of chapter 53 of such title relating to
8 classification and general schedule pay rates, except that
9 not more than 20 such personnel shall be employed at any
10 1 time.

11 “(e) MODEL FORMS.—Not later than the date that
12 the Secretary publishes final regulations under this Act,
13 to implement amendments made by the Individuals with
14 Disabilities Education Improvement Act of 2003, the Sec-
15 retary shall publish and disseminate widely to States, local
16 educational agencies, and parent and community training
17 and information centers—

18 “(1) a model IEP form;

19 “(2) a model form of the notice of procedural
20 safeguards described in section 615(d); and

21 “(3) a model form of the prior written notice
22 described in section 615 (b)(3) and (c)(1) that is
23 consistent with the requirements of this part and is
24 sufficient to meet such requirements.

1 **“SEC. 618. PROGRAM INFORMATION.**

2 “(a) IN GENERAL.—Each State that receives assist-
3 ance under this part, and the Secretary of the Interior,
4 shall provide data each year to the Secretary of Education
5 on—

6 “(1)(A)—the number and percentage of chil-
7 dren with disabilities, by race, ethnicity, limited
8 English proficiency status, and disability category,
9 who are receiving a free appropriate public edu-
10 cation;

11 “(B) the number and percentage of children
12 with disabilities, by race, ethnicity, and limited
13 English proficiency status who are receiving early
14 intervention services;

15 “(C) the number and percentage of children
16 with disabilities, by race, ethnicity, limited English
17 proficiency status, and disability category, who are
18 participating in regular education;

19 “(D) the number and percentage of children
20 with disabilities, by race, ethnicity, limited English
21 proficiency status, and disability category, who are
22 in separate classes, separate schools or facilities, or
23 public or private residential facilities;

24 “(E) the number and percentage of children
25 with disabilities, by race, ethnicity, limited English
26 proficiency status, and disability category, who, for

1 each year of age from age 14 through 21, stopped
2 receiving special education and related services be-
3 cause of program completion or other reasons, and
4 the reasons why those children stopped receiving
5 special education and related services;

6 “(F) the number and percentage of children
7 with disabilities, by race, and ethnicity, who, from
8 birth through age 2, stopped receiving early inter-
9 vention services because of program completion or
10 for other reasons;

11 “(G)(i) the number and percentage of children
12 with disabilities, by race, ethnicity, limited English
13 proficiency status, and disability category, who are
14 removed to an interim alternative educational setting
15 under section 615(k)(1);

16 “(ii) the acts or items precipitating those re-
17 movals; and

18 “(iii) the number of children with disabilities
19 who are subject to long-term suspensions or expul-
20 sions;

21 “(H) the incidence and duration of disciplinary
22 actions by race, ethnicity, limited English proficiency
23 status, and disability category, of children with dis-
24 abilities, including suspensions of 1 day or more;

1 “(I) the number and percentage of children
2 with disabilities who are removed to alternative edu-
3 cational settings or expelled as compared to children
4 without disabilities who are removed to alternative
5 educational settings or expelled;

6 “(J) the number of due process complaints filed
7 under section 615 and the number of hearings con-
8 ducted;

9 “(K) the number of hearings requested under
10 section 615(k) and the number of changes in place-
11 ments ordered as a result of those hearings;

12 “(L) the number of hearings requested under
13 section 615(k)(3)(B) and the number of changes in
14 placements ordered as a result of those hearings;
15 and

16 “(M) the number of mediations held and the
17 number of settlement agreements reached through
18 such mediations;

19 “(2) the number and percentage of infants and
20 toddlers, by race, and ethnicity, who are at risk of
21 having substantial developmental delays (as defined
22 in section 632), and who are receiving early inter-
23 vention services under part C; and

24 “(3) any other information that may be re-
25 quired by the Secretary.

1 “(b) TECHNICAL ASSISTANCE.—The Secretary may
2 provide technical assistance to States to ensure compliance
3 with the data collection and reporting requirements under
4 this Act.

5 “(c) DISPROPORTIONALITY.—

6 “(1) IN GENERAL.—Each State that receives
7 assistance under this part, and the Secretary of the
8 Interior, shall provide for the collection and exam-
9 ination of data to determine if significant
10 disproportionality based on race is occurring in the
11 State with respect to—

12 “(A) the identification of children as chil-
13 dren with disabilities, including the identifica-
14 tion of children as children with disabilities in
15 accordance with a particular impairment de-
16 scribed in section 602(3);

17 “(B) the placement in particular edu-
18 cational settings of such children; and

19 “(C) the incidence, duration, and type of
20 disciplinary actions, including suspensions and
21 expulsions.

22 “(2) REVIEW AND REVISION OF POLICIES,
23 PRACTICES, AND PROCEDURES.—In the case of a de-
24 termination of significant disproportionality with re-
25 spect to the identification of children as children

1 with disabilities, or the placement in particular edu-
2 cational settings of such children, in accordance with
3 paragraph (1), the State or the Secretary of the In-
4 terior, as the case may be, shall provide for the re-
5 view and, if appropriate, revision of the policies, pro-
6 cedures, and practices used in such identification or
7 placement to ensure that such policies, procedures,
8 and practices comply with the requirements of this
9 Act.

10 **“SEC. 619. PRESCHOOL GRANTS.**

11 “(a) IN GENERAL.—The Secretary shall provide
12 grants under this section to assist States to provide special
13 education and related services, in accordance with this
14 part—

15 “(1) to children with disabilities aged 3 through
16 5, inclusive; and

17 “(2) at the State’s discretion, to 2-year-old chil-
18 dren with disabilities who will turn 3 during the
19 school year.

20 “(b) ELIGIBILITY.—A State shall be eligible for a
21 grant under this section if such State—

22 “(1) is eligible under section 612 to receive a
23 grant under this part; and

1 “(2) makes a free appropriate public education
2 available to all children with disabilities, aged 3
3 through 5, residing in the State.

4 “(c) ALLOCATIONS TO STATES.—

5 “(1) IN GENERAL.—The Secretary shall allo-
6 cate the amount made available to carry out this
7 section for a fiscal year among the States in accord-
8 ance with paragraph (2) or (3), as the case may be.

9 “(2) INCREASE IN FUNDS.—If the amount
10 available for allocations to States under paragraph
11 (1) is equal to or greater than the amount allocated
12 to the States under this section for the preceding
13 fiscal year, those allocations shall be calculated as
14 follows:

15 “(A) ALLOCATION.—

16 “(i) IN GENERAL.—Except as pro-
17 vided in subparagraph (B), the Secretary
18 shall—

19 “(I) allocate to each State the
20 amount the State received under this
21 section for fiscal year 1997;

22 “(II) allocate 85 percent of any
23 remaining funds to States on the
24 basis of the States’ relative popu-

1 lations of children aged 3 through 5;
2 and

3 “(III) allocate 15 percent of
4 those remaining funds to States on
5 the basis of the States’ relative popu-
6 lations of all children aged 3 through
7 5 who are living in poverty.

8 “(ii) DATA.—For the purpose of mak-
9 ing grants under this paragraph, the Sec-
10 retary shall use the most recent population
11 data, including data on children living in
12 poverty, that are available and satisfactory
13 to the Secretary.

14 “(B) LIMITATIONS.—Notwithstanding sub-
15 paragraph (A), allocations under this paragraph
16 shall be subject to the following:

17 “(i) PRECEDING YEARS.—No State’s
18 allocation shall be less than its allocation
19 under this section for the preceding fiscal
20 year.

21 “(ii) MINIMUM.—No State’s allocation
22 shall be less than the greatest of—

23 “(I) the sum of—

1 “(aa) the amount the State
2 received under this section for
3 fiscal year 1997; and

4 “(bb) $\frac{1}{3}$ of 1 percent of the
5 amount by which the amount ap-
6 propriated under subsection (j)
7 for the fiscal year exceeds the
8 amount appropriated for this sec-
9 tion for fiscal year 1997;

10 “(II) the sum of—

11 “(aa) the amount the State
12 received under this section for
13 the preceding fiscal year; and

14 “(bb) that amount multi-
15 plied by the percentage by which
16 the increase in the funds appro-
17 priated under this section from
18 the preceding fiscal year exceeds
19 1.5 percent; or

20 “(III) the sum of—

21 “(aa) the amount the State
22 received under this section for
23 the preceding fiscal year; and

24 “(bb) that amount multi-
25 plied by 90 percent of the per-

1 centage increase in the amount
2 appropriated under this section
3 from the preceding fiscal year.

4 “(iii) MAXIMUM.—Notwithstanding
5 clause (ii), no State’s allocation under this
6 paragraph shall exceed the sum of—

7 “(I) the amount the State re-
8 ceived under this section for the pre-
9 ceding fiscal year; and

10 “(II) that amount multiplied by
11 the sum of 1.5 percent and the per-
12 centage increase in the amount appro-
13 priated under this section from the
14 preceding fiscal year.

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

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

1 “(A) ALLOCATIONS.—If the amount avail-
 2 able for allocations is greater than the amount
 3 allocated to the States for fiscal year 1997,
 4 each State shall be allocated the sum of—

5 “(i) the amount the State received
 6 under this section for fiscal year 1997; and

7 “(ii) an amount that bears the same
 8 relation to any remaining funds as the in-
 9 crease the State received under this section
 10 for the preceding fiscal year over fiscal
 11 year 1997 bears to the total of all such in-
 12 creases for all States.

13 “(B) If the amount available for alloca-
 14 tions under this paragraph is equal to or less
 15 than the amount allocated under this section to
 16 the States for fiscal year 1997, each State shall
 17 be allocated the amount the State received for
 18 that year, ratably reduced, if necessary.

19 “(d) RESERVATION FOR STATE ACTIVITIES.—

20 “(1) IN GENERAL.—Each State may reserve
 21 not more than the amount described in paragraph
 22 (2) for administration and other State-level activities
 23 in accordance with subsections (e) and (f).

24 “(2) AMOUNT DESCRIBED.—For each fiscal
 25 year, the Secretary shall determine and report to the

1 State educational agency an amount that is 25 per-
 2 cent of the amount the State received under this sec-
 3 tion for fiscal year 1997, cumulatively adjusted by
 4 the Secretary for each succeeding fiscal year by the
 5 lesser of—

6 “(A) the percentage increase, if any, from
 7 the preceding fiscal year in the State’s alloca-
 8 tion under this section; or

9 “(B) the percentage increase, if any, from
 10 the preceding fiscal year in the Consumer Price
 11 Index For All Urban Consumers published by
 12 the Bureau of Labor Statistics of the Depart-
 13 ment of Labor.

14 “(e) STATE ADMINISTRATION.—

15 “(1) IN GENERAL.—For the purpose of admin-
 16 istering this section (including the coordination of
 17 activities under this part with, and providing tech-
 18 nical assistance to, other programs that provide
 19 services to children with disabilities) a State may
 20 use not more than 20 percent of the maximum
 21 amount the State may reserve under subsection (d)
 22 for any fiscal year.

23 “(2) ADMINISTRATION OF PART C.—Funds de-
 24 scribed in paragraph (1) may also be used for the
 25 administration of part C of this Act, if the State

1 educational agency is the lead agency for the State
2 under that part.

3 “(f) OTHER STATE-LEVEL ACTIVITIES.—Each State
4 shall use any funds the State reserves under subsection
5 (d) and does not use for administration under subsection
6 (e)—

7 “(1) for support services (including establishing
8 and implementing the mediation process required by
9 section 615(e)), which may benefit children with dis-
10 abilities younger than 3 or older than 5 as long as
11 those services also benefit children with disabilities
12 aged 3 through 5;

13 “(2) for direct services for children eligible for
14 services under this section;

15 “(3) for activities at the State and local levels
16 to meet the performance goals established by the
17 State under section 612(a)(15) and to support im-
18 plementation of the State plan under subpart 1 of
19 part D if the State receives funds under that sub-
20 part; or

21 “(4) to supplement other funds used to develop
22 and implement a statewide coordinated services sys-
23 tem designed to improve results for children and
24 families, including children with disabilities and their
25 families, but not more than 1 percent of the amount

1 received by the State under this section for a fiscal
 2 year.

3 “(g) SUBGRANTS TO LOCAL EDUCATIONAL AGEN-
 4 CIES.—

5 “(1) SUBGRANTS REQUIRED.—Each State that
 6 receives a grant under this section for any fiscal
 7 year shall distribute all of the grant funds that the
 8 State does not reserve under subsection (d) to local
 9 educational agencies in the State that have estab-
 10 lished their eligibility under section 613, as follows:

11 “(A) BASE PAYMENTS.—The State shall
 12 first award each local educational agency de-
 13 scribed in paragraph (1) the amount that agen-
 14 cy would have received under this section for
 15 fiscal year 1997 if the State had distributed 75
 16 percent of its grant for that year under section
 17 619(c)(3), as such section was then in effect.

18 “(B) ALLOCATION OF REMAINING
 19 FUNDS.—After making allocations under sub-
 20 paragraph (A), the State shall—

21 “(i) allocate 85 percent of any re-
 22 maining funds to those local educational
 23 agencies on the basis of the relative num-
 24 bers of children enrolled in public and pri-
 25 vate elementary schools and secondary

1 schools within the local educational agen-
2 cy's jurisdiction; and

3 “(ii) allocate 15 percent of those re-
4 maining funds to those local educational
5 agencies in accordance with their relative
6 numbers of children living in poverty, as
7 determined by the State educational agen-
8 cy.

9 “(2) REALLOCATION OF FUNDS.—If a State
10 educational agency determines that a local edu-
11 cational agency is adequately providing a free appro-
12 priate public education to all children with disabil-
13 ities aged 3 through 5 residing in the area served by
14 that agency with State and local funds, the State
15 educational agency may reallocate any portion of the
16 funds under this section that are not needed by that
17 local educational agency to provide a free appro-
18 priate public education to other local educational
19 agencies in the State that are not adequately pro-
20 viding special education and related services to all
21 children with disabilities aged 3 through 5 residing
22 in the areas the other local educational agencies
23 serve.

24 “(h) PART C INAPPLICABLE.—Part C of this Act
25 does not apply to any child with a disability receiving a

1 free appropriate public education, in accordance with this
2 part, with funds received under this section.

3 “(i) DEFINITION.—For the purpose of this section,
4 the term ‘State’ means each of the 50 States, the District
5 of Columbia, and the Commonwealth of Puerto Rico.

6 “(j) AUTHORIZATION OF APPROPRIATIONS.—For the
7 purpose of carrying out this section, there are authorized
8 to be appropriated to the Secretary such sums as may be
9 necessary for each of the fiscal years 2004 through 2009.

10 **“PART C—INFANTS AND** 11 **TODDLERS WITH DISABILITIES**

12 **“SEC. 631. FINDINGS AND POLICY.**

13 “(a) FINDINGS.—Congress finds that there is an ur-
14 gent and substantial need—

15 “(1) to enhance the development of infants and
16 toddlers with disabilities, to minimize their potential
17 for developmental delay, and to recognize the signifi-
18 cant brain development which occurs during a child’s
19 first 3 years of life;

20 “(2) to reduce the educational costs to our soci-
21 ety, including our Nation’s schools, by minimizing
22 the need for special education and related services
23 after infants and toddlers with disabilities reach
24 school age;

1 “(3) to maximize the potential for individuals
2 with disabilities to live independently in society;

3 “(4) to enhance the capacity of families to meet
4 the special needs of their infants and toddlers with
5 disabilities; and

6 “(5) to enhance the capacity of State and local
7 agencies and service providers to identify, evaluate,
8 and meet the needs of all children, particularly mi-
9 nority, low-income, inner city, and rural children.

10 “(b) POLICY.—It is the policy of the United States
11 to provide financial assistance to States—

12 “(1) to develop and implement a statewide,
13 comprehensive, coordinated, multidisciplinary, inter-
14 agency system that provides early intervention serv-
15 ices for infants and toddlers with disabilities and
16 their families;

17 “(2) to facilitate the coordination of payment
18 for early intervention services from Federal, State,
19 local, and private sources (including public and pri-
20 vate insurance coverage);

21 “(3) to enhance State capacity to provide qual-
22 ity early intervention services and expand and im-
23 prove existing early intervention services being pro-
24 vided to infants and toddlers with disabilities and
25 their families; and

1 “(4) to encourage States to expand opportuni-
 2 ties for children under 3 years of age who would be
 3 at risk of having substantial developmental delay if
 4 they did not receive early intervention services.

5 **“SEC. 632. DEFINITIONS.**

6 “As used in this part:

7 “(1) AT-RISK INFANT OR TODDLER.—The term
 8 ‘at-risk infant or toddler’ means an individual under
 9 3 years of age who would be at risk of experiencing
 10 a substantial developmental delay if early interven-
 11 tion services were not provided to the individual.

12 “(2) COUNCIL.—The term ‘council’ means a
 13 State interagency coordinating council established
 14 under section 641.

15 “(3) DEVELOPMENTAL DELAY.—The term ‘de-
 16 velopmental delay’, when used with respect to an in-
 17 dividual residing in a State, has the meaning given
 18 such term by the State under section 635(a)(1).

19 “(4) EARLY INTERVENTION SERVICES.—The
 20 term ‘early intervention services’ means develop-
 21 mental services that—

22 “(A) are provided under public supervision;

23 “(B) are provided at no cost except where

24 Federal or State law provides for a system of

1 payments by families, including a schedule of
 2 sliding fees;

3 “(C) are designed to meet the develop-
 4 mental needs of an infant or toddler with a dis-
 5 ability in any 1 or more of the following areas:

6 “(i) physical development;

7 “(ii) cognitive development;

8 “(iii) communication development;

9 “(iv) social or emotional development;

10 or

11 “(v) adaptive development;

12 “(D) meet the standards of the State in
 13 which the services are provided, including the
 14 requirements of this part;

15 “(E) include—

16 “(i) family training, counseling, and
 17 home visits;

18 “(ii) special instruction;

19 “(iii) speech-language pathology and
 20 audiology services;

21 “(iv) occupational therapy;

22 “(v) physical therapy;

23 “(vi) psychological services;

24 “(vii) service coordination services;

1 “(viii) medical services only for diag-
2 nostic or evaluation purposes;

3 “(ix) early identification, screening,
4 and assessment services;

5 “(x) health services necessary to en-
6 able the infant or toddler to benefit from
7 the other early intervention services;

8 “(xi) social work services;

9 “(xii) vision services;

10 “(xiii) assistive technology devices and
11 assistive technology services; and

12 “(xiv) transportation and related costs
13 that are necessary to enable an infant or
14 toddler and the infant’s or toddler’s family
15 to receive another service described in this
16 paragraph;

17 “(F) are provided by qualified personnel,
18 including—

19 “(i) special educators;

20 “(ii) speech-language pathologists and
21 audiologists;

22 “(iii) occupational therapists;

23 “(iv) physical therapists;

24 “(v) psychologists;

25 “(vi) social workers;

1 “(vii) nurses;

2 “(viii) nutritionists;

3 “(ix) family therapists;

4 “(x) orientation and mobility special-
5 ists; and

6 “(xi) pediatricians and other physi-
7 cians;

8 “(G) to the maximum extent appropriate,
9 are provided in natural environments, including
10 the home, and community settings in which
11 children without disabilities participate; and

12 “(H) are provided in conformity with an
13 individualized family service plan adopted in ac-
14 cordance with section 636.

