

Calendar No. 362108TH CONGRESS
1ST SESSION**S. 1248****[Report No. 108-185]**

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

IN THE SENATE OF THE UNITED STATES

JUNE 12, 2003

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

NOVEMBER 3, 2003

Reported by Mr. GREGG, with an amendment

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

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,*

1 **SECTION 1. SHORT TITLE.**

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

4 **TITLE I—AMENDMENTS TO THE**
5 **INDIVIDUALS WITH DISABIL-**
6 **ITIES EDUCATION ACT**

7 **SEC. 101. AMENDMENTS TO THE INDIVIDUALS WITH DIS-**
8 **ABILITIES EDUCATION ACT.**

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

12 **“PART A—GENERAL PROVISIONS**

13 **“SEC. 601. SHORT TITLE; TABLE OF CONTENTS; FINDINGS;**
14 **PURPOSES.**

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

17 **“(b) TABLE OF CONTENTS.—**The table of contents
18 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-
riations.

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

“PART C—INFANTS AND TODDLERS WITH DISABILITIES

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

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

- “Sec. 650. Findings and purpose.

“SUBPART 1—STATE PERSONNEL PREPARATION AND PROFESSIONAL DEVELOPMENT GRANTS

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

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

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

“SUBPART 3—SUPPORTS TO IMPROVE RESULTS FOR CHILDREN WITH DISABILITIES

“Sec. 670. Purposes.

“Sec. 671. Parent training and information centers.

“Sec. 672. Community parent resource centers.

“Sec. 673. Technical assistance for parent training and information centers.

“Sec. 674. Technology development, demonstration, and utilization; and media services.

“Sec. 675. Authorization of appropriations.

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

“Sec. 681. Purpose.

“Sec. 682. Definition of eligible entity.

“Sec. 683. Program authorized.

“Sec. 684. Program evaluations.

“Sec. 685. Authorization of appropriations.

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;

1 “(B) the children were excluded entirely
2 from the public school system and from being
3 educated with their peers;

4 “(C) undiagnosed disabilities prevented the
5 children from having a successful educational
6 experience; or

7 “(D) a lack of adequate resources within
8 the public school system forced families to find
9 services outside the public school system.

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

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

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

1 “(A) having high expectations for such
2 children and ensuring their access to the gen-
3 eral education curriculum in the regular class-
4 room to the maximum extent possible in order
5 to—

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

10 “(ii) be prepared to lead productive
11 and independent adult lives, to the max-
12 imum extent possible;

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

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

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

3 “(D) providing appropriate special edu-
4 cation and related services, and aids and sup-
5 ports in the regular classroom, to such children,
6 whenever appropriate;

7 “(E) supporting high-quality, intensive
8 preservice preparation professional development
9 for all personnel who work with children with
10 disabilities in order to ensure that such per-
11 sonnel have the skills and knowledge necessary
12 to improve the academic achievement and func-
13 tional performance of children with disabilities,
14 including the use of scientifically based instruc-
15 tional practices, to the maximum extent pos-
16 sible;

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

23 “(G) focusing resources on teaching and
24 learning while reducing paperwork and require-

1 ments that do not assist in improving edu-
2 cational results; and

3 “~~(H)~~ supporting the development and use
4 of technology, including assistive technology de-
5 vices and assistive technology services; to maxi-
6 mize accessibility for children with disabilities.

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

15 “~~(7)~~ A more equitable allocation of resources is
16 essential for the Federal Government to meet its re-
17 sponsibility to provide an equal educational oppor-
18 tunity for all individuals.

19 “~~(8)(A)~~ The Federal Government must be re-
20 sponsive to the growing needs of an increasingly
21 more diverse society.

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

1 “(C) Minority children comprise an increasing
2 percentage of public school students.

3 “(D) With such changing demographics, re-
4 cruitment efforts for special education personnel
5 should focus on increasing the participation of mi-
6 norities in the teaching profession.

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

10 “(B) Studies have documented apparent dis-
11 crepancies in the levels of referral and placement of
12 limited English proficient children in special edu-
13 cation.

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

18 “(10)(A) Greater efforts are needed to prevent
19 the intensification of problems connected with
20 mislabeling and high dropout rates among minority
21 children with disabilities.

22 “(B) More minority children continue to be
23 served in special education than would be expected
24 from the percentage of minority students in the gen-
25 eral school population.