15 “(5) INFANT OR TODDLER WITH A DIS-
16 ABILITY.—The term ‘infant or toddler with a dis-
17 ability’—

18 “(A) means an individual under 3 years of
19 age who needs early intervention services be-
20 cause the individual—

21 “(i) is experiencing developmental
22 delays, as measured by appropriate diag-
23 nostic instruments and procedures in 1 or
24 more of the areas of cognitive development,
25 physical development, communication de-

1 velopment, social or emotional develop-
2 ment, and adaptive development; or

3 “(ii) has a diagnosed physical or men-
4 tal condition which has a high probability
5 of resulting in developmental delay; and

6 “(B) may also include, at a State’s discre-
7 tion, at-risk infants and toddlers.

8 **“SEC. 633. GENERAL AUTHORITY.**

9 “The Secretary shall, in accordance with this part,
10 make grants to States (from their allotments under sec-
11 tion 643) to assist each State to maintain and implement
12 a statewide, comprehensive, coordinated, multidisciplinary,
13 interagency system to provide early intervention services
14 for infants and toddlers with disabilities and their families.

15 **“SEC. 634. ELIGIBILITY.**

16 “In order to be eligible for a grant under section 633,
17 a State shall demonstrate to the Secretary that the
18 State—

19 “(1) has adopted a policy that appropriate early
20 intervention services are available to all infants and
21 toddlers with disabilities in the State and their fami-
22 lies, including Indian infants and toddlers with dis-
23 abilities and their families residing on a reservation
24 geographically located in the State; and

1 “(2) has in effect a statewide system that meets
2 the requirements of section 635.

3 **“SEC. 635. REQUIREMENTS FOR STATEWIDE SYSTEM.**

4 “(a) IN GENERAL.—A statewide system described in
5 section 633 shall include, at a minimum, the following
6 components:

7 “(1) A definition of the term ‘developmental
8 delay’ that—

9 “(A) will be used by the State in carrying
10 out programs under this part; and

11 “(B) covers, at a minimum, all infants and
12 toddlers with—

13 “(i) a developmental delay of 35 per-
14 cent or more in 1 of the developmental
15 areas described in section 632(5)(A)(i); or

16 “(ii) a developmental delay of 25 per-
17 cent or more in 2 or more of the develop-
18 mental areas described in section
19 632(5)(A)(i).

20 “(2) A State policy that is in effect and that
21 ensures that appropriate early intervention services
22 are available to all infants and toddlers with disabil-
23 ities and their families, including Indian infants and
24 toddlers and their families residing on a reservation
25 geographically located in the State.

1 “(3) A timely, comprehensive, multidisciplinary
2 evaluation of the functioning of each infant or tod-
3 dler with a disability in the State, and a family-di-
4 rected identification of the needs of each family of
5 such an infant or toddler, to appropriately assist in
6 the development of the infant or toddler.

7 “(4) For each infant or toddler with a disability
8 in the State, an individualized family service plan in
9 accordance with section 636, including service co-
10 ordination services in accordance with such service
11 plan.

12 “(5) A comprehensive child find system, con-
13 sistent with part B, including a system for making
14 referrals to service providers that includes timelines
15 and provides for participation by primary referral
16 sources.

17 “(6) A public awareness program focusing on
18 early identification of infants and toddlers with dis-
19 abilities, including the preparation and dissemination
20 by the lead agency designated or established under
21 paragraph (10) to all primary referral sources, espe-
22 cially hospitals and physicians, of information for
23 parents on the availability of early intervention serv-
24 ices, and procedures for determining the extent to

1 which such sources disseminate such information to
2 parents of infants and toddlers.

3 “(7) A central directory that includes informa-
4 tion on early intervention services, resources, and ex-
5 perts available in the State and research and dem-
6 onstration projects being conducted in the State.

7 “(8) A comprehensive system of personnel de-
8 velopment, including the training of paraprofes-
9 sionals and the training of primary referral sources
10 with respect to the basic components of early inter-
11 vention services available in the State, which com-
12 prehensive system may include—

13 “(A) implementing innovative strategies
14 and activities for the recruitment and retention
15 of early education service providers;

16 “(B) promoting the preparation of early
17 intervention providers who are fully and appro-
18 priately qualified to provide early intervention
19 services under this part;

20 “(C) training personnel to work in rural
21 and inner-city areas; and

22 “(D) training personnel to coordinate tran-
23 sition services for infants and toddlers served
24 under this part from an early intervention pro-

1 gram under this part to preschool or other ap-
2 propriate services.

3 “(9) Subject to subsection (b), policies and pro-
4 cedures relating to the establishment and mainte-
5 nance of standards to ensure that personnel nec-
6 essary to carry out this part are appropriately and
7 adequately prepared and trained, including the es-
8 tablishment and maintenance of standards which are
9 consistent with any State-approved or recognized
10 certification, licensing, registration, or other com-
11 parable requirements which apply to the area in
12 which such personnel are providing early interven-
13 tion services, except that nothing in this part (in-
14 cluding this paragraph) shall be construed to pro-
15 hibit the use of paraprofessionals and assistants who
16 are appropriately trained in accordance with State
17 law, regulation, or written policy, to assist in the
18 provision of early intervention services under this
19 part to infants and toddlers with disabilities.

20 “(10) A single line of responsibility in a lead
21 agency designated or established by the Governor for
22 carrying out—

23 “(A) the general administration and super-
24 vision of programs and activities receiving as-
25 sistance under section 633, and the monitoring

1 of programs and activities used by the State to
2 carry out this part, whether or not such pro-
3 grams or activities are receiving assistance
4 made available under section 633, to ensure
5 that the State complies with this part;

6 “(B) the identification and coordination of
7 all available resources within the State from
8 Federal, State, local, and private sources;

9 “(C) the assignment of financial responsi-
10 bility in accordance with section 637(a)(2) to
11 the appropriate agencies;

12 “(D) the development of procedures to en-
13 sure that services are provided to infants and
14 toddlers with disabilities and their families
15 under this part in a timely manner pending the
16 resolution of any disputes among public agen-
17 cies or service providers;

18 “(E) the resolution of intra- and inter-
19 agency disputes; and

20 “(F) the entry into formal interagency
21 agreements that define the financial responsi-
22 bility of each agency for paying for early inter-
23 vention services (consistent with State law) and
24 procedures for resolving disputes and that in-

1 clude all additional components necessary to en-
2 sure meaningful cooperation and coordination.

3 “(11) A policy pertaining to the contracting or
4 making of other arrangements with service providers
5 to provide early intervention services in the State,
6 consistent with the provisions of this part, including
7 the contents of the application used and the condi-
8 tions of the contract or other arrangements.

9 “(12) A procedure for securing timely reim-
10 bursements of funds used under this part in accord-
11 ance with section 640(a).

12 “(13) Procedural safeguards with respect to
13 programs under this part, as required by section
14 639.

15 “(14) A system for compiling data requested by
16 the Secretary under section 618 that relates to this
17 part.

18 “(15) A State interagency coordinating council
19 that meets the requirements of section 641.

20 “(16) Policies and procedures to ensure that,
21 consistent with section 636(d)(5) to the maximum
22 extent appropriate, early intervention services are
23 provided in natural environments unless a specific
24 outcome cannot be met satisfactorily for the infant
25 or toddler in a natural environment.

1 “(b) POLICY.—In implementing subsection (a)(9), a
2 State may adopt a policy that includes making ongoing
3 good-faith efforts to recruit and hire appropriately and
4 adequately trained personnel to provide early intervention
5 services to infants and toddlers with disabilities, including,
6 in a geographic area of the State where there is a shortage
7 of such personnel, the most qualified individuals available
8 who are making satisfactory progress toward completing
9 applicable coursework necessary to meet the standards de-
10 scribed in subsection (a)(9), consistent with State law
11 within 3 years.

12 **“SEC. 636. INDIVIDUALIZED FAMILY SERVICE PLAN.**

13 “(a) ASSESSMENT AND PROGRAM DEVELOPMENT.—
14 A statewide system described in section 633 shall provide,
15 at a minimum, for each infant or toddler with a disability,
16 and the infant’s or toddler’s family, to receive—

17 “(1) a multidisciplinary assessment of the
18 unique strengths and needs of the infant or toddler
19 and the identification of services appropriate to meet
20 such needs;

21 “(2) a family-directed assessment of the re-
22 sources, priorities, and concerns of the family and
23 the identification of the supports and services nec-
24 essary to enhance the family’s capacity to meet the
25 developmental needs of the infant or toddler; and

1 “(3) a written individualized family service plan
2 developed by a multidisciplinary team, including the
3 parents, as required by subsection (e), including a
4 description of the appropriate transition services for
5 the child.

6 “(b) PERIODIC REVIEW.—The individualized family
7 service plan shall be evaluated once a year and the family
8 shall be provided a review of the plan at 6-month intervals
9 (or more often where appropriate based on infant or tod-
10 dler and family needs).

11 “(c) PROMPTNESS AFTER ASSESSMENT.—The indi-
12 vidualized family service plan shall be developed within a
13 reasonable time after the assessment required by sub-
14 section (a)(1) is completed. With the parents’ consent,
15 early intervention services may commence prior to the
16 completion of the assessment.

17 “(d) CONTENT OF PLAN.—The individualized family
18 service plan shall be in writing and contain—

19 “(1) a statement of the infant’s or toddler’s
20 present levels of physical development, cognitive de-
21 velopment, communication development, social or
22 emotional development, and adaptive development,
23 based on objective criteria;

24 “(2) a statement of the family’s resources, pri-
25 orities, and concerns relating to enhancing the devel-

1 opment of the family’s infant or toddler with a dis-
2 ability;

3 “(3) a statement of the measurable outcomes
4 expected to be achieved for the infant or toddler and
5 the family, including, as appropriate, pre-literacy
6 and language skills, and the criteria, procedures,
7 and timelines used to determine the degree to which
8 progress toward achieving the outcomes is being
9 made and whether modifications or revisions of the
10 outcomes or services are necessary;

11 “(4) a statement of specific early intervention
12 services necessary to meet the unique needs of the
13 infant or toddler and the family, including the fre-
14 quency, intensity, and method of delivering services;

15 “(5) a statement of the natural environments in
16 which early intervention services will appropriately
17 be provided, including a justification of the extent,
18 if any, to which the services will not be provided in
19 a natural environment;

20 “(6) the projected dates for initiation of serv-
21 ices and the anticipated length, duration, and fre-
22 quency of the services;

23 “(7) the identification of the service coordinator
24 from the profession most immediately relevant to the
25 infant’s or toddler’s or family’s needs (or who is oth-

1 erwise qualified to carry out all applicable respon-
2 sibilities under this part) who will be responsible for
3 the implementation of the plan and coordination
4 with other agencies and persons, including transition
5 services; and

6 “(8) the steps to be taken to support the transi-
7 tion of the toddler with a disability to preschool or
8 other appropriate services.

9 “(e) PARENTAL CONSENT.—The contents of the indi-
10 vidualized family service plan shall be fully explained to
11 the parents and informed written consent from the par-
12 ents shall be obtained prior to the provision of early inter-
13 vention services described in such plan. If the parents do
14 not provide consent with respect to a particular early
15 intervention service, then only the early intervention serv-
16 ices to which consent is obtained shall be provided.

17 **“SEC. 637. STATE APPLICATION AND ASSURANCES.**

18 “(a) APPLICATION.—A State desiring to receive a
19 grant under section 633 shall submit an application to the
20 Secretary at such time and in such manner as the Sec-
21 retary may reasonably require. The application shall con-
22 tain—

23 “(1) a designation of the lead agency in the
24 State that will be responsible for the administration
25 of funds provided under section 633;

1 “(2) a designation of an individual or entity re-
2 sponsible for assigning financial responsibility
3 among appropriate agencies;

4 “(3) information demonstrating eligibility of the
5 State under section 634, including—

6 “(A) information demonstrating to the
7 Secretary’s satisfaction that the State has in ef-
8 fect the statewide system required by section
9 633; and

10 “(B) a description of services to be pro-
11 vided to infants and toddlers with disabilities
12 and their families through the system;

13 “(4) if the State provides services to at-risk in-
14 fants and toddlers through the system, a description
15 of such services;

16 “(5) a description of the uses for which funds
17 will be expended in accordance with this part;

18 “(6) a description of the State policies and pro-
19 cedures that require the referral for early interven-
20 tion services of a child under the age of 3 who—

21 “(A) is involved in a substantiated case of
22 child abuse or neglect; or

23 “(B) is identified as affected by illegal sub-
24 stance abuse, or withdrawal symptoms resulting
25 from prenatal drug exposure;

1 “(7) a description of the procedure used to en-
2 sure that resources are made available under this
3 part for all geographic areas within the State;

4 “(8) a description of State policies and proce-
5 dures that ensure that, prior to the adoption by the
6 State of any other policy or procedure necessary to
7 meet the requirements of this part, there are public
8 hearings, adequate notice of the hearings, and an
9 opportunity for comment available to the general
10 public, including individuals with disabilities and
11 parents of infants and toddlers with disabilities;

12 “(9) a description of the policies and procedures
13 to be used—

14 “(A) to ensure a smooth transition for tod-
15 dlers receiving early intervention services under
16 this part to preschool, other appropriate serv-
17 ices, or exiting the program, including a de-
18 scription of how—

19 “(i) the families of such toddlers will
20 be included in the transition plans required
21 by subparagraph (C); and

22 “(ii) the lead agency designated or es-
23 tablished under section 635(a)(10) will—

24 “(I) notify the local educational
25 agency for the area in which such a

1 child resides that the child will shortly
2 reach the age of eligibility for pre-
3 school services under part B, as deter-
4 mined in accordance with State law;

5 “(II) in the case of a child who
6 may be eligible for such preschool
7 services, with the approval of the fam-
8 ily of the child, convene a conference
9 among the lead agency, the family,
10 and the local educational agency at
11 least 90 days (and at the discretion of
12 all such parties, not more than 6
13 months) before the child is eligible for
14 the preschool services, to discuss any
15 such services that the child may re-
16 ceive; and

17 “(III) in the case of a child who
18 may not be eligible for such preschool
19 services, with the approval of the fam-
20 ily, make reasonable efforts to con-
21 vene a conference among the lead
22 agency, the family, and providers of
23 other appropriate services for children
24 who are not eligible for preschool serv-
25 ices under part B, to discuss the ap-

1 appropriate services that the child may
2 receive;

3 “(B) to review the child’s program options
4 for the period from the child’s third birthday
5 through the remainder of the school year; and

6 “(C) to establish a transition plan, includ-
7 ing, as appropriate, steps to exit from the pro-
8 gram; and

9 “(10) such other information and assurances as
10 the Secretary may reasonably require.

11 “(b) ASSURANCES.—The application described in
12 subsection (a)—

13 “(1) shall provide satisfactory assurance that
14 Federal funds made available under section 643 to
15 the State will be expended in accordance with this
16 part;

17 “(2) shall contain an assurance that the State
18 will comply with the requirements of section 640;

19 “(3) shall provide satisfactory assurance that
20 the control of funds provided under section 643, and
21 title to property derived from those funds, will be in
22 a public agency for the uses and purposes provided
23 in this part and that a public agency will administer
24 such funds and property;

25 “(4) shall provide for—

1 “(A) making such reports in such form
2 and containing such information as the Sec-
3 retary may require to carry out the Secretary’s
4 functions under this part; and

5 “(B) keeping such reports and affording
6 such access to the reports as the Secretary may
7 find necessary to ensure the correctness and
8 verification of the reports and proper disburse-
9 ment of Federal funds under this part;

10 “(5) provide satisfactory assurance that Federal
11 funds made available under section 643 to the
12 State—

13 “(A) will not be commingled with State
14 funds; and

15 “(B) will be used so as to supplement the
16 level of State and local funds expended for in-
17 fants and toddlers with disabilities and their
18 families and in no case to supplant those State
19 and local funds;

20 “(6) shall provide satisfactory assurance that
21 such fiscal control and fund accounting procedures
22 will be adopted as may be necessary to ensure prop-
23 er disbursement of, and accounting for, Federal
24 funds paid under section 643 to the State;

1 “(7) shall provide satisfactory assurance that
2 policies and procedures have been adopted to ensure
3 meaningful involvement of underserved groups, in-
4 cluding minority, low-income, and rural families, in
5 the planning and implementation of all the require-
6 ments of this part; and

7 “(8) shall contain such other information and
8 assurances as the Secretary may reasonably require
9 by regulation.

10 “(c) STANDARD FOR DISAPPROVAL OF APPLICA-
11 TION.—The Secretary may not disapprove such an appli-
12 cation unless the Secretary determines, after notice and
13 opportunity for a hearing, that the application fails to
14 comply with the requirements of this section.

15 “(d) SUBSEQUENT STATE APPLICATION.—If a State
16 has on file with the Secretary a policy, procedure, or as-
17 surance that demonstrates that the State meets a require-
18 ment of this section, including any policy or procedure
19 filed under part C, as in effect before the date of enact-
20 ment of the Individuals with Disabilities Education Im-
21 provement Act of 2003, the Secretary shall consider the
22 State to have met the requirement for purposes of receiv-
23 ing a grant under this part.

24 “(e) MODIFICATION OF APPLICATION.—An applica-
25 tion submitted by a State in accordance with this section

1 shall remain in effect until the State submits to the Sec-
 2 retary such modifications as the State determines nec-
 3 essary. This section shall apply to a modification of an
 4 application to the same extent and in the same manner
 5 as this section applies to the original application.

6 “(f) MODIFICATIONS REQUIRED BY THE SEC-
 7 RETARY.—The Secretary may require a State to modify
 8 its application under this section, but only to the extent
 9 necessary to ensure the State’s compliance with this part,
 10 if—

11 “(1) an amendment is made to this Act, or a
 12 Federal regulation issued under this Act;

13 “(2) a new interpretation of this Act is made by
 14 a Federal court or the State’s highest court; or

15 “(3) an official finding of noncompliance with
 16 Federal law or regulations is made with respect to
 17 the State.

18 **“SEC. 638. USES OF FUNDS.**

19 “In addition to using funds provided under section
 20 633 to maintain and implement the statewide system re-
 21 quired by such section, a State may use such funds—

22 “(1) for direct early intervention services for in-
 23 fants and toddlers with disabilities, and their fami-
 24 lies, under this part that are not otherwise funded
 25 through other public or private sources;

1 “(2) to expand and improve on services for in-
2 fants and toddlers and their families under this part
3 that are otherwise available;

4 “(3) to provide a free appropriate public edu-
5 cation, in accordance with part B, to children with
6 disabilities from their third birthday to the begin-
7 ning of the following school year; and

8 “(4) in any State that does not provide services
9 for at-risk infants and toddlers under section
10 637(a)(4), to strengthen the statewide system by ini-
11 tiating, expanding, or improving collaborative efforts
12 related to at-risk infants and toddlers, including es-
13 tablishing linkages with appropriate public or private
14 community-based organizations, services, and per-
15 sonnel for the purposes of—

16 “(A) identifying and evaluating at-risk in-
17 fants and toddlers;

18 “(B) making referrals of the infants and
19 toddlers identified and evaluated under sub-
20 paragraph (A); and

21 “(C) conducting periodic follow-up on each
22 such referral to determine if the status of the
23 infant or toddler involved has changed with re-
24 spect to the eligibility of the infant or toddler
25 for services under this part.

1 **“SEC. 639. PROCEDURAL SAFEGUARDS.**

2 “(a) MINIMUM PROCEDURES.—The procedural safe-
3 guards required to be included in a statewide system
4 under section 635(a)(13) shall provide, at a minimum, the
5 following:

6 “(1) The timely administrative resolution of
7 complaints by parents. Any party aggrieved by the
8 findings and decision regarding an administrative
9 complaint shall have the right to bring a civil action
10 with respect to the complaint in any State court of
11 competent jurisdiction or in a district court of the
12 United States without regard to the amount in con-
13 troversy. In any action brought under this para-
14 graph, the court shall receive the records of the ad-
15 ministrative proceedings, shall hear additional evi-
16 dence at the request of a party, and, basing its deci-
17 sion on the preponderance of the evidence, shall
18 grant such relief as the court determines is appro-
19 priate.

20 “(2) The right to confidentiality of personally
21 identifiable information, including the right of par-
22 ents to written notice of and written consent to the
23 exchange of such information among agencies con-
24 sistent with Federal and State law.

25 “(3) The right of the parents to determine
26 whether they, their infant or toddler, or other family

1 members will accept or decline any early intervention
2 service under this part in accordance with State law
3 without jeopardizing other early intervention services
4 under this part.

5 “(4) The opportunity for parents to examine
6 records relating to assessment, screening, eligibility
7 determinations, and the development and implemen-
8 tation of the individualized family service plan.

9 “(5) Procedures to protect the rights of the in-
10 fant or toddler whenever the parents of the infant or
11 toddler are not known or cannot be found or the in-
12 fant or toddler is a ward of the State, including the
13 assignment of an individual (who shall not be an em-
14 ployee of the State lead agency, or other State agen-
15 cy, and who shall not be any person, or any em-
16 ployee of a person, providing early intervention serv-
17 ices to the infant or toddler or any family member
18 of the infant or toddler) to act as a surrogate for the
19 parents.

20 “(6) Written prior notice to the parents of the
21 infant or toddler with a disability whenever the State
22 agency or service provider proposes to initiate or
23 change, or refuses to initiate or change, the identi-
24 fication, evaluation, or placement of the infant or
25 toddler with a disability, or the provision of appro-

1 appropriate early intervention services to the infant or
2 toddler.

3 “(7) Procedures designed to ensure that the no-
4 tice required by paragraph (6) fully informs the par-
5 ents, in the parents’ native language, unless it clear-
6 ly is not feasible to do so, of all procedures available
7 pursuant to this section.

8 “(8) The right of parents to use mediation in
9 accordance with section 615, except that—

10 “(A) any reference in the section to a
11 State educational agency shall be considered to
12 be a reference to a State’s lead agency estab-
13 lished or designated under section 635(a)(10);

14 “(B) any reference in the section to a local
15 educational agency shall be considered to be a
16 reference to a local service provider or the
17 State’s lead agency under this part, as the case
18 may be; and

19 “(C) any reference in the section to the
20 provision of free appropriate public education to
21 children with disabilities shall be considered to
22 be a reference to the provision of appropriate
23 early intervention services to infants and tod-
24 dlers with disabilities.

1 “(b) SERVICES DURING PENDENCY OF PRO-
2 CEEDINGS.—During the pendency of any proceeding or ac-
3 tion involving a complaint by the parents of an infant or
4 toddler with a disability, unless the State agency and the
5 parents otherwise agree, the infant or toddler shall con-
6 tinue to receive the appropriate early intervention services
7 currently being provided or, if applying for initial services,
8 shall receive the services not in dispute.

9 **“SEC. 640. PAYOR OF LAST RESORT.**

10 “(a) NONSUBSTITUTION.—Funds provided under
11 section 643 may not be used to satisfy a financial commit-
12 ment for services that would have been paid for from an-
13 other public or private source, including any medical pro-
14 gram administered by the Secretary of Defense, but for
15 the enactment of this part, except that whenever consid-
16 ered necessary to prevent a delay in the receipt of appro-
17 priate early intervention services by an infant, toddler, or
18 family in a timely fashion, funds provided under section
19 643 may be used to pay the provider of services pending
20 reimbursement from the agency that has ultimate respon-
21 sibility for the payment.

22 “(b) REDUCTION OF OTHER BENEFITS.—Nothing in
23 this part shall be construed to permit the State to reduce
24 medical or other assistance available or to alter eligibility
25 under title V of the Social Security Act (relating to mater-

1 nal and child health) or title XIX of the Social Security
 2 Act (relating to Medicaid for infants or toddlers with dis-
 3 abilities) within the State.

4 **“SEC. 641. STATE INTERAGENCY COORDINATING COUNCIL.**

5 “(a) ESTABLISHMENT.—

6 “(1) IN GENERAL.—A State that desires to re-
 7 ceive financial assistance under this part shall estab-
 8 lish a State interagency coordinating council.

9 “(2) APPOINTMENT.—The council shall be ap-
 10 pointed by the Governor. In making appointments to
 11 the council, the Governor shall ensure that the mem-
 12 bership of the council reasonably represents the pop-
 13 ulation of the State.

14 “(3) CHAIRPERSON.—The Governor shall des-
 15 ignate a member of the council to serve as the chair-
 16 person of the council, or shall require the council to
 17 so designate such a member. Any member of the
 18 council who is a representative of the lead agency
 19 designated under section 635(a)(10) may not serve
 20 as the chairperson of the council.

21 “(b) COMPOSITION.—

22 “(1) IN GENERAL.—The council shall be com-
 23 posed as follows:

24 “(A) PARENTS.—At least 20 percent of
 25 the members shall be parents of infants or tod-

1 dlers with disabilities or children with disabil-
2 ities aged 12 or younger, with knowledge of, or
3 experience with, programs for infants and tod-
4 dlers with disabilities. At least 1 such member
5 shall be a parent of an infant or toddler with
6 a disability or a child with a disability aged 6
7 or younger.

8 “(B) SERVICE PROVIDERS.—At least 20
9 percent of the members shall be public or pri-
10 vate providers of early intervention services.

11 “(C) STATE LEGISLATURE.—At least 1
12 member shall be from the State legislature.

13 “(D) PERSONNEL PREPARATION.—At least
14 1 member shall be involved in personnel prepa-
15 ration.

16 “(E) AGENCY FOR EARLY INTERVENTION
17 SERVICES.—At least 1 member shall be from
18 each of the State agencies involved in the provi-
19 sion of, or payment for, early intervention serv-
20 ices to infants and toddlers with disabilities and
21 their families and shall have sufficient authority
22 to engage in policy planning and implementa-
23 tion on behalf of such agencies.

24 “(F) AGENCY FOR PRESCHOOL SERV-
25 ICES.—At least 1 member shall be from the

1 State educational agency responsible for pre-
2 school services to children with disabilities and
3 shall have sufficient authority to engage in pol-
4 icy planning and implementation on behalf of
5 such agency.

6 “(G) STATE MEDICAID AGENCY.—At least
7 1 member shall be from the agency responsible
8 for the State medicaid program.

9 “(H) HEAD START AGENCY.—At least 1
10 representative from a Head Start agency or
11 program in the State.

12 “(I) CHILD CARE AGENCY.—At least 1
13 representative from a State agency responsible
14 for child care.

15 “(2) OTHER MEMBERS.—The council may in-
16 clude other members selected by the Governor, in-
17 cluding a representative from the Bureau of Indian
18 Affairs, or where there is no BIA-operated or BIA-
19 funded school, from the Indian Health Service or the
20 tribe or tribal council.

21 “(c) MEETINGS.—The council shall meet at least
22 quarterly and in such places as the council determines nec-
23 essary. The meetings shall be publicly announced, and, to
24 the extent appropriate, open and accessible to the general
25 public.

1 “(d) MANAGEMENT AUTHORITY.—Subject to the ap-
2 proval of the Governor, the council may prepare and ap-
3 prove a budget using funds under this part to conduct
4 hearings and forums, to reimburse members of the council
5 for reasonable and necessary expenses for attending coun-
6 cil meetings and performing council duties (including child
7 care for parent representatives), to pay compensation to
8 a member of the council if the member is not employed
9 or must forfeit wages from other employment when per-
10 forming official council business, to hire staff, and to ob-
11 tain the services of such professional, technical, and cler-
12 ical personnel as may be necessary to carry out its func-
13 tions under this part.

14 “(e) FUNCTIONS OF COUNCIL.—

15 “(1) DUTIES.—The council shall—

16 “(A) advise and assist the lead agency des-
17 ignated or established under section 635(a)(10)
18 in the performance of the responsibilities set
19 forth in such section, particularly the identifica-
20 tion of the sources of fiscal and other support
21 for services for early intervention programs, as-
22 signment of financial responsibility to the ap-
23 propriate agency, and the promotion of the
24 interagency agreements;

1 “(B) advise and assist the lead agency in
2 the preparation of applications and amend-
3 ments thereto;

4 “(C) advise and assist the State edu-
5 cational agency regarding the transition of tod-
6 dlers with disabilities to preschool and other ap-
7 propriate services; and

8 “(D) prepare and submit an annual report
9 to the Governor and to the Secretary on the
10 status of early intervention programs for in-
11 fants and toddlers with disabilities and their
12 families operated within the State.

13 “(2) AUTHORIZED ACTIVITY.—The council may
14 advise and assist the lead agency and the State edu-
15 cational agency regarding the provision of appro-
16 priate services for children from birth through age
17 5. The council may advise appropriate agencies in
18 the State with respect to the integration of services
19 for infants and toddlers with disabilities and at-risk
20 infants and toddlers and their families, regardless of
21 whether at-risk infants and toddlers are eligible for
22 early intervention services in the State.

23 “(f) CONFLICT OF INTEREST.—No member of the
24 council shall cast a vote on any matter that is likely to
25 provide a direct financial benefit to that member or other-

1 wise give the appearance of a conflict of interest under
2 State law.

3 **“SEC. 642. FEDERAL ADMINISTRATION.**

4 “Sections 616, 617, and 618 shall, to the extent not
5 inconsistent with this part, apply to the program author-
6 ized by this part, except that—

7 “(1) any reference in such sections to a State
8 educational agency shall be considered to be a ref-
9 erence to a State’s lead agency established or des-
10 igned under section 635(a)(10);

11 “(2) any reference in such sections to a local
12 educational agency, educational service agency, or a
13 State agency shall be considered to be a reference to
14 an early intervention service provider under this
15 part; and

16 “(3) any reference to the education of children
17 with disabilities or the education of all children with
18 disabilities shall be considered to be a reference to
19 the provision of appropriate early intervention serv-
20 ices to infants and toddlers with disabilities.

21 **“SEC. 643. ALLOCATION OF FUNDS.**

22 “(a) RESERVATION OF FUNDS FOR OUTLYING
23 AREAS.—

24 “(1) IN GENERAL.—From the sums appro-
25 priated to carry out this part for any fiscal year, the

1 Secretary may reserve not more than 1 percent for
2 payments to Guam, American Samoa, the United
3 States Virgin Islands, and the Commonwealth of the
4 Northern Mariana Islands in accordance with their
5 respective needs.

6 “(2) CONSOLIDATION OF FUNDS.—The provi-
7 sions of Public Law 95–134, permitting the consoli-
8 dation of grants to the outlying areas, shall not
9 apply to funds those areas receive under this part.

10 “(b) PAYMENTS TO INDIANS.—

11 “(1) IN GENERAL.—The Secretary shall, sub-
12 ject to this subsection, make payments to the Sec-
13 retary of the Interior to be distributed to tribes,
14 tribal organizations (as defined under section 4 of
15 the Indian Self-Determination and Education Assist-
16 ance Act), or consortia of the above entities for the
17 coordination of assistance in the provision of early
18 intervention services by the States to infants and
19 toddlers with disabilities and their families on res-
20 ervations served by elementary schools and sec-
21 ondary schools for Indian children operated or fund-
22 ed by the Department of the Interior. The amount
23 of such payment for any fiscal year shall be 1.25
24 percent of the aggregate of the amount available to
25 all States under this part for such fiscal year.

1 “(2) ALLOCATION.—For each fiscal year, the
2 Secretary of the Interior shall distribute the entire
3 payment received under paragraph (1) by providing
4 to each tribe, tribal organization, or consortium an
5 amount based on the number of infants and toddlers
6 residing on the reservation, as determined annually,
7 divided by the total of such children served by all
8 tribes, tribal organizations, or consortia.

9 “(3) INFORMATION.—To receive a payment
10 under this subsection, the tribe, tribal organization,
11 or consortium shall submit such information to the
12 Secretary of the Interior as is needed to determine
13 the amounts to be distributed under paragraph (2).

14 “(4) USE OF FUNDS.—The funds received by a
15 tribe, tribal organization, or consortium shall be
16 used to assist States in child find, screening, and
17 other procedures for the early identification of In-
18 dian children under 3 years of age and for parent
19 training. Such funds may also be used to provide
20 early intervention services in accordance with this
21 part. Such activities may be carried out directly or
22 through contracts or cooperative agreements with
23 the BIA, local educational agencies, and other public
24 or private nonprofit organizations. The tribe, tribal
25 organization, or consortium is encouraged to involve

1 Indian parents in the development and implementa-
2 tion of these activities. The above entities shall, as
3 appropriate, make referrals to local, State, or Fed-
4 eral entities for the provision of services or further
5 diagnosis.

6 “(5) REPORTS.—To be eligible to receive a
7 grant under paragraph (2), a tribe, tribal organiza-
8 tion, or consortium shall make a biennial report to
9 the Secretary of the Interior of activities undertaken
10 under this subsection, including the number of con-
11 tracts and cooperative agreements entered into, the
12 number of children contacted and receiving services
13 for each year, and the estimated number of children
14 needing services during the 2 years following the
15 year in which the report is made. The Secretary of
16 the Interior shall include a summary of this informa-
17 tion on a biennial basis to the Secretary of Edu-
18 cation along with such other information as required
19 under section 611(h)(3)(E). The Secretary of Edu-
20 cation may require any additional information from
21 the Secretary of the Interior.

22 “(6) PROHIBITED USES OF FUNDS.—None of
23 the funds under this subsection may be used by the
24 Secretary of the Interior for administrative pur-

1 poses, including child count, and the provision of
2 technical assistance.

3 “(c) STATE ALLOTMENTS.—

4 “(1) IN GENERAL.—Except as provided in para-
5 graphs (2) and (3) from the funds remaining for
6 each fiscal year after the reservation and payments
7 under subsections (a) and (b), the Secretary shall
8 first allot to each State an amount that bears the
9 same ratio to the amount of such remainder as the
10 number of infants and toddlers in the State bears to
11 the number of infants and toddlers in all States.

12 “(2) MINIMUM ALLOTMENTS.—Except as pro-
13 vided in paragraph (3), no State shall receive an
14 amount under this section for any fiscal year that is
15 less than the greater of—

16 “(A) $\frac{1}{2}$ of 1 percent of the remaining
17 amount described in paragraph (1); or

18 “(B) \$500,000.

19 “(3) RATABLE REDUCTION.—

20 “(A) IN GENERAL.—If the sums made
21 available under this part for any fiscal year are
22 insufficient to pay the full amounts that all
23 States are eligible to receive under this sub-
24 section for such year, the Secretary shall rat-

1 ably reduce the allotments to such States for
2 such year.

3 “(B) ADDITIONAL FUNDS.—If additional
4 funds become available for making payments
5 under this subsection for a fiscal year, allot-
6 ments that were reduced under subparagraph
7 (A) shall be increased on the same basis the al-
8 lotments were reduced.

9 “(4) DEFINITIONS.—For the purpose of this
10 subsection—

11 “(A) the terms ‘infants’ and ‘toddlers’
12 mean children under 3 years of age; and

13 “(B) the term ‘State’ means each of the 50
14 States, the District of Columbia, and the Com-
15 monwealth of Puerto Rico.

16 “(d) REALLOTMENT OF FUNDS.—If a State elects
17 not to receive its allotment under subsection (c), the Sec-
18 retary shall reallocate, among the remaining States, amounts
19 from such State in accordance with such subsection.

20 **“SEC. 644. AUTHORIZATION OF APPROPRIATIONS.**

21 “For the purpose of carrying out this part, there are
22 authorized to be appropriated such sums as may be nec-
23 essary for each of the fiscal years 2004 through 2009.

1 **“PART D—NATIONAL ACTIVITIES TO IMPROVE**
2 **EDUCATION OF CHILDREN WITH DISABILITIES**
3 **“SEC. 650. FINDINGS.**

4 “Congress finds the following:

5 “(1) The Federal Government has an ongoing
6 obligation to support activities that contribute to
7 positive results for children with disabilities, ena-
8 bling them to lead productive and independent adult
9 lives.

10 “(2) Systemic change benefiting all students,
11 including children with disabilities, requires the in-
12 volvement of States, local educational agencies, par-
13 ents, individuals with disabilities and their families,
14 teachers and other service providers, and other inter-
15 ested individuals and organizations to develop and
16 implement comprehensive strategies that improve
17 educational results for children with disabilities.

18 “(3) State educational agencies, in partnership
19 with local educational agencies, parents of children
20 with disabilities, and other individuals and organiza-
21 tions, are in the best position to improve education
22 for children with disabilities and to address their
23 special needs.

24 “(4) An effective educational system serving
25 students with disabilities should—

1 “(A) maintain high academic achievement
2 standards and clear performance goals for chil-
3 dren, consistent with the standards and expect-
4 tations for all students in the educational sys-
5 tem, and provide for appropriate and effective
6 strategies and methods to ensure that all chil-
7 dren with disabilities have the opportunity to
8 achieve those standards and goals;

9 “(B) clearly define, in objective, measur-
10 able terms, the school and post-school results
11 that children with disabilities are expected to
12 achieve; and

13 “(C) promote transition services as de-
14 scribed in section 602(32) and coordinate State
15 and local education, social, health, mental
16 health, and other services, in addressing the full
17 range of student needs, particularly the needs
18 of children with disabilities who need significant
19 levels of support to participate and learn in
20 school and the community.