1 ~~“(C) African-American children are over identi-~~
2 ~~fied as having mental retardation and emotional dis-~~
3 ~~turbance at rates greater than their white counter-~~
4 ~~parts.~~

5 ~~“(D) In the 1998–1999 school year, African-~~
6 ~~American children represented just 14.8 percent of~~
7 ~~the population aged 6 through 21, but comprised~~
8 ~~20.2 percent of all children with disabilities.~~

9 ~~“(E) Studies have found that schools with pre-~~
10 ~~dominately Caucasian students and teachers have~~
11 ~~placed disproportionately high numbers of their mi-~~
12 ~~nority students into special education.~~

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

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

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

2 “(1)(A) to ensure that all children with disabili-
3 ties have available to them a free appropriate public
4 education that emphasizes special education and re-
5 lated services designed to meet their unique needs
6 and prepare them for employment, further edu-
7 cation, and independent living;

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

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

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

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

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

3 **“SEC. 602. DEFINITIONS.**

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

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

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

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

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

23 “(C) selecting, designing, fitting, custom-
24 izing, adapting, applying, maintaining, repair-
25 ing, or replacing of assistive technology devices;

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

6 “(E) training or technical assistance for
 7 such child, or, where appropriate, the family of
 8 such child; and

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

15 “(3) CHILD WITH A DISABILITY.—

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

18 “(i) with mental retardation, hearing
 19 impairments (including deafness), speech
 20 or language impairments, visual impair-
 21 ments (including blindness), serious emo-
 22 tional disturbance (hereinafter referred to
 23 as ‘emotional disturbance’), orthopedic im-
 24 pairments, autism, traumatic brain injury,

1 other health impairments, or specific learn-
2 ing disabilities; and

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

5 “(B) CHILD AGED 3 THROUGH 9.—The
6 term ‘child with a disability’ for a child aged 3
7 through 9 (or any subset of that age range, in-
8 cluding ages 3 through 5), may, at the discre-
9 tion of the State and the local educational agen-
10 cy, include a child—

11 “(i) experiencing developmental
12 delays, as defined by the State and as
13 measured by appropriate diagnostic instru-
14 ments and procedures, in 1 or more of the
15 following areas: physical development, cog-
16 nitive development, communication devel-
17 opment, social or emotional development,
18 or adaptive development; and

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

21 “(4) CORE ACADEMIC SUBJECT.—The term
22 ‘core academic subject’ has the meaning given the
23 term in section 9101(11) of the Elementary and
24 Secondary Education Act of 1965.

1 “(5) EDUCATIONAL SERVICE AGENCY.—The
2 term ‘educational service agency’—

3 “(A) means a regional public multiservice
4 agency—

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

8 “(ii) recognized as an administrative
9 agency for purposes of the provision of
10 special education and related services pro-
11 vided within public elementary schools and
12 secondary schools of the State; and

13 “(B) includes any other public institution
14 or agency having administrative control and di-
15 rection over a public elementary school or sec-
16 ondary school.

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

21 “(7) EQUIPMENT.—The term ‘equipment’ in-
22 cludes—

23 “(A) machinery, utilities, and built-in
24 equipment, and any necessary enclosures or

1 structures to house such machinery, utilities, or
2 equipment; and

3 “(B) all other items necessary for the
4 functioning of a particular facility as a facility
5 for the provision of educational services, includ-
6 ing items such as instructional equipment and
7 necessary furniture; printed, published, and
8 audio-visual instructional materials; tele-
9 communications, sensory, and other techno-
10 logical aids and devices; and books, periodicals,
11 documents, and other related materials.

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

19 “(A) amounts received—

20 “(i) under part B of this title;

21 “(ii) under part A of title I of the El-
22 ementary and Secondary Education Act of
23 1965; and

24 “(iii) under parts A and B of title III
25 of that Act; and

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

4 “(9) FREE APPROPRIATE PUBLIC EDU-
5 CATION.—The term ‘free appropriate public edu-
6 cation’ means special education and related services
7 that—

8 “(A) have been provided at public expense,
9 under public supervision and direction, and
10 without charge;

11 “(B) meet the standards of the State edu-
12 cational agency;

13 “(C) include an appropriate preschool, ele-
14 mentary school, or secondary school education
15 in the State involved; and

16 “(D) are provided in conformity with the
17 individualized education program required
18 under section 614(d).

19 “(10) HIGHLY QUALIFIED; CONSULTATIVE
20 SERVICES.—

21 “(A) HIGHLY QUALIFIED.—The term
22 ‘highly qualified’, when used with respect to any
23 special education teacher teaching in a State,
24 means a teacher who—

1 “(i)(I) meets the definition of that
2 term in section 9101(23) of the Elemen-
3 tary and Secondary Education Act of
4 1965, including full State certification as a
5 special education teacher through a State
6 approved special education teacher prepa-
7 ration program (including certification ob-
8 tained through State or local educational
9 agency approved alternative routes); or

10 “(II) has passed a State special edu-
11 cation licensing examination and holds a li-
12 cense to teach special education in such
13 State,

14 except that when used with respect to any
15 teacher teaching in a public charter school, the
16 term means that the teacher meets the require-
17 ments set forth in the State’s statute on public
18 charter schools; and

19 “(ii) does not have certification or li-
20 censure requirements waived on an emer-
21 gency, temporary, or provisional basis;

22 “(iii) if the teacher provides only con-
23 sultative services to a regular education
24 teacher with respect to a core academic
25 subject, the special education teacher shall

1 meet the standards for subject knowledge
2 and teaching skills described in section
3 9101(23) of the Elementary and Sec-
4 ondary Education Act of 1965 that apply
5 to elementary school teachers; and

6 “(iv) if the teacher provides instruc-
7 tion in a core academic subject to middle
8 or secondary students who are performing
9 at the elementary level, the teacher shall
10 meet the standards for subject knowledge
11 and teaching skills described in section
12 9101(23) of the Elementary and Sec-
13 ondary Education Act of 1965 that apply
14 to elementary school teachers.

15 “(B) CONSULTATIVE SERVICES.—As used
16 in subparagraph (A)(iii), the term ‘consultative
17 services’ means—

18 “(i) consultation on adapting cur-
19 ricula, using positive behavioral supports
20 and interventions, and selecting appro-
21 priate accommodations, and does not in-
22 clude direct instruction of students; or

23 “(ii) teaching in collaboration with a
24 regular education teacher or teachers who

1 is or are highly qualified in the core aca-
2 demic subjects being taught.

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

5 “(12) INDIAN TRIBE.—The term ‘Indian tribe’
6 means any Federal or State Indian tribe, band,
7 rancheria, pueblo, colony, or community, including
8 any Alaska Native village or regional village corpora-
9 tion (as defined in or established under the Alaska
10 Native Claims Settlement Act).

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

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

19 “(15) INFANT OR TODDLER WITH A DIS-
20 ABILITY.—The term ‘infant or toddler with a dis-
21 ability’ has the meaning given such term in section
22 632.

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

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

4 “(B) also includes any community college
5 receiving funding from the Secretary of the In-
6 terior under the Tribally Controlled College or
7 University Assistance Act of 1978.

8 “(17) LOCAL EDUCATIONAL AGENCY.—

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

21 “(B) The term includes—

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

24 “(ii) any other public institution or
25 agency having administrative control and

1 direction of a public elementary school or
2 secondary school.

3 “(C) The term includes an elementary
4 school or secondary school funded by the Bu-
5 reau of Indian Affairs, but only to the extent
6 that such inclusion makes the school eligible for
7 programs for which specific eligibility is not
8 provided to the school in another provision of
9 law and the school does not have a student popu-
10 lation that is smaller than the student popu-
11 lation of the local educational agency receiving
12 assistance under this Act with the smallest stu-
13 dent population, except that the school shall not
14 be subject to the jurisdiction of any State edu-
15 cational agency other than the Bureau of In-
16 dian Affairs.

17 “(18) NATIVE LANGUAGE.—The term ‘native
18 language’, when used with respect to an individual
19 of limited English proficiency, means the language
20 normally used by the individual, or in the case of a
21 child, the language normally used by the parents of
22 the child.

23 “(19) NONPROFIT.—The term ‘nonprofit’, as
24 applied to a school, agency, organization, or institu-
25 tion, means a school, agency, organization, or insti-

1 tution owned and operated by 1 or more nonprofit
 2 corporations or associations no part of the net earn-
 3 ings of which inures, or may lawfully inure, to the
 4 benefit of any private shareholder or individual.

5 “(20) OUTLYING AREA.—The term ‘outlying
 6 area’ means the United States Virgin Islands,
 7 Guam, American Samoa, and the Commonwealth of
 8 the Northern Mariana Islands.