21 “(5) The availability of an adequate number of
22 qualified personnel is critical to serve effectively chil-
23 dren with disabilities, to assume leadership positions
24 in administration and direct services, to provide

1 teacher training, and to conduct high quality re-
2 search to improve special education.

3 “(6) High quality, comprehensive professional
4 development programs are essential to ensure that
5 the persons responsible for the education or transi-
6 tion of children with disabilities possess the skills
7 and knowledge necessary to address the educational
8 and related needs of those children.

9 “(7) Models of professional development should
10 be scientifically based and reflect successful prac-
11 tices, including strategies for recruiting, preparing,
12 and retaining personnel.

13 “(8) Continued support is essential for the de-
14 velopment and maintenance of a coordinated and
15 high quality program of research to inform success-
16 ful teaching practices and model curricula for edu-
17 cating children with disabilities.

18 “(9) A comprehensive research agenda should
19 be established and pursued to promote the highest
20 quality and rigor in special education research, and
21 to address the full range of issues facing children
22 with disabilities, parents of children with disabilities,
23 school personnel, and others.

24 “(10) Training, technical assistance, support,
25 and dissemination activities are necessary to ensure

1 that parts B and C are fully implemented and
 2 achieve high quality early intervention, educational,
 3 and transitional results for children with disabilities
 4 and their families.

5 “(11) Parents, teachers, administrators, and re-
 6 lated services personnel need technical assistance
 7 and information in a timely, coordinated, and acces-
 8 sible manner in order to improve early intervention,
 9 educational, and transitional services and results at
 10 the State and local levels for children with disabil-
 11 ities and their families.

12 “(12) Parent training and information activities
 13 assist parents of a child with a disability in dealing
 14 with the multiple pressures of parenting such a child
 15 and are of particular importance in—

16 “(A) playing a vital role in creating and
 17 preserving constructive relationships between
 18 parents of children with disabilities and schools
 19 by facilitating open communication between the
 20 parents and schools; encouraging dispute reso-
 21 lution at the earliest possible point in time; and
 22 discouraging the escalation of an adversarial
 23 process between the parents and schools;

24 “(B) ensuring the involvement of parents
 25 in planning and decisionmaking with respect to

1 early intervention, educational, and transitional
2 services;

3 “(C) achieving high quality early interven-
4 tion, educational, and transitional results for
5 children with disabilities;

6 “(D) providing such parents information
7 on their rights, protections, and responsibilities
8 under this Act to ensure improved early inter-
9 vention, educational, and transitional results for
10 children with disabilities;

11 “(E) assisting such parents in the develop-
12 ment of skills to participate effectively in the
13 education and development of their children and
14 in the transitions described in section 602(32);

15 “(F) supporting the roles of such parents
16 as participants within partnerships seeking to
17 improve early intervention, educational, and
18 transitional services and results for children
19 with disabilities and their families; and

20 “(G) supporting such parents who may
21 have limited access to services and supports,
22 due to economic, cultural, or linguistic barriers.

23 “(13) Support is needed to improve techno-
24 logical resources and integrate technology, including
25 universally designed technologies, into the lives of

1 children with disabilities, parents of children with
2 disabilities, school personnel, and others through
3 curricula, services, and assistive technologies.

4 **“Subpart 1—State Personnel Preparation and**
5 **Professional Development Grants**

6 **“SEC. 651. PURPOSE; DEFINITION; PROGRAM AUTHORITY.**

7 “(a) PURPOSE.—The purpose of this subpart is to
8 assist State educational agencies in reforming and improv-
9 ing their systems for personnel preparation and profes-
10 sional development in early intervention, educational, and
11 transition services in order to improve results for children
12 with disabilities.

13 “(b) DEFINITION.—In this subpart the term ‘per-
14 sonnel’ means special education teachers, general edu-
15 cation teachers, principals, administrators, related services
16 personnel, paraprofessionals, and early intervention per-
17 sonnel serving infants, toddlers, preschoolers, or children
18 with disabilities.

19 “(c) PROGRAM AUTHORITY.—

20 “(1) COMPETITIVE GRANTS.—

21 “(A) IN GENERAL.—For any fiscal year
22 for which the amount appropriated under sec-
23 tion 655 is less than \$100,000,000, the Sec-
24 retary is authorized to award grants, on a com-
25 petitive basis, to State educational agencies to

1 carry out the activities described in the State
2 plan submitted under section 654.

3 “(B) PRIORITY.—The Secretary may give
4 priority to awarding grants under subparagraph
5 (A) to State educational agencies that—

6 “(i) have the greatest personnel short-
7 ages; or

8 “(ii) demonstrate the greatest dif-
9 ficulty meeting the requirements of section
10 615(a)(14).

11 “(C) MINIMUM.—The Secretary shall make
12 a grant to each State educational agency se-
13 lected under subparagraph (A) in an amount
14 for each fiscal year that is—

15 “(i) not less than \$500,000, nor more
16 than \$2,000,000, in the case of the 50
17 States, the District of Columbia, and the
18 Commonwealth of Puerto Rico; and

19 “(ii) not less than \$80,000 in the case
20 of an outlying area.

21 “(D) INCREASES.—The Secretary may in-
22 crease the amount described in subparagraph
23 (C) to account for inflation.

1 “(E) FACTORS.—The Secretary shall set
 2 the amount of each grant under subparagraph
 3 (A) after considering—

4 “(i) the amount of funds available for
 5 making the grants;

6 “(ii) the relative population of the
 7 State or outlying area;

8 “(iii) the types of activities proposed
 9 by the State or outlying area;

10 “(iv) the alignment of proposed activi-
 11 ties with section 612(a)(15);

12 “(v) the alignment of proposed activi-
 13 ties with the plans and applications sub-
 14 mitted under sections 1111 and 2112, re-
 15 spectively, of the Elementary and Sec-
 16 ondary Education Act of 1965; and

17 “(vi) the use, as appropriate, of sci-
 18 entifically based activities.

19 “(2) FORMULA GRANTS.—

20 “(A) IN GENERAL.—For any fiscal year
 21 for which the funds appropriated under section
 22 655 are equal to or greater than \$100,000,000,
 23 the Secretary shall—

24 “(i) reserve from such funds an
 25 amount sufficient to continue to make pay-

1 ments for the fiscal year in accordance
2 with the terms of each multi-year grant
3 awarded under paragraph (1) for which
4 the grant period has not ended; and

5 “(ii) use the remainder of such funds
6 to award grants to State educational agen-
7 cies, from allotments under subparagraph
8 (B), to enable the State educational agen-
9 cies to award contracts and subgrants, on
10 a competitive basis, to carry out the au-
11 thorized activities described in section 654.

12 “(B) ALLOTMENT.—Except as provided in
13 subparagraph (C), from the remainder of funds
14 described in subparagraph (A)(ii) for a fiscal
15 year, the Secretary shall make an allotment to
16 each State educational agency in an amount
17 that bears the same relation to such remainder
18 as the amount of funds the State received
19 under section 611(d)(3) for the preceding fiscal
20 year bears to the amount of funds received by
21 all States under such section for the preceding
22 fiscal year.

23 “(C) MINIMUM ALLOTMENT.—The amount
24 of any State educational agency’s allotment
25 under this paragraph for any fiscal year shall

1 not be less than $\frac{1}{4}$ of 1 percent of the amount
2 made available under this part for such year.

3 **“SEC. 652. ELIGIBILITY AND COLLABORATIVE PROCESS.**

4 “(a) ELIGIBLE APPLICANTS.—A State educational
5 agency may apply for a grant under this subpart for a
6 grant period of not less than 1 year and not more than
7 5 years.

8 “(b) PARTNERS.—

9 “(1) IN GENERAL.—In order to be considered
10 for a grant under this subpart, a State educational
11 agency shall establish a partnership with local edu-
12 cational agencies and other State agencies involved
13 in, or concerned with, the education of children with
14 disabilities, including institutions of higher education
15 and the State agencies responsible for administering
16 part C, child care, and vocational rehabilitation.

17 “(2) OTHER PARTNERS.—In order to be consid-
18 ered for a grant under this subpart, a State edu-
19 cational agency shall work in partnership with other
20 persons and organizations involved in, and concerned
21 with, the education of children with disabilities,
22 which may include—

23 “(A) the Governor;

24 “(B) parents of children with disabilities
25 ages birth through 26;

1 “(C) parents of nondisabled children ages
2 birth through 26;

3 “(D) individuals with disabilities;

4 “(E) parent training and information cen-
5 ters or community parent resource centers;

6 “(F) community based and other nonprofit
7 organizations involved in the education and em-
8 ployment of individuals with disabilities;

9 “(G) general and special education teach-
10 ers, paraprofessionals, related services per-
11 sonnel, and early intervention personnel;

12 “(H) the State advisory panel established
13 under part B;

14 “(I) the State interagency coordinating
15 council established under part C;

16 “(J) institutions of higher education within
17 the State;

18 “(K) individuals knowledgeable about voca-
19 tional education;

20 “(L) the State agency for higher edu-
21 cation;

22 “(M) the State vocational rehabilitation
23 agency;

1 “(N) public agencies with jurisdiction in
2 the areas of health, mental health, social serv-
3 ices, and juvenile justice;

4 “(O) other providers of professional devel-
5 opment that work with infants, toddlers, pre-
6 schoolers, and children with disabilities; and

7 “(P) other individuals.

8 **“SEC. 653. APPLICATIONS.**

9 “(a) IN GENERAL.—

10 “(1) SUBMISSION.—A State educational agency
11 that desires to receive a grant under this subpart
12 shall submit to the Secretary an application at such
13 time, in such manner, and including such informa-
14 tion as the Secretary may require.

15 “(2) STATE PLAN.—The application shall in-
16 clude a plan that identifies and addresses the State
17 and local needs for the professional development of
18 administrators, principals, and teachers, as well as
19 individuals who provide direct supplementary aids
20 and services to children with disabilities, and that—

21 “(A) is designed to enable the State to
22 meet the requirements of section 612(a)(14);

23 “(B) is based on an assessment of State
24 and local needs that identifies critical aspects
25 and areas in need of improvement related to the

1 preparation, ongoing training, and professional
2 development of personnel that serve infants,
3 toddlers, preschoolers, and children with disabili-
4 ties within the State, including—

5 “(i) current and anticipated personnel
6 vacancies and shortages; and

7 “(ii) the number of preservice pro-
8 grams; and

9 “(C) is integrated and aligned, to the max-
10 imum extent possible, with State plans and ac-
11 tivities under the Elementary and Secondary
12 Education Act of 1965, the Rehabilitation Act
13 of 1973, and the Higher Education Act of
14 1965, as appropriate.

15 “(3) REQUIREMENT.—The State application
16 shall contain an assurance that the State edu-
17 cational agency shall carry out each of the strategies
18 described in subsection (b)(4).

19 “(b) ELEMENTS OF STATE PERSONNEL PREPARA-
20 TION AND PROFESSIONAL DEVELOPMENT PLAN.—Each
21 professional development plan shall—

22 “(1) describe a partnership agreement that is in
23 effect for the period of the grant, which agreement
24 shall specify—

1 “(A) the nature and extent of the partner-
2 ship described in section 652(b) and the respec-
3 tive roles of each member of the partnership;
4 and

5 “(B) how the State will work in partner-
6 ship with other persons and organizations in-
7 volved in, and concerned with, the education of
8 children with disabilities, including the respec-
9 tive roles of each of the persons and organiza-
10 tions;

11 “(2) describe how the strategies and activities
12 described in paragraph (4) will be coordinated with
13 other public resources (including part B and part C
14 funds retained for use at the State level for per-
15 sonnel and professional development purposes) and
16 private resources;

17 “(3) describe how the State will align its profes-
18 sional development plan under this subpart with the
19 plan and application submitted under sections 1111
20 and 2112, respectively, of the Elementary and Sec-
21 ondary Education Act of 1965;

22 “(4) describe what strategies the State will use
23 to address the professional development and per-
24 sonnel needs identified under subsection (a)(2) and

1 how those strategies will be implemented, includ-
2 ing—

3 “(A) a description of the preservice and in-
4 service programs and activities to be supported
5 under this subpart that will provide personnel
6 with the knowledge and skills to meet the needs
7 of, and improve the performance and achieve-
8 ment of, infants, toddlers, preschoolers, and
9 children with disabilities; and

10 “(B) how such strategies shall be inte-
11 grated, to the maximum extent possible, with
12 other activities supported by grants funded
13 under this part, including those under section
14 664;

15 “(5) provide an assurance that the State will
16 provide technical assistance to local educational
17 agencies to improve the quality of professional devel-
18 opment available to meet the needs of personnel who
19 serve children with disabilities;

20 “(6) provide an assurance that the State will
21 provide technical assistance to entities that provide
22 services to infants and toddlers with disabilities to
23 improve the quality of professional development
24 available to meet the needs of personnel serving such
25 children;

1 “(7) describe how the State will recruit and re-
2 tain highly qualified teachers and other qualified
3 personnel in geographic areas of greatest need;

4 “(8) describe the steps the State will take to
5 ensure that poor and minority children are not
6 taught at higher rates by teachers who are not high-
7 ly qualified; and

8 “(9) describe how the State will assess, on a
9 regular basis, the extent to which the strategies im-
10 plemented under this subpart have been effective in
11 meeting the performance goals described in section
12 612(a)(15).

13 “(c) PEER REVIEW.—

14 “(1) IN GENERAL.—The Secretary shall use a
15 panel of experts who are competent, by virtue of
16 their training, expertise, or experience, to evaluate
17 applications for grants under section 651(c)(1).

18 “(2) COMPOSITION OF PANEL.—A majority of a
19 panel described in paragraph (1) shall be composed
20 of individuals who are not employees of the Federal
21 Government.

22 “(3) PAYMENT OF FEES AND EXPENSES OF
23 CERTAIN MEMBERS.—The Secretary may use avail-
24 able funds appropriated to carry out this subpart to

1 pay the expenses and fees of panel members who are
2 not employees of the Federal Government.

3 “(d) REPORTING PROCEDURES.—Each State edu-
4 cational agency that receives a grant under this subpart
5 shall submit annual performance reports to the Secretary.
6 The reports shall describe the progress of the State in im-
7 plementing its plan and analyzing the effectiveness of the
8 State’s activities under this subpart.

9 **“SEC. 654. USE OF FUNDS.**

10 “(a) PROFESSIONAL DEVELOPMENT ACTIVITIES.—A
11 State educational agency that receives a grant under this
12 subpart shall use the grant funds to support activities in
13 accordance with the State’s plan described in section 653,
14 including 1 or more of the following:

15 “(1) Carrying out programs that provide sup-
16 port to both special education and regular education
17 teachers of children with disabilities, such as pro-
18 grams that—

19 “(A) provide teacher mentoring, team
20 teaching, reduced class schedules and case
21 loads, and intensive professional development;
22 and

23 “(B) use standards or assessments for
24 guiding beginning teachers that are consistent
25 with challenging State student academic

1 achievement and functional standards and with
2 the requirements for professional development
3 as defined in section 9101(34) of the Element-
4 tary and Secondary Education Act of 1965.

5 “(2) Encouraging and supporting the training
6 of special education and regular education teachers
7 and administrators to effectively utilize and inte-
8 grate technology—

9 “(A) into curricula and instruction, includ-
10 ing training to improve the ability to collect,
11 manage, and analyze data to improve teaching,
12 decisionmaking, school improvement efforts,
13 and accountability;

14 “(B) to enhance learning by children with
15 disabilities; and

16 “(C) to effectively communicate with par-
17 ents.

18 “(3) Providing professional development activi-
19 ties that—

20 “(A) improve the knowledge of special edu-
21 cation and regular education teachers con-
22 cerning—

23 “(i) the academic and developmental
24 or functional needs of students with dis-
25 abilities; or

1 “(ii) effective instructional strategies,
2 methods, and skills, and the use of State
3 academic content standards and student
4 academic achievement and functional
5 standards, and State assessments, to im-
6 prove teaching practices and student aca-
7 demic achievement; and

8 “(B) improve the knowledge of special edu-
9 cation and regular education teachers and prin-
10 cipals and, in appropriate cases, paraprofes-
11 sionals, concerning effective instructional prac-
12 tices and that—

13 “(i) provide training in how to teach
14 and address the needs of students with dif-
15 ferent learning styles;

16 “(ii) involve collaborative groups of
17 teachers and administrators;

18 “(iii) provide training in methods of—

19 “(I) positive behavior interven-
20 tions and supports to improve student
21 behavior in the classroom;

22 “(II) scientifically based reading
23 instruction, including early literacy in-
24 struction;

1 “(III) early and appropriate
2 interventions to identify and help chil-
3 dren with disabilities;

4 “(IV) effective instruction for
5 children with low incidence disabil-
6 ities;

7 “(V) successful transitioning to
8 postsecondary opportunities; and

9 “(VI) using classroom-based
10 techniques to assist children prior to
11 referral for special education;

12 “(iv) provide training to enable special
13 education and regular education teachers
14 and principals to work with and involve
15 parents in their child’s education, including
16 parents of low income and limited English
17 proficient children with disabilities;

18 “(v) provide training for special edu-
19 cation, regular education, principals, and
20 related services personnel in planning, de-
21 veloping, and implementing effective and
22 appropriate IEPs; and

23 “(vi) providing training to meet the
24 needs of students with significant health,

1 mobility, or behavioral needs prior to serv-
2 ing such students;

3 “(C) train administrators, principals, and
4 other relevant school personnel in conducting
5 effective IEP meetings; and

6 “(D) develop and enhance instructional
7 leadership skills of principals.

8 “(4) Developing and implementing initiatives to
9 promote the recruitment and retention of highly
10 qualified special education teachers, particularly ini-
11 tiatives that have been proven effective in recruit-
12 ment and retaining highly qualified teachers, includ-
13 ing programs that provide—

14 “(A) teacher mentoring from exemplary
15 special education teachers, principals, or super-
16 intendents;

17 “(B) induction and support for special
18 education teachers during their first 3 years of
19 employment as teachers, respectively; or

20 “(C) incentives, including financial incen-
21 tives, to retain special education teachers who
22 have a record of success in helping students
23 with disabilities.

1 “(5) Carrying out programs and activities that
2 are designed to improve the quality of personnel who
3 serve children with disabilities, such as—

4 “(A) innovative professional development
5 programs (which may be provided through part-
6 nerships that include institutions of higher edu-
7 cation), including programs that train teachers
8 and principals to integrate technology into cur-
9 ricula and instruction to improve teaching,
10 learning, and technology literacy, which profes-
11 sional development shall be consistent with the
12 definition of professional development described
13 in section 9101(34) of the Elementary and Sec-
14 ondary Education Act of 1965; and

15 “(B) development and use of proven, cost
16 effective strategies for the implementation of
17 professional development activities, such as
18 through the use of technology and distance
19 learning.

20 “(b) OTHER ACTIVITIES.—A State educational agen-
21 cy that receives a grant under this subpart shall use the
22 grant funds to support activities in accordance with the
23 State’s plan described in section 653, including 1 or more
24 of the following:

1 “(1) Reforming special education and regular
2 education teacher certification (including recertifi-
3 cation) or licensing requirements to ensure that—

4 “(A) special education and regular edu-
5 cation teachers have—

6 “(i) the training and information nec-
7 essary to address the full range of needs of
8 children with disabilities across disability
9 categories; and

10 “(ii) the necessary subject matter
11 knowledge and teaching skills in the aca-
12 demic subjects that they teach;

13 “(B) special education and regular edu-
14 cation teacher certification (including recertifi-
15 cation) or licensing requirements are aligned
16 with challenging State academic content stand-
17 ards; and

18 “(C) special education and regular edu-
19 cation teachers have the subject matter knowl-
20 edge and teaching skills, including technology
21 literacy, necessary to help students meet chal-
22 lenging State student academic achievement
23 and functional standards.

24 “(2) Programs that establish, expand, or im-
25 prove alternative routes for State certification of

1 special education teachers for highly qualified indi-
2 viduals with a baccalaureate or master's degree, in-
3 cluding mid-career professionals from other occupa-
4 tions, paraprofessionals, and recent college or uni-
5 versity graduates with records of academic distine-
6 tion who demonstrate the potential to become highly
7 effective special education teachers.

8 “(3) Teacher advancement initiatives for special
9 education teachers that promote professional growth
10 and emphasize multiple career paths (such as paths
11 to becoming a career teacher, mentor teacher, or ex-
12 emplary teacher) and pay differentiation.

13 “(4) Developing and implementing mechanisms
14 to assist local educational agencies and schools in ef-
15 fectively recruiting and retaining highly qualified
16 special education teachers.

17 “(5) Reforming tenure systems, implementing
18 teacher testing for subject matter knowledge, and
19 implementing teacher testing for State certification
20 or licensing, consistent with title II of the Higher
21 Education Act of 1965.

22 “(6) Funding projects to promote reciprocity of
23 teacher certification or licensing between or among
24 States for special education teachers, except that no
25 reciprocity agreement developed under this para-

1 graph or developed using funds provided under this
2 subpart may lead to the weakening of any State
3 teaching certification or licensing requirement.

4 “(7) Developing or assisting local educational
5 agencies to serve children with disabilities through
6 the development and use of proven, innovative strat-
7 egies to deliver intensive professional development
8 programs that are both cost effective and easily ac-
9 cessible, such as strategies that involve delivery
10 through the use of technology, peer networks, and
11 distance learning.

12 “(8) Developing, or assisting local educational
13 agencies in developing, merit based performance sys-
14 tems, and strategies that provide differential and
15 bonus pay for special education teachers.

16 “(9) Supporting activities that ensure that
17 teachers are able to use challenging State academic
18 content standards and student academic and func-
19 tional achievement standards, and State assessments
20 for all children with disabilities, to improve instruc-
21 tional practices and improve the academic achieve-
22 ment of children with disabilities.

23 “(10) Coordinating with, and expanding centers
24 established under, section 2113(c)(18) of the Ele-

1 mentary and Secondary Education Act of 1965 to
2 benefit special education teachers.

3 “(c) CONTRACTS AND SUBGRANTS.—Each such State
4 educational agency—

5 “(1) shall award contracts or subgrants to local
6 educational agencies, institutions of higher edu-
7 cation, parent training and information centers, or
8 community parent resource centers, as appropriate,
9 to carry out its State plan under this subpart; and

10 “(2) may award contracts and subgrants to
11 other public and private entities, including the lead
12 agency under part C, to carry out such plan.

13 “(d) USE OF FUNDS FOR PROFESSIONAL DEVELOP-
14 MENT.—A State educational agency that receives a grant
15 under this subpart shall use—

16 “(1) not less than 75 percent of the funds the
17 State educational agency receives under the grant
18 for any fiscal year for activities under subsection (a);
19 and

20 “(2) not more than 25 percent of the funds the
21 State educational agency receives under the grant
22 for any fiscal year for activities under subsection (b).

23 “(e) GRANTS TO OUTLYING AREAS.—Public Law 95–
24 134, permitting the consolidation of grants to the outlying
25 areas, shall not apply to funds received under this subpart.

1 **“SEC. 655. AUTHORIZATION OF APPROPRIATIONS.**

2 “There are authorized to be appropriated to carry out
3 this subpart such sums as may be necessary for each of
4 the fiscal years 2004 through 2009.

5 **“Subpart 2—Scientifically Based Research, Technical**
6 **Assistance, Model Demonstration Projects, and**
7 **Dissemination of Information**

8 **“SEC. 660. PURPOSE.**

9 “The purpose of this subpart is—

10 “(1) to provide Federal funding for scientif-
11 ically based research, technical assistance, model
12 demonstration projects, and information dissemina-
13 tion to improve early intervention, educational, and
14 transitional results for children with disabilities; and

15 “(2) to assist State educational agencies and
16 local educational agencies in improving their edu-
17 cation systems.

18 **“SEC. 661. ADMINISTRATIVE PROVISIONS.**

19 “(a) COMPREHENSIVE PLAN.—

20 “(1) IN GENERAL.—After receiving input from
21 interested individuals with relevant expertise, the
22 Secretary shall develop and implement a comprehen-
23 sive plan for activities carried out under this subpart
24 (other than activities assisted under sections 662
25 and 665) in order to enhance the provision of early
26 intervention, educational, related and transitional

1 services to children with disabilities under parts B
2 and C. The plan shall be coordinated with the agen-
3 da developed pursuant to section 662(d) and shall
4 include mechanisms to address early intervention,
5 educational, related service and transitional needs
6 identified by State educational agencies in applica-
7 tions submitted for State program improvement
8 grants under subpart 1.

9 “(2) PUBLIC COMMENT.—The Secretary shall
10 provide a public comment period of at least 60 days
11 on the plan.

12 “(3) DISTRIBUTION OF FUNDS.—In imple-
13 menting the plan, the Secretary shall, to the extent
14 appropriate, ensure that funds are awarded to re-
15 cipients under this subpart to carry out activities
16 that benefit, directly or indirectly, children with the
17 full range of disabilities and of all ages.

18 “(4) REPORTS TO CONGRESS.—The Secretary
19 shall annually report to Congress on the Secretary’s
20 activities under this subpart, including an initial re-
21 port not later than 12 months after the date of en-
22 actment of the Individuals with Disabilities Edu-
23 cation Improvement Act of 2003.

24 “(b) ELIGIBLE APPLICANTS.—

1 “(1) IN GENERAL.—Except as otherwise pro-
 2 vided in this subpart, the following entities are eligi-
 3 ble to apply for a grant, contract, or cooperative
 4 agreement under this subpart:

5 “(A) A State educational agency.

6 “(B) A local educational agency.

7 “(C) A public charter school that is a local
 8 educational agency under State law.

9 “(D) An institution of higher education.

10 “(E) Any other public agency.

11 “(F) A private nonprofit organization.

12 “(G) An outlying area.

13 “(H) An Indian tribe or a tribal organiza-
 14 tion (as defined under section 4 of the Indian
 15 Self-Determination and Education Assistance
 16 Act).

17 “(I) A for-profit organization.

18 “(2) SPECIAL RULE.—The Secretary may limit
 19 the entities eligible for an award of a grant, con-
 20 tract, or cooperative agreement to 1 or more cat-
 21 egories of eligible entities described in paragraph
 22 (1).

23 “(c) SPECIAL POPULATIONS.—

24 “(1) APPLICATION REQUIREMENT.—In making
 25 an award of a grant, contract, or cooperative agree-

1 ment under this subpart, the Secretary shall, as ap-
2 propriate, require an applicant to meet the criteria
3 set forth by the Secretary under this subpart and
4 demonstrate how the applicant will address the
5 needs of children with disabilities from minority
6 backgrounds.

7 “(2) REQUIRED OUTREACH AND TECHNICAL AS-
8 SISTANCE.—Notwithstanding any other provision of
9 this Act other than paragraph (1), the Secretary
10 shall reserve at least 1 percent of the total amount
11 of funds made available to carry out this subpart for
12 1 or both of the following activities:

13 “(A) To provide outreach and technical as-
14 sistance to Historically Black Colleges and Uni-
15 versities, and to institutions of higher education
16 with minority enrollments of at least 25 per-
17 cent, to promote the participation of such col-
18 leges, universities, and institutions in activities
19 under this subpart.

20 “(B) To enable Historically Black Colleges
21 and Universities, and the institutions described
22 in subparagraph (A), to assist other colleges,
23 universities, institutions, and agencies in im-
24 proving educational and transitional results for
25 children with disabilities.

1 “(C) RESERVATION OF FUNDS.—The Sec-
2 retary may reserve funds made available under
3 this subpart to satisfy the requirements of sub-
4 paragraphs (A) and (B).

5 “(d) PRIORITIES.—The Secretary, in making an
6 award of a grant, contract, or cooperative agreement
7 under this subpart, may, without regard to the rulemaking
8 procedures under section 553(a) of title 5, United States
9 Code, limit competitions to, or otherwise give priority to—

10 “(1) projects that address 1 or more—

11 “(A) age ranges;

12 “(B) disabilities;

13 “(C) school grades;

14 “(D) types of educational placements or
15 early intervention environments;

16 “(E) types of services;

17 “(F) content areas, such as reading; or

18 “(G) effective strategies for helping chil-
19 dren with disabilities learn appropriate behavior
20 in the school and other community based edu-
21 cational settings;

22 “(2) projects that address the needs of children
23 based on the severity or incidence of their disability;

24 “(3) projects that address the needs of—

25 “(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 “(1) DEVELOPMENT AND ASSESSMENT OF
2 PROJECTS.—The Secretary shall require that an ap-
3 plicant for, and a recipient of, a grant, contract, or
4 cooperative agreement for a project under this sub-
5 part—

6 “(A) involve individuals with disabilities or
7 parents of individuals with disabilities ages
8 birth through 26 in planning, implementing,
9 and evaluating the project; and

10 “(B) where appropriate, determine whether
11 the project has any potential for replication and
12 adoption by other entities.

13 “(2) ADDITIONAL RESPONSIBILITIES.—The
14 Secretary may require a recipient of a grant, con-
15 tract, or cooperative agreement under this subpart
16 to—

17 “(A) share in the cost of the project;

18 “(B) prepare the research and evaluation
19 findings and products from the project in for-
20 mats that are useful for specific audiences, in-
21 cluding parents, administrators, teachers, early
22 intervention personnel, related services per-
23 sonnel, and individuals with disabilities;

24 “(C) disseminate such findings and prod-
25 ucts; and

1 “(D) collaborate with other such recipients
2 in carrying out subparagraphs (B) and (C).

3 “(f) APPLICATION MANAGEMENT.—

4 “(1) STANDING PANEL.—

5 “(A) IN GENERAL.—The Secretary shall
6 establish and use a standing panel of experts
7 who are competent, by virtue of their training,
8 expertise, or experience, to evaluate applications
9 under this subpart (other than applications for
10 assistance under sections 662 and 665) that,
11 individually, request more than \$75,000 per
12 year in Federal financial assistance.

13 “(B) MEMBERSHIP.—The standing panel
14 shall include, at a minimum—

15 “(i) individuals who are representa-
16 tives of institutions of higher education
17 that plan, develop, and carry out high
18 quality programs of personnel preparation;

19 “(ii) individuals who design and carry
20 out scientifically based research targeted to
21 the improvement of special education pro-
22 grams and services;

23 “(iii) individuals who have recognized
24 experience and knowledge necessary to in-
25 tegrate and apply scientifically based re-

1 search findings to improve educational and
2 transitional results for children with dis-
3 abilities;

4 “(iv) individuals who administer pro-
5 grams at the State or local level in which
6 children with disabilities participate;

7 “(v) individuals who prepare parents
8 of children with disabilities to participate
9 in making decisions about the education of
10 their children;

11 “(vi) individuals who establish policies
12 that affect the delivery of services to chil-
13 dren with disabilities;

14 “(vii) parents of children with disabil-
15 ities ages birth through 26 who are bene-
16 fitting, or have benefited, from coordinated
17 research, personnel preparation, and tech-
18 nical assistance; and

19 “(viii) individuals with disabilities.

20 “(C) TERM.—Unless approved by the Sec-
21 retary due to extenuating circumstances related
22 to shortages of experts in a particular area of
23 expertise or for a specific competition, no indi-
24 vidual shall serve on the standing panel for
25 more than 3 consecutive years.

1 “(2) PEER REVIEW PANELS FOR PARTICULAR
2 COMPETITIONS.—

3 “(A) COMPOSITION.—The Secretary shall
4 ensure that each sub panel selected from the
5 standing panel that reviews applications under
6 this subpart (other than sections 662 and 665)
7 includes—

8 “(i) individuals with knowledge and
9 expertise on the issues addressed by the
10 activities authorized by this subpart; and

11 “(ii) to the extent practicable, parents
12 of children with disabilities ages birth
13 through 26, individuals with disabilities,
14 and persons from diverse backgrounds.

15 “(B) FEDERAL EMPLOYMENT LIMITA-
16 TION.—A majority of the individuals on each
17 sub panel that reviews an application under this
18 subpart (other than an application under sec-
19 tions 662 and 665) shall be individuals who are
20 not employees of the Federal Government.

21 “(3) USE OF DISCRETIONARY FUNDS FOR AD-
22 MINISTRATIVE PURPOSES.—

23 “(A) EXPENSES AND FEES OF NON-FED-
24 ERAL PANEL MEMBERS.—The Secretary may
25 use funds made available under this subpart to

1 pay the expenses and fees of the panel members
2 who are not officers or employees of the Fed-
3 eral Government.

4 “(B) ADMINISTRATIVE SUPPORT.—The
5 Secretary may use not more than 1 percent of
6 the funds made available to carry out this sub-
7 part to pay non-Federal entities for administra-
8 tive support related to management of applica-
9 tions submitted under this subpart.

10 “(4) AVAILABILITY OF CERTAIN PRODUCTS.—
11 The Secretary shall ensure that recipients of grants,
12 cooperative agreements, or contracts under this sub-
13 part and subpart 3 make available in formats that
14 are accessible to individuals with disabilities any
15 products developed under such grants, cooperative
16 agreements, or contracts that the recipient is mak-
17 ing available to the public.

18 “(g) PROGRAM EVALUATION.—The Secretary may
19 use funds made available to carry out this subpart to
20 evaluate activities carried out under this subpart.

21 “(h) MINIMUM FUNDING REQUIRED.—

22 “(1) IN GENERAL.—Subject to paragraph (2),
23 the Secretary shall ensure that, for each fiscal year,
24 at least the following amounts are provided under
25 this subpart to address the following needs:

1 “(A) \$12,832,000 to address the edu-
2 cational, related services, transitional, and early
3 intervention needs of children with deaf-blind-
4 ness.

5 “(B) \$4,000,000 to address the postsec-
6 ondary, vocational, technical, continuing, and
7 adult education needs of individuals with deaf-
8 ness.

9 “(C) \$4,000,000 to address the edu-
10 cational, related services, and transitional needs
11 of children with an emotional disturbance and
12 those who are at risk of developing an emo-
13 tional disturbance.

14 “(2) RATABLE REDUCTION.—If the total
15 amount appropriated to carry out sections 662, 664,
16 and 674 for any fiscal year is less than
17 \$130,000,000, the amounts listed in paragraph (1)
18 shall be ratably reduced.

19 “(i) ELIGIBILITY FOR FINANCIAL ASSISTANCE.—No
20 State or local educational agency, or other public institu-
21 tion or agency, may receive a grant or enter into a con-
22 tract or cooperative agreement under this subpart that re-
23 lates exclusively to programs, projects, and activities per-
24 taining to children aged 3 through 5, inclusive, unless the
25 State is eligible to receive a grant under section 619(b).

1 **“SEC. 662. RESEARCH TO IMPROVE RESULTS FOR CHIL-**
2 **DREN WITH DISABILITIES.**

3 “(a) NATIONAL CENTER FOR SPECIAL EDUCATION
4 RESEARCH.—

5 “(1) ESTABLISHMENT.—

6 “(A) IN GENERAL.—There is established,
7 in the Institute of Education Sciences estab-
8 lished under section 111 of the Education
9 Sciences Reform Act of 2002 (hereinafter in
10 this section referred to as ‘the Institute’), the
11 National Center for Special Education Re-
12 search.

13 “(B) MISSION.—The mission of the Na-
14 tional Center for Special Education Research
15 (hereafter in this section referred to as the
16 ‘Center’) shall be to—

17 “(i) sponsor research to expand
18 knowledge and understanding of the needs
19 of infants, toddlers, and children with dis-
20 abilities in order to improve the develop-
21 mental, educational, and transitional re-
22 sults of such individuals;

23 “(ii) sponsor research to improve serv-
24 ices provided under, and support the im-
25 plementation of, this Act; and

1 “(iii) evaluate the implementation and
2 effectiveness of this Act in coordination
3 with the National Center for Education
4 Evaluation.

5 “(2) COMMISSIONER.—The Center shall be
6 headed by a Commissioner for Special Education
7 Research (hereinafter in this section referred to as
8 ‘the Commissioner’). The Commissioner shall be ap-
9 pointed by the Director of the Institute (hereinafter
10 in this section referred to as ‘the Director’) in ac-
11 cordance with section 117 of the Education Sciences
12 Reform Act of 2002. The Commissioner shall have
13 substantial knowledge of the Center’s activities, in-
14 cluding a high level of expertise in the fields of re-
15 search, research management, and the education of
16 children with disabilities.

17 “(3) APPLICABILITY OF EDUCATION SCIENCES
18 REFORM ACT OF 2002.—Parts A and E of the Edu-
19 cation Sciences Reform Act of 2002, and the stand-
20 ards for peer review of applications and for the con-
21 duct and evaluation of research under sections
22 133(a) and 134 of such Act, respectively, shall apply
23 to the Secretary, the Director, and the Commis-
24 sioner in carrying out this section.

1 “(4) GRANTS, CONTRACTS, AND COOPERATIVE
2 AGREEMENTS.—In carrying out the duties under
3 this part, the Director may award grants to, or
4 enter into contracts or cooperative agreements with,
5 eligible entities.