9 “(21) PARENT.—The term ‘parent’—

10 “(A) includes a legal guardian; and

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

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

18 “(23) PARENT TRAINING AND INFORMATION
 19 CENTER.—The term ‘parent training and informa-
 20 tion center’ means a center assisted under section
 21 671 or 672.

22 “(24) RELATED SERVICES.—The term ‘related
 23 services’ means transportation, and such develop-
 24 mental, corrective, and other supportive services (in-
 25 cluding speech-language pathology and audiology

1 services, psychological services, physical and occupa-
2 tional therapy, recreation, including therapeutic
3 recreation, social work services, school health serv-
4 ices, counseling services, including rehabilitation
5 counseling, orientation and mobility services, and
6 medical services, except that such medical services
7 shall be for diagnostic and evaluation purposes only)
8 as may be required to assist a child with a disability
9 to benefit from special education, and includes the
10 early identification and assessment of disabling con-
11 ditions in children.

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

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

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

23 “(A) instruction conducted in the class-
24 room, in the home, in hospitals and institutions,
25 and in other settings; and

1 “(B) instruction in physical education.

2 “(28) SPECIFIC LEARNING DISABILITY.—

3 “(A) IN GENERAL.—The term ‘specific
4 learning disability’ means a disorder in 1 or
5 more of the basic psychological processes in-
6 volved in understanding or in using language,
7 spoken or written, which disorder may manifest
8 itself in the imperfect ability to listen, think,
9 speak, read, write, spell, or do mathematical
10 calculations.

11 “(B) DISORDERS INCLUDED.—Such term
12 includes such conditions as perceptual disabili-
13 ties, brain injury, minimal brain dysfunction,
14 dyslexia, and developmental aphasia.

15 “(C) DISORDERS NOT INCLUDED.—Such
16 term does not include a learning problem that
17 is primarily the result of visual, hearing, or
18 motor disabilities, of mental retardation, of
19 emotional disturbance, or of environmental, cul-
20 tural, or economic disadvantage.

21 “(29) STATE.—The term ‘State’ means each of
22 the 50 States, the District of Columbia, the Com-
23 monwealth of Puerto Rico, and each of the outlying
24 areas.

1 “(30) STATE EDUCATIONAL AGENCY.—The
2 term ‘State educational agency’ means the State
3 board of education or other agency or officer pri-
4 marily responsible for the State supervision of public
5 elementary schools and secondary schools; or, if
6 there is no such officer or agency, an officer or
7 agency designated by the Governor or by State law.

8 “(31) SUPPLEMENTARY AIDS AND SERVICES.—
9 The term ‘supplementary aids and services’ means
10 aids, services, and other supports that are provided
11 in regular education classes or other education-re-
12 lated settings to enable children with disabilities to
13 be educated with nondisabled children to the max-
14 imum extent appropriate in accordance with section
15 612(a)(5).

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

20 “(A) is designed to be within a results-ori-
21 ented process, that is focused on improving the
22 academic and functional achievement of the
23 child with a disability to facilitate the child’s
24 movement from school to post-school activities,
25 including post-secondary education, vocational

1 training, integrated employment (including sup-
2 ported employment), continuing and adult edu-
3 cation, adult services, independent living, or
4 community participation;

5 “(B) is based on the individual child’s
6 needs, taking into account the child’s capacity,
7 preferences, and interests; and

8 “(C) includes instruction, related services,
9 community experiences, the development of em-
10 ployment and other post-school adult living ob-
11 jectives, and, when appropriate, acquisition of
12 daily living skills and functional vocational eval-
13 uation.

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

15 “(a) **ESTABLISHMENT.**—There shall be, within the
16 Office of Special Education and Rehabilitative Services in
17 the Department of Education, an Office of Special Edu-
18 cation Programs, which shall be the principal agency in
19 such Department for administering and carrying out this
20 Act and other programs and activities concerning the edu-
21 cation of children with disabilities.

22 “(b) **DIRECTOR.**—The Office established under sub-
23 section (a) shall be headed by a Director who shall be se-
24 lected by the Secretary and shall report directly to the As-

1 sistant Secretary for Special Education and Rehabilitative
2 Services.

3 “(e) VOLUNTARY AND UNCOMPENSATED SERV-
4 ICES.—Notwithstanding section 1342 of title 31, United
5 States Code, the Secretary is authorized to accept vol-
6 untary and uncompensated services in furtherance of the
7 purposes of this Act.