6 “(b) AUTHORIZED ACTIVITIES.—Activities that may
7 be carried out under this section include research activities
8 to—

9 “(1) improve services provided under this Act in
10 order to improve academic achievement, functional
11 outcomes, and educational results for children with
12 disabilities;

13 “(2) identify scientifically based educational
14 practices that support learning and improve aca-
15 demic achievement, functional outcomes, and edu-
16 cational results for all students with disabilities;

17 “(3) examine the special needs of preschool
18 aged children, infants, and toddlers with disabilities,
19 including factors that may result in developmental
20 delays;

21 “(4) identify scientifically based related services
22 and interventions that promote participation and
23 progress in the general education curriculum and
24 general education settings;

1 “(5) improve the alignment, compatibility, and
2 development of valid and reliable assessments, in-
3 cluding alternate assessments as described in section
4 1111(b) of the Elementary and Secondary Edu-
5 cation Act of 1965;

6 “(6) examine State content standards and alter-
7 nate assessments for students with significant cog-
8 nitive impairment in terms of academic achievement,
9 individualized instructional need, appropriate edu-
10 cation settings, and improved post-school results;

11 “(7) examine the educational, developmental,
12 and transitional needs of children with high inci-
13 dence and low incidence disabilities;

14 “(8) examine the extent to which overidentifica-
15 tion and underidentification of children with disabil-
16 ities occurs, and the causes thereof;

17 “(9) improve reading and literacy skills of chil-
18 dren with disabilities;

19 “(10) examine and improve secondary and post-
20 secondary education and transitional outcomes and
21 results for children with disabilities;

22 “(11) examine methods of early intervention for
23 children with disabilities who need significant levels
24 of support;

1 “(12) examine and incorporate universal design
2 concepts in the development of standards, assess-
3 ments, curricula, and instructional methods as a
4 method to improve educational and transitional re-
5 sults for children with disabilities;

6 “(13) improve the preparation of personnel who
7 provide educational and related services to children
8 with disabilities to increase the academic achieve-
9 ment of students with disabilities;

10 “(14) examine the excess costs of educating a
11 child with a disability and expenses associated with
12 high cost special education and related services; and

13 “(15) help parents improve educational results
14 for their children, particularly related to transition
15 issues.

16 “(c) STANDARDS.—The Commissioner shall ensure
17 that activities assisted under this section—

18 “(1) conform to high standards of quality, in-
19 tegrity, accuracy, validity, and reliability;

20 “(2) are carried out in conjunction with the
21 standards for the conduct and evaluation of all re-
22 search and development established by the National
23 Center for Education Research; and

24 “(3) are objective, secular, neutral, and non-
25 ideological, and are free of partisan political influ-

1 ence, and racial, cultural, gender, regional, or dis-
2 ability bias.

3 “(d) PLAN.—The Commissioner shall propose to the
4 Director a research plan, developed in collaboration with
5 the Assistant Secretary for Special Education and Reha-
6 bilitative Services, that—

7 “(1) is consistent with the priorities and mis-
8 sion of the Institute of Education Sciences and the
9 mission of the Special Education Research Center;

10 “(2) shall be carried out, updated, and modi-
11 fied, as appropriate;

12 “(3) is consistent with the purpose of this Act;

13 “(4) contains an appropriate balance across all
14 age ranges and types of children with disabilities;

15 “(5) provides for research that is objective and
16 uses measurable indicators to assess its progress and
17 results;

18 “(6) is coordinated with the comprehensive plan
19 developed under section 661; and

20 “(7) provides that the research conducted under
21 this part is relevant to special education practice and
22 policy.

23 “(e) APPLICATIONS.—An eligible entity that wishes
24 to receive a grant, or enter into a contract or cooperative
25 agreement, under this section shall submit an application

1 to the Director at such time, in such manner, and con-
 2 taining such information as the Director may require.

3 “(f) DISSEMINATION.—The Center shall—

4 “(1) synthesize and disseminate, through the
 5 National Center for Education Evaluation and Re-
 6 gional Assistance, the findings and results of special
 7 education research conducted or supported by the
 8 Center; and

9 “(2) assist the Director in the preparation of a
 10 biennial report, as described in section 119 of the
 11 Education Sciences Reform Act of 2003.

12 “(g) AUTHORIZATION OF APPROPRIATIONS.—There
 13 are authorized to be appropriated to carry out this section
 14 such sums as may be necessary for each of fiscal years
 15 2004 through 2009.

16 **“SEC. 663. TECHNICAL ASSISTANCE, DEMONSTRATION**
 17 **PROJECTS, DISSEMINATION OF INFORMA-**
 18 **TION, AND IMPLEMENTATION OF SCIENTIF-**
 19 **ICALLY BASED RESEARCH.**

20 “(a) IN GENERAL.—From amounts made available
 21 under section 675, the Secretary, on a competitive basis,
 22 shall award grants to, or enter into contracts or coopera-
 23 tive agreements with, eligible entities to provide technical
 24 assistance, carry out model demonstration projects, dis-

1 seminate useful information, and implement activities that
2 are supported by scientifically based research.

3 “(b) REQUIRED ACTIVITIES.—The Secretary shall
4 support activities to improve services provided under this
5 Act, including the practices of professionals and others in-
6 volved in providing such services to children with disabil-
7 ities, that promote academic achievement and functional
8 performance to improve educational results and functional
9 outcomes for children with disabilities through—

10 “(1) implementing effective strategies that are
11 conducive to learning and for addressing inappro-
12 priate behavior of students with disabilities in
13 schools, including strategies to prevent children with
14 emotional and behavioral problems from developing
15 emotional disturbances that require the provision of
16 special education and related services;

17 “(2) improving the alignment, compatibility,
18 and development of valid and reliable assessment
19 methods, including alternate assessment methods
20 and evaluation methods, for assessing adequately
21 yearly progress as described in section
22 1111(b)(2)(B) of the Elementary and Secondary
23 Education Act of 1965;

24 “(3) providing information to both regular edu-
25 cation teachers and special education teachers to ad-

1 dress the different learning styles and disabilities of
2 students;

3 “(4) disseminating innovative, effective, and ef-
4 ficient curricula, materials (including those that are
5 universally designed), instructional approaches, and
6 strategies that—

7 “(A) support effective transitions between
8 educational settings or from school to post-
9 school settings;

10 “(B) support effective inclusion of students
11 with disabilities in general education settings,
12 especially students with low-incidence disabil-
13 ities; and

14 “(C) improve educational and transitional
15 results at all levels of the educational system in
16 which the activities are carried out and, in par-
17 ticular, that improve the progress of children
18 with disabilities, as measured by assessments
19 within the general education curriculum in-
20 volved; and

21 “(5) demonstrating and applying scientifically-
22 based findings to facilitate systematic changes re-
23 lated to the provision of services to children with dis-
24 abilities.

1 “(c) AUTHORIZED ACTIVITIES.—Activities that may
2 be carried out under this section include activities to im-
3 prove services provided under this Act, including the prac-
4 tices of professionals and others involved in providing such
5 services to children with disabilities, that promote aca-
6 demic achievement and functional outcomes to improve re-
7 sults for children with disabilities through—

8 “(1) applying and testing research findings in
9 typical service settings to determine the usability, ef-
10 fectiveness, and general applicability of those find-
11 ings in such areas as improving instructional meth-
12 ods, curricula, and tools, such as textbooks and
13 media;

14 “(2) demonstrating and applying scientifically-
15 based findings to facilitate systemic changes related
16 to the provision of services to children with disabil-
17 ities, in policy, procedure, practice, and the training
18 and use of personnel;

19 “(3) supporting and promoting the coordination
20 of early intervention, education, and transitional
21 services for children with disabilities with services
22 provided by health, rehabilitation, and social service
23 agencies;

24 “(4) promoting improved alignment and com-
25 patibility of general and special education reforms

1 concerned with curriculum and instructional reform,
2 and evaluating of such reforms;

3 “(5) enabling professionals, parents of children
4 with disabilities, and other persons, to learn about,
5 and implement, the findings of scientifically based
6 research and effective practices developed in model
7 demonstration projects, relating to the provision of
8 services to children with disabilities;

9 “(6) disseminating information relating to suc-
10 cessful approaches to overcoming systemic barriers
11 to the effective and efficient delivery of early inter-
12 vention, educational, and transitional services, to
13 personnel who provide services to children with dis-
14 abilities;

15 “(7) assisting States and local educational
16 agencies with the process of planning systemic
17 changes that will promote improved early interven-
18 tion, educational, and transitional results for chil-
19 dren with disabilities;

20 “(8) promoting change through a multi-State or
21 regional framework that benefits States, local edu-
22 cational agencies, and other participants in partner-
23 ships that are in the process of achieving systemic-
24 change outcomes;

1 “(9) focusing on the needs and issues that are
2 specific to a population of children with disabilities,
3 such as providing single-State and multi-State tech-
4 nical assistance and in-service training—

5 “(A) to schools and agencies serving deaf-
6 blind children and their families;

7 “(B) to programs and agencies serving
8 other groups of children with low-incidence dis-
9 abilities and their families; and

10 “(C) to address the postsecondary edu-
11 cation needs of individuals who are deaf or
12 hard-of-hearing;

13 “(10) demonstrating models of personnel prepa-
14 ration to ensure appropriate placements and services
15 for all students with disabilities and to reduce
16 disproportionality in eligibility, placement, and dis-
17 ciplinary actions for minority and limited English
18 proficient children; and

19 “(11) disseminating information on how to re-
20 duce racial and ethnic disproportionalities.

21 “(d) BALANCE AMONG DISABILITIES AND AGE
22 RANGES.—In carrying out this section, the Secretary shall
23 ensure that there is an appropriate balance across all age
24 ranges and disabilities.

1 “(e) LINKING STATES TO INFORMATION SOURCES.—

2 In carrying out this section, the Secretary may support
3 projects that link States to technical assistance resources,
4 including special education and general education re-
5 sources, and may make research and related products
6 available through libraries, electronic networks, parent
7 training projects, and other information sources.

8 “(f) APPLICATIONS.—

9 “(1) IN GENERAL.—An eligible entity that de-
10 sires to receive a grant, or to enter into a contract
11 or cooperative agreement, under this section shall
12 submit an application to the Secretary at such time,
13 in such manner, and containing such information as
14 the Secretary may require.

15 “(2) CONTENTS.—The Secretary may, as ap-
16 propriate, require eligible entities to demonstrate
17 that the projects described in their applications are
18 supported by scientifically based research that has
19 been carried out in conjunction with the standards
20 for the conduct and evaluation of all research and
21 development established by the National Center for
22 Education Research.

23 “(3) PRIORITY.—As appropriate, the Secretary
24 shall give priority to applications that propose to
25 serve teachers and school personnel directly in the

1 school environment or that strengthen State and
2 local agency capacity to improve instructional prac-
3 tices of personnel to improve educational results for
4 children with disabilities in the school environment.

5 **“SEC. 664. PERSONNEL DEVELOPMENT TO IMPROVE SERV-**
6 **ICES AND RESULTS FOR CHILDREN WITH DIS-**
7 **ABILITIES.**

8 “(a) IN GENERAL.—The Secretary, on a competitive
9 basis, shall award grants to, or enter into contracts or co-
10 operative agreements with, eligible entities—

11 “(1) to help address State identified needs for
12 highly qualified personnel in special education, re-
13 lated services, early intervention, transition, and reg-
14 ular education, to work with children with disabil-
15 ities, consistent with the needs identified in the
16 State plan described in section 653(a)(2) and the
17 standards described in section 612(a)(14);

18 “(2) to ensure that those personnel have the
19 necessary skills and knowledge, derived from prac-
20 tices that have been determined, through scientif-
21 ically based research, to be successful in serving
22 those children;

23 “(3) to encourage increased focus on academics
24 and core content areas in special education per-
25 sonnel preparation programs;

1 “(4) to ensure that regular education teachers
2 have the necessary skills and knowledge to provide
3 instruction to students with disabilities in the reg-
4 ular education classroom;

5 “(5) to ensure that all special education teach-
6 ers teaching in core academic subjects are highly
7 qualified;

8 “(6) to ensure that preservice and in-service
9 personnel preparation programs include training
10 in—

11 “(A) the use of new technologies;

12 “(B) the area of early intervention, edu-
13 cational, and transition services;

14 “(C) effectively involving parents; and

15 “(D) positive behavior supports; and

16 “(7) to provide high-quality professional devel-
17 opment for principals, superintendents, and other
18 administrators, including training in—

19 “(A) instructional leadership;

20 “(B) behavioral supports in the school and
21 classroom;

22 “(C) paperwork reduction;

23 “(D) promoting improved collaboration be-
24 tween special education and general education
25 teachers;

1 “(E) assessment and accountability;

2 “(F) ensuring effective learning environ-
3 ments; and

4 “(G) fostering positive relationships with
5 parents.

6 “(b) PERSONNEL DEVELOPMENT; AUTHORIZED AC-
7 TIVITIES.—

8 “(1) IN GENERAL.—In carrying out this sec-
9 tion, the Secretary shall support activities to prepare
10 personnel, including activities for the preparation of
11 personnel who will serve children with high-incidence
12 and low-incidence disabilities, consistent with the ob-
13 jectives described in subsection (a).

14 “(2) AUTHORIZED ACTIVITIES.—Activities that
15 may be carried out under this subsection include the
16 following:

17 “(A) Supporting collaborative personnel
18 preparation activities undertaken by institutions
19 of higher education, local educational agencies,
20 and other local entities—

21 “(i) to improve and reform their exist-
22 ing programs, to support effective existing
23 programs, to support the development of
24 new programs, and to prepare teachers
25 and related services personnel—

1 “(I) to meet the diverse needs of
2 children with disabilities for early
3 intervention, educational, and transi-
4 tional services; and

5 “(II) to work collaboratively in
6 regular classroom settings; and

7 “(ii) to incorporate best practices and
8 scientifically based research about pre-
9 paring personnel—

10 “(I) so the personnel will have
11 the knowledge and skills to improve
12 educational results for children with
13 disabilities; and

14 “(II) to implement effective
15 teaching strategies and interventions
16 to prevent the misidentification, over-
17 identification, or underidentification
18 of children as having a disability, es-
19 pecially minority and limited English
20 proficient children.

21 “(B) Developing, evaluating, and dissemi-
22 nating innovative models for the recruitment,
23 induction, retention, and assessment of highly
24 qualified teachers to reduce shortages in per-
25 sonnel.

1 “(C) Providing continuous personnel prep-
2 aration, training, and professional development
3 designed to provide support and ensure reten-
4 tion of teachers and personnel who teach and
5 provide related services to children with disabil-
6 ities.

7 “(D) Developing and improving programs
8 for paraprofessionals to become special edu-
9 cation teachers, related services personnel, and
10 early intervention personnel, including inter-
11 disciplinary training to enable the paraprofes-
12 sionals to improve early intervention, edu-
13 cational, and transitional results for children
14 with disabilities.

15 “(E) Demonstrating models for the prepa-
16 ration of, and interdisciplinary training of, early
17 intervention, special education, and general edu-
18 cation personnel, to enable the personnel to ac-
19 quire the collaboration skills necessary to work
20 within teams and to improve results for chil-
21 dren with disabilities, particularly within the
22 general education curriculum.

23 “(F) Promoting effective parental involve-
24 ment practices to enable the personnel to work

1 with parents and involve parents in the edu-
2 cation of such parents' children.

3 “(G) Promoting the transferability, across
4 State and local jurisdictions, of licensure and
5 certification of teachers and administrators
6 working with such children.

7 “(H) Developing and disseminating models
8 that prepare teachers with strategies, including
9 positive behavioral interventions, for addressing
10 the conduct of children with disabilities that im-
11 pedes their learning and that of others in the
12 classroom.

13 “(I) Developing and improving programs
14 to enhance the ability of general education
15 teachers, principals, school administrators, and
16 school board members to improve results for
17 children with disabilities.

18 “(J) Supporting institutions of higher edu-
19 cation with minority enrollments of at least 25
20 percent for the purpose of preparing personnel
21 to work with children with disabilities.

22 “(K) Preparing personnel to work in high
23 need elementary schools and secondary schools,
24 including urban schools, rural schools, and
25 schools operated by an entity described in sec-

1 tion 7113(d)(1)(A)(ii) of the Elementary and
 2 Secondary Education Act of 1965, and schools
 3 that serve high numbers or percentages of lim-
 4 ited English proficient children.

5 “(L) Developing, evaluating, and dissemi-
 6 nating innovative models for the recruitment,
 7 induction, retention, and assessment of new,
 8 qualified teachers, especially from groups that
 9 are underrepresented in the teaching profession,
 10 including individuals with disabilities.

11 “(c) LOW INCIDENCE DISABILITIES; AUTHORIZED
 12 ACTIVITIES.—

13 “(1) IN GENERAL.—In carrying out this sec-
 14 tion, the Secretary shall support activities, consistent
 15 with the objectives described in subsection (a), that
 16 benefit children with low incidence disabilities.

17 “(2) AUTHORIZED ACTIVITIES.—Activities that
 18 may be carried out under this subsection include ac-
 19 tivities such as the following:

20 “(A) Preparing persons who—

21 “(i) have prior training in educational
 22 and other related service fields; and

23 “(ii) are studying to obtain degrees,
 24 certificates, or licensure that will enable
 25 the persons to assist children with low inci-

1 dence disabilities to achieve the objectives
 2 set out in their individualized education
 3 programs described in section 614(d), or to
 4 assist infants and toddlers with low inci-
 5 dence disabilities to achieve the outcomes
 6 described in their individualized family
 7 service plans described in section 636.

8 “(B) Providing personnel from various dis-
 9 ciplines with interdisciplinary training that will
 10 contribute to improvement in early intervention,
 11 educational, and transitional results for children
 12 with low incidence disabilities.

13 “(C) Preparing personnel in the innovative
 14 uses and application of technology, including
 15 universally designed technologies, assistive tech-
 16 nology devices, and assistive technology serv-
 17 ices—

18 “(i) to enhance learning by children
 19 with low incidence disabilities through
 20 early intervention, educational, and transi-
 21 tional services; and

22 “(ii) to improve communication with
 23 parents.

24 “(D) Preparing personnel who provide
 25 services to visually impaired or blind children to

1 teach and use Braille in the provision of serv-
2 ices to such children.

3 “(E) Preparing personnel to be qualified
4 educational interpreters, to assist children with
5 low incidence disabilities, particularly deaf and
6 hard of hearing children in school and school
7 related activities, and deaf and hard of hearing
8 infants and toddlers and preschool children in
9 early intervention and preschool programs.

10 “(F) Preparing personnel who provide
11 services to children with significant cognitive
12 disabilities and children with multiple disabil-
13 ities.

14 “(3) DEFINITION.—As used in this section, the
15 term ‘low incidence disability’ means—

16 “(A) a visual or hearing impairment, or si-
17 multaneous visual and hearing impairments;

18 “(B) a significant cognitive impairment; or

19 “(C) any impairment for which a small
20 number of personnel with highly specialized
21 skills and knowledge are needed in order for
22 children with that impairment to receive early
23 intervention services or a free appropriate pub-
24 lic 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 “(1) IN GENERAL.—In carrying out this sec-
2 tion, the Secretary shall support leadership prepara-
3 tion activities that are consistent with the objectives
4 described in subsection (a).

5 “(2) AUTHORIZED ACTIVITIES.—Activities that
6 may be carried out under this subsection include ac-
7 tivities such as the following:

8 “(A) Preparing personnel at the graduate,
9 doctoral, and postdoctoral levels of training to
10 administer, enhance, or provide services to im-
11 prove results for children with disabilities.