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

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

13 “(b) REMEDIES.—In a suit against a State for a vio-
14 lation of this Act, remedies (including remedies both at
15 law and in equity) are available for such a violation to
16 the same extent as those remedies are available for such
17 a violation in the suit against any public entity other than
18 a State.

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

1 **“SEC. 605. ACQUISITION OF EQUIPMENT; CONSTRUCTION**
 2 **OR ALTERATION OF FACILITIES.**

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

9 “(b) COMPLIANCE WITH CERTAIN REGULATIONS.—
 10 Any construction of new facilities or alteration of existing
 11 facilities under subsection (a) shall comply with the re-
 12 quirements of—

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

17 “(2) appendix A of subpart 101–19.6 of title
 18 41, Code of Federal Regulations (commonly known
 19 as the ‘Uniform Federal Accessibility Standards’).

20 **“SEC. 606. EMPLOYMENT OF INDIVIDUALS WITH DISABIL-**
 21 **ITIES.**

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

1 **“SEC. 607. REQUIREMENTS FOR PRESCRIBING REGULA-**
2 **TIONS.**

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

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

9 “(1) violates or contradicts any provision of this
10 Act; and

11 “(2) procedurally or substantively lessens the
12 protections provided to children with disabilities
13 under this Act, as embodied in regulations in effect
14 on July 20, 1983 (particularly as such protections
15 related to parental consent to initial evaluation or
16 initial placement in special education, least restric-
17 tive environment, related services, timelines, attend-
18 ance of evaluation personnel at individualized edu-
19 cation program meetings, or qualifications of per-
20 sonnel); except to the extent that such regulation re-
21 flects the clear and unequivocal intent of the Con-
22 gress in legislation.

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

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

3 “(d) **POLICY LETTERS AND STATEMENTS.**—The Sec-
4 retary may not issue policy letters or other statements (in-
5 cluding letters or statements regarding issues of national
6 significance) that—

7 “(1) violate or contradict any provision of this
8 Act; or

9 “(2) establish a rule that is required for compli-
10 ance with, and eligibility under, this Act without fol-
11 lowing the requirements of section 553 of title 5,
12 United States Code.

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

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

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

23 “(3) such response represents the interpretation
24 by the Department of Education of the applicable

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

3 “(f) CORRESPONDENCE FROM DEPARTMENT OF
4 EDUCATION DESCRIBING INTERPRETATIONS OF THIS
5 ACT.—

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

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

18 “(A) identify the topic addressed by the
19 correspondence and shall include such other
20 summary information as the Secretary deter-
21 mines to be appropriate; and

22 “(B) ensure that all such correspondence
23 is issued, where applicable, in compliance with
24 the requirements of section 553 of title 5,
25 United States Code.

1 **“SEC. 608. STATE ADMINISTRATION.**

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

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

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

11 “(b) SUPPORT AND FACILITATION.—State rules, reg-
12 ulations, and policies under this Act shall support and fa-
13 cilitate local educational agency and school-level systemic
14 reform designed to enable children with disabilities to meet
15 the challenging State student academic achievement
16 standards.

17 **“SEC. 609. REPORT TO CONGRESS.**

18 “The Comptroller General shall conduct a review of
19 Federal, State, and local requirements to determine which
20 requirements result in excessive paperwork completion
21 burdens for teachers, related services providers, and school
22 administrators, and shall report to Congress not later than
23 18 months after the date of enactment of the Individuals
24 with Disabilities Education Improvement Act of 2003 re-
25 garding such review along with strategic proposals for re-
26 ducing the paperwork burdens on teachers.

1 **“PART B—ASSISTANCE FOR EDU-**
 2 **CATION OF ALL CHILDREN**
 3 **WITH DISABILITIES**

4 **“SEC. 611. AUTHORIZATION; ALLOTMENT; USE OF FUNDS;**
 5 **AUTHORIZATION OF APPROPRIATIONS.**

6 **“(a) GRANTS TO STATES.—**

7 **“(1) PURPOSE OF GRANTS.—**The Secretary
 8 shall make grants to States and the outlying areas,
 9 and provide funds to the Secretary of the Interior,
 10 to assist them to provide special education and re-
 11 lated services to children with disabilities in accord-
 12 ance with this part.