12 “(B) Providing interdisciplinary training
13 for various types of leadership personnel, in-
14 cluding teacher preparation faculty, administra-
15 tors, researchers, supervisors, principals, related
16 services personnel, and other persons whose
17 work affects early intervention, educational, and
18 transitional services for children with disabil-
19 ities.

20 “(e) ENHANCED SUPPORT AND TRAINING FOR BE-
21 GINNING SPECIAL EDUCATORS; AUTHORIZED ACTIVI-
22 TIES.—

23 “(1) IN GENERAL.—In carrying out this sec-
24 tion, 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

1 with disabilities to meet academic achievement
2 standards.

3 “(f) TRAINING TO SUPPORT GENERAL EDUCATORS;
4 AUTHORIZED ACTIVITIES.—

5 “(1) IN GENERAL.—In carrying out this sec-
6 tion, the Secretary shall support personnel prepara-
7 tion activities that are consistent with the objectives
8 described in subsection (a).

9 “(2) AUTHORIZED ACTIVITIES.—Activities that
10 may be carried out under this subsection include—

11 “(A) high quality professional development
12 for general educators that develops the knowl-
13 edge and skills, and enhances the ability, of
14 general educators to—

15 “(i) utilize classroom-based techniques
16 to identify students who may be eligible for
17 special education services, and deliver in-
18 struction in a way that meets the individ-
19 ualized needs of children with disabilities
20 through appropriate supports, accommoda-
21 tions, and curriculum modifications;

22 “(ii) utilize classroom-based tech-
23 niques, such as scientifically based reading
24 instruction;

1 “(iii) work collaboratively with special
2 education teachers and related services
3 personnel;

4 “(iv) implement strategies, such as
5 positive behavioral interventions—

6 “(I) to address the behavior of
7 children with disabilities that impedes
8 the learning of such children and oth-
9 ers; or

10 “(II) to prevent children from
11 being misidentified as children with
12 disabilities;

13 “(v) prepare children with disabilities
14 to participate in statewide assessments
15 (with and without accommodations) and
16 alternative assessment, as appropriate;

17 “(vi) develop effective practices for en-
18 suring that all children with disabilities are
19 a part of all accountability systems under
20 the Elementary and Secondary Education
21 Act of 1965;

22 “(vii) work with and involve parents
23 of children with disabilities in their child’s
24 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

1 cooperative agreement, under this section shall sub-
2 mit an application to the Secretary at such time, in
3 such manner, and containing such information as
4 the Secretary may require.

5 “(2) IDENTIFIED STATE NEEDS.—

6 “(A) REQUIREMENT TO ADDRESS IDENTI-
7 FIED NEEDS.—Any application under sub-
8 section (b), (c), (d), (e), or (f) shall include in-
9 formation demonstrating to the satisfaction of
10 the Secretary that the activities described in the
11 application will address needs identified by the
12 State or States the applicant proposes to serve,
13 consistent with the needs identified in the State
14 plan described in section 653(a)(2).

15 “(B) COOPERATION WITH STATE EDU-
16 CATIONAL AGENCIES.—Any applicant that is
17 not a local educational agency or a State edu-
18 cational agency shall include in the application
19 information demonstrating to the satisfaction of
20 the Secretary that the applicant and 1 or more
21 State educational agencies have engaged in a
22 cooperative effort to carry out and monitor the
23 project to be assisted.

24 “(3) ACCEPTANCE BY STATES OF PERSONNEL
25 PREPARATION REQUIREMENTS.—The Secretary may

1 require applicants to provide assurances from 1 or
2 more States that such States—

3 “(A) intend to accept successful completion
4 of the proposed personnel preparation program
5 as meeting State personnel standards for serv-
6 ing children with disabilities or serving infants
7 and toddlers with disabilities; and

8 “(B) need personnel in the area or areas
9 in which the applicant proposes to provide prep-
10 aration, as identified in the States’ comprehen-
11 sive systems of personnel development under
12 parts B and C.

13 “(h) SELECTION OF RECIPIENTS.—

14 “(1) IMPACT OF PROJECT.—In selecting award
15 recipients under this section, the Secretary shall con-
16 sider the impact of the proposed project described in
17 the application in meeting the need for personnel
18 identified by the States.

19 “(2) REQUIREMENT FOR APPLICANTS TO MEET
20 STATE AND PROFESSIONAL STANDARDS.—The Sec-
21 retary shall make grants and enter into contracts
22 and cooperative agreements under this section only
23 to eligible applicants that meet State and profes-
24 sionally recognized standards for the preparation of
25 special education and related services personnel, if

1 the purpose of the project is to assist personnel in
2 obtaining degrees.

3 “(3) PREFERENCES.—In selecting recipients
4 under this section, the Secretary may give preference
5 to institutions of higher education that are—

6 “(A) educating regular education personnel
7 to meet the needs of children with disabilities in
8 integrated settings;

9 “(B) educating special education personnel
10 to work in collaboration with regular educators
11 in integrated settings; and

12 “(C) successfully recruiting and preparing
13 individuals with disabilities and individuals
14 from groups that are underrepresented in the
15 profession for which the institution of higher
16 education is preparing individuals.

17 “(i) SERVICE OBLIGATION.—Each application for
18 funds under subsections (b), (c), (d), and (e) shall include
19 an assurance that the applicant will ensure that individ-
20 uals who receive a scholarship under the proposed project
21 will subsequently provide special education and related
22 services to children with disabilities for a period of 1 year
23 for every year for which assistance was received, or repay
24 all or part of the cost of that assistance, in accordance
25 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—

1 “(A) a free appropriate public education to
2 children with disabilities; and

3 “(B) early intervention services to infants
4 and toddlers with disabilities, and infants and
5 toddlers who would be at risk of having sub-
6 stantial developmental delays if early interven-
7 tion services were not provided to them.

8 “(b) NATIONAL ASSESSMENT.—

9 “(1) IN GENERAL.—The Secretary shall carry
10 out a national assessment of activities carried out
11 with Federal funds under this Act in order—

12 “(A) to determine the effectiveness of this
13 Act in achieving its purposes;

14 “(B) to provide timely information to the
15 President, Congress, the States, local edu-
16 cational agencies, and the public on how to im-
17 plement this Act more effectively; and

18 “(C) to provide the President and Con-
19 gress with information that will be useful in de-
20 veloping legislation to achieve the purposes of
21 this Act more effectively.

22 “(2) CONSULTATION.—The Secretary shall
23 plan, review, and conduct the national assessment
24 under this subsection in consultation with research-
25 ers, State practitioners, local practitioners, parents

1 of children with disabilities, and other appropriate
2 individuals.

3 “(3) SCOPE OF ASSESSMENT.—The national as-
4 sessment shall assess the—

5 “(A) implementation of programs assisted
6 under this Act and the impact of those pro-
7 grams on addressing the developmental, edu-
8 cational, and transitional needs of, and improv-
9 ing the academic achievement and functional
10 outcomes of, children with disabilities to enable
11 the children to reach challenging developmental
12 goals and challenging State academic content
13 standards based on State academic assess-
14 ments, including alternative assessments;

15 “(B) types of programs and services that
16 have demonstrated the greatest likelihood of
17 helping students reach the challenging State
18 academic content standards and developmental
19 goals;

20 “(C) implementation of the personal prepa-
21 ration professional development activities as-
22 sisted under this Act and the impact on instruc-
23 tion, student academic achievement, and teach-
24 er qualifications to enhance the ability of spe-
25 cial education teachers and regular education

1 teachers to improve results for children with
2 disabilities; and

3 “(D) effectiveness of schools, local edu-
4 cational agencies, States, and other recipients
5 of assistance under this Act, in achieving the
6 purposes of this Act in—

7 “(i) improving the academic achieve-
8 ment of children with disabilities and their
9 performance on regular statewide assess-
10 ments, and the performance of children
11 with disabilities on alternate assessments;

12 “(ii) improving the participation rate
13 of children with disabilities in the general
14 education curriculum;

15 “(iii) improving the transitions of chil-
16 dren with disabilities at natural transition
17 points;

18 “(iv) placing and serving children with
19 disabilities, including minority children, in
20 the least restrictive environment appro-
21 priate;

22 “(v) preventing children with disabil-
23 ities, especially children with emotional dis-
24 turbances and specific learning disabilities,
25 from dropping out of school;

1 “(vi) addressing the reading and lit-
2 eracy needs of children with disabilities;

3 “(vii) coordinating services provided
4 under this Act with each other, with other
5 educational and pupil services (including
6 preschool services), and with health and
7 social services funded from other sources;

8 “(viii) improving the participation of
9 parents of children with disabilities in the
10 education of their children;

11 “(ix) resolving disagreements between
12 education personnel and parents through
13 alternate dispute resolution activities in-
14 cluding mediation and voluntary binding
15 arbitration; and

16 “(x) reducing the misidentification of
17 children, especially minority and limited
18 English proficient children.

19 “(4) INTERIM AND FINAL REPORTS.—The Sec-
20 retary shall submit to the President and Congress—

21 “(A) an interim report that summarizes
22 the preliminary findings of the national assess-
23 ment not later than 3 years after the date of
24 enactment of the Individuals with Disabilities
25 Education Improvement Act of 2003; and

1 “(B) a final report of the findings of the
2 assessment not later than 5 years after the date
3 of enactment of the Individual with Disabilities
4 Education Improvement Act of 2003.

5 “(c) STUDY ON ENSURING ACCOUNTABILITY FOR
6 STUDENTS WITH SIGNIFICANT DISABILITIES.—The Sec-
7 retary shall carry out a national study or studies to exam-
8 ine—

9 “(1) the criteria that States use to determine
10 eligibility for alternate assessments and the number
11 and type of children who take those assessments;

12 “(2) the validity and reliability of alternate as-
13 sessment instruments and procedures;

14 “(3) the alignment of alternate assessments
15 with State academic content and achievement stand-
16 ards or with alternate academic achievement stand-
17 ards; and

18 “(4) the use and effectiveness of alternate as-
19 sessments in appropriately measuring student
20 progress and outcomes specific to individualized in-
21 structional need.

22 “(d) ANNUAL REPORT.—The Secretary shall provide
23 an annual report to Congress that—

24 “(1) summarizes the research conducted under
25 section 662;

1 “(2) analyzes and summarizes the data re-
2 ported by the States and the Secretary of the Inte-
3 rior under section 618;

4 “(3) summarizes the studies and evaluations
5 conducted under this section and the timeline for
6 their completion;

7 “(4) describes the extent and progress of the
8 national assessment; and

9 “(5) describes the findings and determinations
10 resulting from reviews of State implementation of
11 this Act.

12 “(e) AUTHORIZED ACTIVITIES.—In carrying out this
13 subsection, the Secretary may support objective studies,
14 evaluations, and assessments, including studies that—

15 “(1) analyze measurable impact, outcomes, and
16 results achieved by State educational agencies and
17 local educational agencies through their activities to
18 reform policies, procedures, and practices designed
19 to improve educational and transitional services and
20 results for children with disabilities;

21 “(2) analyze State and local needs for profes-
22 sional development, parent training, and other ap-
23 propriate activities that can reduce the need for dis-
24 ciplinary actions involving children with disabilities;

1 “(3) assess educational and transitional services
2 and results for children with disabilities from minor-
3 ity backgrounds, including—

4 “(A) data on—

5 “(i) the number of minority children
6 who are referred for special education eval-
7 uation;

8 “(ii) the number of minority children
9 who are receiving special education and re-
10 lated services and their educational or
11 other service placement;

12 “(iii) the number of minority children
13 who graduated from secondary programs
14 with a regular diploma in the standard
15 number of years; and

16 “(iv) the number of minority children
17 who drop out of the educational system;
18 and

19 “(B) the performance of children with dis-
20 abilities from minority backgrounds on State
21 assessments and other performance indicators
22 established for all students;

23 “(4) measure educational and transitional serv-
24 ices and results of children with disabilities served
25 under this Act, including longitudinal studies that—

1 “(A) examine educational and transitional
2 services and results for children with disabilities
3 who are 3 through 17 years of age and are re-
4 ceiving special education and related services
5 under this Act, using a national, representative
6 sample of distinct age cohorts and disability
7 categories; and

8 “(B) examine educational results, transi-
9 tion services, postsecondary placement, and em-
10 ployment status of individuals with disabilities,
11 18 through 21 years of age, who are receiving
12 or have received special education and related
13 services under this Act; and

14 “(5) identify and report on the placement of
15 children with disabilities by disability category.

16 “(f) RESERVATION FOR STUDIES AND TECHNICAL
17 ASSISTANCE.—

18 “(1) IN GENERAL.—Except as provided in para-
19 graph (2) and notwithstanding any other provision
20 of this Act, the Secretary may reserve not more than
21 $\frac{1}{2}$ of 1 percent of the amount appropriated under
22 parts B and C for each fiscal year to carry out this
23 section, of which \$3,000,000 shall be available to
24 carry out subsection (c).

1 “(2) MAXIMUM AMOUNT.—For the first fiscal
 2 year for which the amount described in paragraph
 3 (1) is at least \$40,000,000, the maximum amount
 4 the Secretary may reserve under paragraph (1), is
 5 \$40,000,000. For each subsequent fiscal year, the
 6 maximum amount the Secretary may reserve under
 7 paragraph (1) is \$40,000,000, increased by the cu-
 8 mulative rate of inflation since the fiscal year de-
 9 scribed in the previous sentence.

10 “(3) USE OF MAXIMUM AMOUNT.—In any fiscal
 11 year described in paragraph (2) for which the Sec-
 12 retary reserves the maximum amount described in
 13 that paragraph, the Secretary shall use at least $\frac{1}{2}$
 14 of the reserved amount for activities under sub-
 15 section (d).

16 **“Subpart 3—Supports To Improve Results for**
 17 **Children With Disabilities**

18 **“SEC. 670. PURPOSES.**

19 “The purposes of this subpart are to ensure that—

20 “(1) children with disabilities and their parents
 21 receive training and information on their rights, re-
 22 sponsibilities, and protections under this Act, in
 23 order to develop the skills necessary to cooperatively
 24 and effectively participate in planning and decision

1 making relating to early intervention, educational,
2 and transitional services;

3 “(2) parents, teachers, administrators, early
4 intervention personnel, related services personnel,
5 and transition personnel receive coordinated and ac-
6 cessible technical assistance and information to as-
7 sist them in improving early intervention, edu-
8 cational, and transitional services and results for
9 children with disabilities and their families; and

10 “(3) appropriate technology and media are re-
11 searched, developed, and demonstrated, to improve
12 and implement early intervention, educational, and
13 transitional services and results for children with
14 disabilities and their families.

15 **“SEC. 671. PARENT TRAINING AND INFORMATION CENTERS.**

16 “(a) PROGRAM AUTHORIZED.—The Secretary may
17 award grants to, and enter into contracts and cooperative
18 agreements with, parent organizations to support parent
19 training and information centers to carry out activities
20 under this section.

21 “(b) REQUIRED ACTIVITIES.—Each parent training
22 and information center that receives assistance under this
23 section shall—

24 “(1) provide training and information that
25 meets the needs of parents of children with disabil-

1 ities living in the area served by the center, particu-
2 larly underserved parents and parents of children
3 who may be inappropriately identified, to enable
4 their children with disabilities to—

5 “(A) meet developmental and functional
6 goals, and challenging academic achievement
7 goals that have been established for all children;
8 and

9 “(B) be prepared to lead productive inde-
10 pendent adult lives, to the maximum extent pos-
11 sible;

12 “(2) serve the parents of infants, toddlers, and
13 children with the full range of disabilities described
14 in section 602(3);

15 “(3) assist parents to—

16 “(A) better understand the nature of their
17 children’s disabilities and their educational, de-
18 velopmental, and transitional needs;

19 “(B) communicate effectively and work col-
20 laboratively with personnel responsible for pro-
21 viding special education, early intervention,
22 transition services, and related services;

23 “(C) participate in decisionmaking proc-
24 esses and the development of individualized

1 education programs under part B and individ-
2 ualized family service plans under part C;

3 “(D) obtain appropriate information about
4 the range, type, and quality of options, pro-
5 grams, services, technologies, and research
6 based practices and interventions, and resources
7 available to assist children with disabilities and
8 their families in school and at home;

9 “(E) understand the provisions of this Act
10 for the education of, and the provision of early
11 intervention services to, children with disabil-
12 ities; and

13 “(F) participate in school reform activities;

14 “(4) in States where the State elects to contract
15 with the parent training and information center,
16 contract with State educational agencies to provide,
17 consistent with subparagraphs (B) and (D) of sec-
18 tion 615(e)(2), individuals who meet with parents to
19 explain the mediation process to the parents;

20 “(5) assist parents in resolving disputes in the
21 most expeditious and effective way possible, includ-
22 ing encouraging the use, and explaining the benefits,
23 of alternative methods of dispute resolution, such as
24 the mediation process described in section 615(e);

1 “(6) assist parents and students with disabil-
2 ities to understand their rights and responsibilities
3 under this Act, including those under section 615(m)
4 on the student’s reaching the age of majority;

5 “(7) assist parents to understand the avail-
6 ability of, and how to effectively use, procedural
7 safeguards under this Act;

8 “(8) assist parents in understanding, preparing
9 for, and participating in, the process described in
10 section 615(f)(1)(B);

11 “(9) network with appropriate clearinghouses,
12 including organizations conducting national dissemi-
13 nation activities under section 663, and with other
14 national, State, and local organizations and agen-
15 cies, such as protection and advocacy agencies, that
16 serve parents and families of children with the full
17 range of disabilities described in section 602(3); and

18 “(10) annually report to the Secretary on—

19 “(A) the number and demographics of par-
20 ents to whom the center provided information
21 and training in the most recently concluded fis-
22 cal year;

23 “(B) the effectiveness of strategies used to
24 reach and serve parents, including underserved
25 parents of children with disabilities; and

1 “(C) the number of parents served who
2 have resolved disputes through alternative
3 methods of dispute resolution.

4 “(c) OPTIONAL ACTIVITIES.—A parent training and
5 information center that receives assistance under this sec-
6 tion may provide information to teachers and other profes-
7 sionals to assist the teachers and professionals in improv-
8 ing results for children with disabilities.

9 “(d) APPLICATION REQUIREMENTS.—Each applica-
10 tion for assistance under this section shall identify with
11 specificity the special efforts that the parent organization
12 will undertake—

13 “(1) to ensure that the needs for training and
14 information of underserved parents of children with
15 disabilities in the area to be served are effectively
16 met; and

17 “(2) to work with community based organiza-
18 tions.

19 “(e) DISTRIBUTION OF FUNDS.—

20 “(1) IN GENERAL.—The Secretary shall—

21 “(A) make at least 1 award to a parent or-
22 ganization in each State for a parent training
23 and information center which is designated as
24 the statewide parent training and information
25 center; or

1 “(B) in the case of a large State, make
2 awards to multiple parent training and informa-
3 tion centers, but only if the centers demonstrate
4 that coordinated services and supports will
5 occur among the multiple centers.

6 “(2) SELECTION REQUIREMENT.—The Sec-
7 retary shall select among applications submitted by
8 parent organizations in a State in a manner that en-
9 sures the most effective assistance to parents, in-
10 cluding parents in urban and rural areas, in the
11 State.

12 “(f) QUARTERLY REVIEW.—

13 “(1) MEETINGS.—The board of directors of
14 each parent organization that receives an award
15 under this section shall meet at least once in each
16 calendar quarter to review the activities for which
17 the award was made.

18 “(2) CONTINUATION AWARD.—When an organi-
19 zation requests a continuation award under this sec-
20 tion, the board of directors shall submit to the Sec-
21 retary a written review of the parent training and
22 information program conducted by the organization
23 during the preceding fiscal year.

24 “(g) DEFINITION OF PARENT ORGANIZATION.—As
25 used in this section, the term ‘parent organization’ means

1 a private nonprofit organization (other than an institution
2 of higher education) that has a board of directors—

3 “(1) the majority of whom are parents of chil-
4 dren with disabilities ages birth through 26;

5 “(2) that includes—

6 “(A) individuals working in the fields of
7 special education, related services, and early
8 intervention; and

9 “(B) individuals with disabilities;

10 “(3) the parent and professional members of
11 which are broadly representative of the population to
12 be served; and

13 “(4) has as its mission serving families of chil-
14 dren and youth with disabilities who—

15 “(A) are ages birth through 26; and

16 “(B) have the full range of disabilities de-
17 scribed in section 602(3).

18 **“SEC. 672. COMMUNITY PARENT RESOURCE CENTERS.**

19 “(a) IN GENERAL.—The Secretary may award grants
20 to, and enter into contracts and cooperative agreements
21 with, local parent organizations to support parent training
22 and information centers that will help ensure that under-
23 served parents of children with disabilities, including low
24 income parents, parents of children with limited English
25 proficiency, and parents with disabilities, have the training

1 and information the parents need to enable the parents
2 to participate effectively in helping their children with dis-
3 abilities—

4 “(1) to meet developmental and functional
5 goals, and challenging academic achievement goals
6 that have been established for all children; and

7 “(2) to be prepared to lead productive inde-
8 pendent adult lives, to the maximum extent possible.

9 “(b) REQUIRED ACTIVITIES.—Each community par-
10 ent resource center assisted under this section shall—

11 “(1) provide training and information that
12 meets the training and information needs of parents
13 of children with disabilities proposed to be served by
14 the grant, contract, or cooperative agreement;

15 “(2) carry out the activities required of parent
16 training and information centers under paragraphs
17 (2) through (9) of section 671(b);

18 “(3) establish cooperative partnerships with the
19 parent training and information centers funded
20 under section 671; and

21 “(4) be designed to meet the specific needs of
22 families who experience significant isolation from
23 available sources of information and support.

1 “(c) DEFINITION.—As used in this section, the term
 2 ‘local parent organization’ means a parent organization,
 3 as defined in section 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-

1 rative efforts among award recipients under sections
 2 671 and 672;

3 “(2) dissemination of information, scientifically
 4 based research, and research based practices and
 5 interventions;

6 “(3) promotion of the use of technology, includ-
 7 ing universal designed technologies, assistive tech-
 8 nology devices, and assistive technology services;

9 “(4) reaching underserved populations;

10 “(5) including children with disabilities in gen-
 11 eral education programs;

12 “(6) facilitation of transitions from—

13 “(A) early intervention services to pre-
 14 school;

15 “(B) preschool to elementary school;

16 “(C) elementary school to secondary
 17 school; and

18 “(D) secondary school to postsecondary en-
 19 vironments; and

20 “(7) promotion of alternative methods of dis-
 21 pute resolution, including mediation.

22 **“SEC. 674. TECHNOLOGY DEVELOPMENT, DEMONSTRATION,**
 23 **AND UTILIZATION; AND MEDIA SERVICES.**

24 “(a) IN GENERAL.—The Secretary, on a competitive
 25 basis, shall award grants to, and enter into contracts and

1 cooperative agreements with, eligible entities to support
2 activities described in subsections (b) and (c).

3 “(b) TECHNOLOGY DEVELOPMENT, DEMONSTRA-
4 TION, AND USE.—

5 “(1) IN GENERAL.—In carrying out this sec-
6 tion, the Secretary shall support activities to pro-
7 mote the development, demonstration, and use of
8 technology.

9 “(2) AUTHORIZED ACTIVITIES.—The following
10 activities may be carried out under this subsection:

11 “(A) Conducting research on and pro-
12 moting the demonstration and use of innova-
13 tive, emerging, and universally designed tech-
14 nologies for children with disabilities, by im-
15 proving the transfer of technology from re-
16 search and development to practice.

17 “(B) Supporting research, development,
18 and dissemination of technology with universal
19 design features, so that the technology is acces-
20 sible to the broadest range of individuals with
21 disabilities without further modification or ad-
22 aptation.

23 “(C) Demonstrating the use of systems to
24 provide parents and teachers with information
25 and training concerning early diagnosis of,

1 intervention for, and effective teaching strate-
2 gies for, young children with reading disabil-
3 ities.

4 “(D) Supporting the use of Internet-based
5 communications for students with cognitive dis-
6 abilities in order to maximize their academic
7 and functional skills.

8 “(c) EDUCATIONAL MEDIA SERVICES; OPTIONAL AC-
9 TIVITIES.—In carrying out this section, the Secretary may
10 support—

11 “(1) educational media activities that are de-
12 signed to be of educational value in the classroom
13 setting to children with disabilities;

14 “(2) providing (A) video description, (B) open
15 captioning, (C) closed captioning of television pro-
16 grams, videos, or other materials appropriate for use
17 in the classroom setting, or (D) news (but news only
18 until September 30, 2006), when such services are
19 not provided by the producer or distributor of such
20 information, materials, or news, including programs
21 and materials associated with new and emerging
22 technologies, such as CDs, DVDs, video streaming,
23 and other forms of multimedia;

1 “(3) distributing materials described in para-
2 graphs (1) and (2) through such mechanisms as a
3 loan service; and

4 “(4) providing free educational materials, in-
5 cluding textbooks, in accessible media for visually
6 impaired and print disabled students in elementary
7 schools and secondary schools.

8 “(d) APPLICATIONS.—Any eligible entity that wishes
9 to receive a grant, or enter into a contract or cooperative
10 agreement, under this section shall submit an application
11 to the Secretary at such time, in such manner, and con-
12 taining such information as the Secretary may require.

13 “(e) AUTHORIZATION OF APPROPRIATIONS.—There
14 are authorized to be appropriated to carry out this section
15 such sums as may be necessary for each of the fiscal years
16 2004 through 2009.

17 **“SEC. 675. AUTHORIZATION OF APPROPRIATIONS.**

18 ““There are authorized to be appropriated to carry out
19 sections 671, 672, 673, and 663 such sums as may be
20 necessary for each of the fiscal years 2004 through 2009.

1 **“Subpart 4—Interim Alternative Educational Set-**
2 **tings, Behavioral Supports, and Whole School**
3 **Interventions**

4 **“SEC. 681. PURPOSE.**

5 “The purpose of this subpart is to authorize re-
6 sources to foster a safe learning environment that sup-
7 ports academic achievement for all students by improving
8 the quality of interim alternative educational settings, pro-
9 viding more behavioral supports in schools, and supporting
10 whole school interventions.

11 **“SEC. 682. DEFINITION OF ELIGIBLE ENTITY.**

12 “In this subpart, the term ‘eligible entity’ means—

13 “(1) a local educational agency; or

14 “(2) a consortium consisting of a local edu-
15 cational agency and 1 or more of the following enti-
16 ties:

17 “(A) another local educational agency;

18 “(B) a community-based organization with
19 a demonstrated record of effectiveness in help-
20 ing special needs students with behavioral chal-
21 lenges succeed;

22 “(C) an institution of higher education;

23 “(D) a mental health provider; or

24 “(E) an educational service agency.

1 **“SEC. 683. PROGRAM AUTHORIZED.**

2 “The Secretary is authorized to award grants, on a
3 competitive basis, to eligible entities to enable the eligible
4 entities—

5 “(1) to establish or expand behavioral supports
6 and whole school behavioral interventions by pro-
7 viding for effective, research-based practices, includ-
8 ing—

9 “(A) comprehensive, early screening efforts
10 for students at risk for emotional and behav-
11 ioral difficulties;

12 “(B) training for school staff on early
13 identification, prereferral, and referral proce-
14 dures;

15 “(C) training for administrators, teachers,
16 related services personnel, behavioral specialists,
17 and other school staff in whole school positive
18 behavioral interventions and supports, behav-
19 ioral intervention planning, and classroom and
20 student management techniques;

21 “(D) joint training for administrators, par-
22 ents, teachers, related services personnel, behav-
23 ioral specialists, and other school staff on effec-
24 tive strategies for positive behavioral interven-
25 tions and behavior management strategies that
26 focus on the prevention of behavior problems;

1 “(E) developing or implementing specific
 2 curricula, programs, or interventions aimed at
 3 addressing behavioral problems;

4 “(F) stronger linkages between school-
 5 based services and community-based resources,
 6 such as community mental health and primary
 7 care providers; or

8 “(G) using behavioral specialists, related
 9 services personnel, and other staff necessary to
 10 implement behavioral supports; or

11 “(2) to improve interim alternative educational
 12 settings by—

13 “(A) improving the training of administra-
 14 tors, teachers, related services personnel, behav-
 15 ioral specialists, and other school staff (includ-
 16 ing ongoing mentoring of new teachers);

17 “(B) attracting and retaining a high qual-
 18 ity, diverse staff;

19 “(C) providing for on-site counseling serv-
 20 ices;

21 “(D) utilizing research-based interventions,
 22 curriculum, and practices;

23 “(E) allowing students to use instructional
 24 technology that provides individualized instruc-
 25 tion;

1 “(F) ensuring that the services are fully
2 consistent with the goals of the individual stu-
3 dent’s IEP;

4 “(G) promoting effective case management
5 and collaboration among parents, teachers, phy-
6 sicians, related services personnel, behavioral
7 specialists, principals, administrators, and other
8 school staff;

9 “(H) promoting interagency coordination
10 and coordinated service delivery among schools,
11 juvenile courts, child welfare agencies, commu-
12 nity mental health providers, primary care pro-
13 viders, public recreation agencies, and commu-
14 nity-based organizations; or

15 “(I) providing for behavioral specialists to
16 help students transitioning from interim alter-
17 native educational settings reintegrate into their
18 regular classrooms.

19 **“SEC. 684. PROGRAM EVALUATIONS.**

20 “(a) REPORT AND EVALUATION.—Each eligible enti-
21 ty receiving a grant under this subpart shall prepare and
22 submit annually to the Secretary a report on the outcomes
23 of the activities assisted under the grant.

24 “(b) BEST PRACTICES ON WEB SITE.—The Sec-
25 retary shall make available on the Department’s web site

1 information for parents, teachers, and school administra-
 2 tors on best practices for interim alternative educational
 3 settings, behavior supports, and whole school intervention.

4 **“SEC. 685. AUTHORIZATION OF APPROPRIATIONS.**

5 “There are authorized to be appropriated to carry out
 6 this subpart \$50,000,000 for fiscal year 2004 and such
 7 sums as may be necessary for each of the 5 succeeding
 8 fiscal years.”.

9 **TITLE II—REHABILITATION ACT**
 10 **OF 1973**

11 **SEC. 201. FINDINGS.**

12 Section 2(a) of the Rehabilitation Act of 1973 (29
 13 U.S.C. 701(a)) is amended—

14 (1) in paragraph (5), by striking “and” at the
 15 end;

16 (2) in paragraph (6), by striking the period and
 17 inserting “; and”; and

18 (3) by adding at the end the following:

19 “(7) there is a substantial need to improve and
 20 expand services for students with disabilities under
 21 this Act.”.

22 **SEC. 202. DEFINITIONS.**

23 Section 7 of the Rehabilitation Act of 1973 (29
 24 U.S.C. 705) is amended—

1 (1) by redesignating paragraphs (35) through
2 (39) as paragraphs (36) through (40), respectively;
3 (2) in subparagraph (A)(ii) of paragraph (36)
4 (as redesignated in paragraph (1)), by striking
5 “paragraph (36)(C)” and inserting “paragraph
6 (37)(C)”; and

7 (3) by inserting after paragraph (34) the fol-
8 lowing:

9 “(35)(A) The term ‘student with a disability’
10 means an individual with a disability who—

11 “(i) is not younger than 14 and not older
12 than 21;

13 “(ii) has been determined to be eligible
14 under section 102(a) for assistance under this
15 title; and

16 “(iii)(I) is eligible for, and is receiving,
17 special education under part B of the Individ-
18 uals with Disabilities Education Act (29 U.S.C.
19 1411 et seq.); or

20 “(II) is an individual with a disability, for
21 purposes of section 504.

22 “(B) The term ‘students with disabilities’
23 means more than 1 student with a disability.”.

1 **SEC. 203. ADDITIONAL AUTHORIZATION OF APPROPRIA-**
 2 **TIONS.**

3 Section 100 of the Rehabilitation Act of 1973 (29
 4 U.S.C. 720) is amended—

5 (1) by redesignating subsection (d) as sub-
 6 section (e); and

7 (2) by inserting after subsection (c) the fol-
 8 lowing:

9 “(d) **ADDITIONAL AUTHORIZATION OF APPROPRIA-**
 10 **TIONS FOR SERVICES TO STUDENTS WITH DISABIL-**
 11 **ITIES.**—In addition to any funds appropriated under sub-
 12 section (b)(1), there are authorized to be appropriated
 13 such sums as may be necessary for fiscal years 2004
 14 through 2009 to carry out programs and activities under
 15 sections 101(a)(25)(B) and 103(b)(6).”.

16 **SEC. 204. STATE PLAN.**

17 (a) **ASSESSMENT AND STRATEGIES.**—Section
 18 101(a)(15) of the Rehabilitation Act of 1973 (29 U.S.C.
 19 721(a)(15)) is amended—

20 (1) in subparagraph (A)(i)—

21 (A) in subclause (II), by striking “and” at
 22 the end;

23 (B) in subclause (III), by adding “and” at
 24 the end; and

25 (C) by adding at the end the following:

1 “(IV) students with disabilities,
 2 including their need for transition
 3 services;”; and

4 (2) in subparagraph (D)—

5 (A) by redesignating clauses (iii), (iv), and
 6 (v) as clauses (iv), (v), and (vi), respectively;
 7 and

8 (B) by inserting after clause (ii) the fol-
 9 lowing:

10 “(iii) the methods to be used to im-
 11 prove and expand vocational rehabilitation
 12 services for students with disabilities, in-
 13 cluding the coordination of services de-
 14 signed to facilitate the transition of such
 15 students from the receipt of educational
 16 services in school to the receipt of voca-
 17 tional rehabilitation services under this
 18 title.”.

19 (b) SERVICES FOR STUDENTS WITH DISABILITIES.—

20 Section 101(a) of the Rehabilitation Act of 1973 (29
 21 U.S.C. 721(a)) is amended by adding at the end the fol-
 22 lowing:

23 “(25) SERVICES FOR STUDENTS WITH DIS-
 24 ABILITIES.—The State plan shall provide an assur-
 25 ance satisfactory to the Secretary that the State—

1 “(A) has developed and implemented strat-
2 egies to address the needs identified in the as-
3 sessment described in paragraph (15), and
4 achieve the goals and priorities identified by the
5 State, to improve and expand vocational reha-
6 bilitation services for students with disabilities
7 on a statewide basis in accordance with para-
8 graph (15); and

9 “(B) will use funds appropriated under
10 section 100(d) to carry out programs or activi-
11 ties designed to improve and expand vocational
12 rehabilitation services for students with disabil-
13 ities that—

14 “(i) facilitate the transition of the stu-
15 dents with disabilities from the receipt of
16 educational services in school, to the re-
17 ceipt of vocational rehabilitation services
18 under this title, including, at a minimum,
19 those services specified in the interagency
20 agreement required in paragraph (11)(D);

21 “(ii) improve the achievement of post-
22 school goals of students with disabilities,
23 including improving the achievement
24 through attendance at meetings regarding
25 individualized education programs devel-

1 oped under section 614 of the Individuals
2 with Disabilities Education Act (20 U.S.C.
3 1414);

4 “(iii) provide vocational guidance, ca-
5 reer exploration services, and job search
6 skills and strategies and technical assist-
7 ance to students with disabilities;

8 “(iv) support the provision of training
9 and technical assistance to State and local
10 educational agency and designated State
11 agency personnel responsible for the plan-
12 ning and provision of services to students
13 with disabilities; and

14 “(v) support outreach activities to stu-
15 dents with disabilities who are eligible for,
16 and need, services under this title.”.

17 **SEC. 205. SCOPE OF SERVICES.**

18 Section 103 of the Rehabilitation Act of 1973 (29
19 U.S.C. 723) is amended—

20 (1) in subsection (a)(15), by inserting “, includ-
21 ing services described in clauses (i) through (iii) of
22 section 101(a)(25)(B)” before the semicolon; and

23 (2) in subsection (b), by striking paragraph (6)
24 and inserting the following:

1 “(6)(A)(i) Consultation and technical assistance
 2 services to assist State and local educational agen-
 3 cies in planning for the transition of students with
 4 disabilities from school to post-school activities, in-
 5 cluding employment.

6 “(ii) Training and technical assistance de-
 7 scribed in section 101(a)(25)(B)(iv).

8 “(B) Services for groups of individuals with dis-
 9 abilities who meet the requirements of clauses (i)
 10 and (iii) of section 7(35)(A), including services de-
 11 scribed in clauses (i), (ii), (iii), and (v) of section
 12 101(a)(25)(B), to assist in the transition from
 13 school to post-school activities.”.

14 **SEC. 206. STANDARDS AND INDICATORS.**

15 Section 106(a) of the Rehabilitation Act of 1973 (29
 16 U.S.C. 726(a)) is amended by striking paragraph (1)(C)
 17 and all that follows through paragraph (2) and inserting
 18 the following:

19 “(2) MEASURES.—The standards and indica-
 20 tors shall include outcome and related measures of
 21 program performance that—

22 “(A) facilitate the accomplishment of the
 23 purpose and policy of this title;

24 “(B) to the maximum extent practicable,
 25 are consistent with the core indicators of per-

1 formance, and corresponding State adjusted lev-
2 els of performance, established under section
3 136(b) of the Workforce Investment Act of
4 1998 (29 U.S.C. 2871(b)); and

5 “(C) include measures of the program’s
6 performance with respect to the transition to
7 post-school activities, and achievement of the
8 post-school goals, of students with disabilities
9 served under the program.”.

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