13 **“(2) MAXIMUM AMOUNT.—**The maximum
 14 amount available for awarding grants under this
 15 part for any fiscal year is—

16 **“(A)** the total number of children with dis-
 17 abilities in the 2002–2003 school year in the
 18 States who received special education and re-
 19 lated services and who were—

20 **“(i)** aged 3 through 5, if the State
 21 was eligible for a grant under section 619;
 22 and

23 **“(ii)** aged 6 through 21, multiplied by

24 **“(B)** 40 percent of the average per-pupil
 25 expenditure in public elementary schools and

1 secondary schools in the United States; ad-
 2 justed by

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

4 “(i) 85 percent of the change in the
 5 nationwide total of the population de-
 6 scribed in (d)(3)(A)(i)(II); and

7 “(ii) 15 percent of the change in the
 8 nationwide total of the population de-
 9 scribed in (d)(3)(A)(i)(III).

10 “(b) OUTLYING AREAS AND FREELY ASSOCIATED
 11 STATES.—

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

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

19 “(B) to provide each of the freely associ-
 20 ated States grants that do not exceed the level
 21 each such freely associated State received for
 22 fiscal year 2003 under this part, but only if the
 23 freely associated State meets the requirements
 24 of section 611(b)(2)(C) as such section was in
 25 effect on the day before the date of enactment

1 of the Individuals with Disabilities Education
2 Improvement Act of 2003.

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

8 “(3) DEFINITION.—As used in this subsection,
9 the term ‘freely associated States’ means the Repub-
10 lic of the Marshall Islands, the Federated States of
11 Micronesia, and the Republic of Palau.

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

17 “(d) ALLOCATIONS TO STATES.—

18 “(1) IN GENERAL.—After reserving funds for
19 studies and evaluations under section 665, and for
20 payments to the outlying areas, the freely associated
21 States, and the Secretary of the Interior under sub-
22 sections (b) and (c) for a fiscal year, the Secretary
23 shall allocate the remaining amount among the
24 States in accordance with this subsection.

1 “(2) SPECIAL RULE FOR USE OF FISCAL YEAR
 2 1999 AMOUNT.—If a State received any funds under
 3 this section for fiscal year 1999 on the basis of chil-
 4 dren aged 3 through 5, but does not make a free ap-
 5 propriate public education available to all children
 6 with disabilities aged 3 through 5 in the State in
 7 any subsequent fiscal year, the Secretary shall com-
 8 pute the State’s amount for fiscal year 1999, solely
 9 for the purpose of calculating the State’s allocation
 10 in that subsequent year under paragraph (3) or (4),
 11 by subtracting the amount allocated to the State for
 12 fiscal year 1999 on the basis of those children.

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

19 “(A) ALLOCATION OF INCREASE.—

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

23 “(I) to each State the amount
 24 the State received under this section
 25 for fiscal year 1999;

1 “(H) 85 percent of any remain-
2 ing funds to States on the basis of the
3 States’ relative populations of children
4 aged 3 through 21 who are of the
5 same age as children with disabilities
6 for whom the State ensures the avail-
7 ability of a free appropriate public
8 education under this part; and

9 “(III) 15 percent of those re-
10 maining funds to States on the basis
11 of the States’ relative populations of
12 children described in subclause (H)
13 who are living in poverty.

14 “(ii) DATA.—For the purpose of mak-
15 ing grants under this paragraph, the Sec-
16 retary shall use the most recent population
17 data, including data on children living in
18 poverty, that are available and satisfactory
19 to the Secretary.

20 “(B) LIMITATIONS.—Notwithstanding sub-
21 paragraph (A), allocations under this paragraph
22 shall be subject to the following:

23 “(i) PRECEDING YEAR ALLOCATION.—
24 No State’s allocation shall be less than its

1 allocation under this section for the pre-
2 ceeding fiscal year.

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

5 “(I) the sum of—

6 “(aa) the amount the State
7 received under this section for
8 fiscal year 1999; and

9 “(bb) $\frac{1}{3}$ of 1 percent of the
10 amount by which the amount ap-
11 propriated under subsection (i)
12 for the fiscal year exceeds the
13 amount appropriated for this sec-
14 tion for fiscal year 1999;

15 “(II) the sum of—

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

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

25 “(III) the sum of—

1 “(aa) the amount the State
2 received under this section for
3 the preceding fiscal year; and

4 “(bb) that amount multi-
5 plied by 90 percent of the per-
6 centage increase in the amount
7 appropriated for this section
8 from the preceding fiscal year.

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

12 “(I) the amount the State re-
13 ceived under this section for the pre-
14 ceding fiscal year; and

15 “(II) that amount multiplied by
16 the sum of 1.5 percent and the per-
17 centage increase in the amount appro-
18 priated under this section from the
19 preceding fiscal year.

20 “(C) RATABLE REDUCTION.—If the
21 amount available for allocations under this
22 paragraph is insufficient to pay those alloca-
23 tions in full, those allocations shall be ratably
24 reduced, subject to subparagraph (B)(i).

1 “(4) DECREASE IN FUNDS.—If the amount
2 available for allocations to States under paragraph
3 (1) for a fiscal year is less than the amount allo-
4 cated to the States under this section for the pre-
5 ceeding fiscal year, those allocations shall be cal-
6 culated as follows:

7 “(A) AMOUNTS GREATER THAN FISCAL
8 YEAR 1999 ALLOCATIONS.—If the amount avail-
9 able for allocations is greater than the amount
10 allocated to the States for fiscal year 1999,
11 each State shall be allocated the sum of—

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

14 “(ii) an amount that bears the same
15 relation to any remaining funds as the in-
16 crease the State received under this section
17 for the preceding fiscal year over fiscal
18 year 1999 bears to the total of all such in-
19 creases for all States.

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

22 “(i) IN GENERAL.—If the amount
23 available for allocations under this para-
24 graph is equal to or less than the amount
25 allocated to the States for fiscal year 1999,

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

3 “(ii) RATABLE REDUCTION.—If the
4 amount available for allocations under this
5 paragraph is insufficient to make the allo-
6 cations described in clause (i), those alloca-
7 tions shall be ratably reduced.

8 “(e) STATE-LEVEL ACTIVITIES.—

9 “(1) STATE ADMINISTRATION.—

10 “(A) IN GENERAL.—For the purpose of
11 administering this part, including paragraph
12 (3), section 619, and the coordination of activi-
13 ties under this part with, and providing tech-
14 nical assistance to, other programs that provide
15 services to children with disabilities—

16 “(i) each State may reserve not more
17 than the maximum amount the State was
18 eligible to reserve for State administration
19 for fiscal year 2003 or \$800,000 (adjusted
20 by the cumulative rate of inflation since
21 fiscal year 2003 as measured by the per-
22 centage increase, if any, in the Consumer
23 Price Index For All Urban Consumers,
24 published by the Bureau of Labor Statis-

1 ties of the Department of Labor), which-
2 ever is greater; and

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

8 “~~(B)~~ PART C.—Funds reserved under sub-
9 paragraph (A) may be used for the administra-
10 tion of part C, if the State educational agency
11 is the lead agency for the State under that
12 part.

13 “~~(C)~~ CERTIFICATION.—Prior to expendi-
14 ture of funds under this paragraph, the State
15 shall certify to the Secretary that the arrange-
16 ments to establish responsibility for services
17 pursuant to section 612(a)(12)(A) are current.

18 “~~(2)~~ OTHER STATE-LEVEL ACTIVITIES.—

19 “~~(A)~~ IN GENERAL.—For the purpose of
20 providing State-level activities, each State may
21 reserve for each of the fiscal years 2004 and
22 2005, not more than 10 percent of the amount
23 that remains after subtracting the amount re-
24 served under paragraph (1) from the amount of
25 the State’s allocation under subsection (d) for

1 fiscal years 2004 and 2005, respectively. For
2 fiscal years 2006, 2007, 2008, and 2009, the
3 State may reserve the maximum amount the
4 State was eligible to reserve under the pre-
5 ceding sentence for fiscal year 2005 (adjusted
6 by the cumulative rate of inflation since fiscal
7 year 2005 as measured by the percentage in-
8 crease, if any, in the Consumer Price Index For
9 All Urban Consumers, published by the Bureau
10 of Labor Statistics of the Department of
11 Labor).

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

15 “(i) For monitoring, enforcement and
16 complaint investigation.

17 “(ii) To establish and implement the
18 mediation processes required by section
19 615(e)(1), including providing for the costs
20 of mediators and support personnel;

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

24 “(I) dispute resolution and due
25 process;

1 “(II) efforts to educate families
2 regarding due process;

3 “(III) voluntary mediation; and

4 “(IV) the opportunity to resolve
5 complaints.

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

9 “(i) To provide technical assistance,
10 personnel development and training.

11 “(ii) To support paperwork reduction
12 activities, including expanding the use of
13 technology in the IEP process.

14 “(iii) To assist local educational agen-
15 cies in providing positive behavioral inter-
16 ventions and supports and mental health
17 services for children with disabilities.

18 “(iv) To improve the use of technology
19 in the classroom by children with disabil-
20 ities to enhance learning.

21 “(v) To support the development and
22 use of technology, including universally de-
23 signed technologies and assistive tech-
24 nology devices, to maximize accessibility to

1 the general curriculum for students with
2 disabilities.

3 “(vi) Development and implementa-
4 tion of transition programs, including co-
5 ordination of services with agencies in-
6 volved in supporting the transition of stu-
7 dents with disabilities to post-secondary
8 activities.

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

11 “(viii) To support capacity building
12 activities and improve the delivery of serv-
13 ices by local educational agencies to im-
14 prove results for children with disabilities.

15 “(ix) Alternative programming for
16 children who have been expelled from
17 school, and services for children in correc-
18 tional facilities; children enrolled in State-
19 operated or State-supported schools; and
20 children in charter schools.

21 “(x) To support the development and
22 provision of appropriate accommodations
23 for children with disabilities; or the devel-
24 opment and provision of alternate assess-
25 ments that are valid and reliable for as-

1 assessing the performance of children with
 2 disabilities, in accordance with sections
 3 1111(b) and 6111 of the Elementary and
 4 Secondary Education Act of 1965.

5 “(3) LOCAL EDUCATIONAL AGENCY RISK
 6 POOL.—

7 “(A) IN GENERAL.—For the purpose of as-
 8 sisting local educational agencies (and charter
 9 schools that are local educational agencies) in
 10 addressing the needs of high-need children and
 11 the unanticipated enrollment of other children
 12 eligible for service under this part, each State
 13 shall reserve for each of the fiscal years 2004
 14 through 2009, 2 percent of the amount that re-
 15 mains after subtracting the amount reserved
 16 under paragraph (1) from the amount of the
 17 State’s allocation under subsection (d) for each
 18 of the fiscal years 2004 through 2009, respec-
 19 tively, to—

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

21 “(ii) make disbursements from the
 22 high-cost fund to local educational agencies
 23 in accordance with this paragraph.

24 “(B) REQUIRED DISBURSEMENTS FROM
 25 THE FUND.—Each State educational agency

1 shall make disbursements from the fund estab-
2 lished under subparagraph (A) to local edu-
3 cational agencies to pay the percentage, de-
4 scribed in subparagraph (D), of the costs of
5 providing a free appropriate public education to
6 high-need children.

7 “(C) APPLICATION.—A local educational
8 agency that desires a disbursement under this
9 subsection shall submit an application to the
10 State educational agency at such time, in such
11 manner, and containing such information as the
12 State educational agency may require. Such ap-
13 plication shall include assurances that funds
14 provided under this paragraph shall not be used
15 to pay costs that otherwise would be reimburs-
16 able as medical assistance for a child with a
17 disability under the State medicaid program
18 under title XIX of the Social Security Act.

19 “(D) DISBURSEMENTS.—

20 “(i) IN GENERAL.—A State edu-
21 cational agency shall make a disbursement
22 to a local educational agency that submits
23 an application under subparagraph (C) in
24 an amount that is equal to 75 percent of
25 the costs that are in excess of 4 times the

1 average per-pupil expenditure in the
2 United States or in the State where the
3 child resides (whichever average per-pupil
4 expenditure is lower) associated with edu-
5 cating each high need child served by such
6 local educational agency in a fiscal year for
7 whom such agency desires a disbursement.

8 “(ii) APPROPRIATE COSTS.—The costs
9 associated with educating a high need child
10 under clause (i) are only those costs associ-
11 ated with providing direct special education
12 and related services to such child that are
13 identified in such child’s appropriately de-
14 veloped IEP.

15 “(E) LEGAL FEES.—The disbursements
16 under subparagraph (D) shall not support legal
17 fees, court costs, or other costs associated with
18 a cause of action brought on behalf of such
19 child to ensure a free appropriate public edu-
20 cation for such child.

21 “(F) PERMISSIBLE DISBURSEMENTS FROM
22 REMAINING FUNDS.—A State educational agen-
23 cy may make disbursements to local educational
24 agencies from any funds that are remaining in
25 the high cost fund after making the required

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

3 “(i) To pay the costs associated with
4 serving children with disabilities who
5 moved into the areas served by such local
6 agencies after the budget for the following
7 school year had been finalized to assist the
8 local educational agencies in providing a
9 free appropriate public education for such
10 children in such year.

11 “(ii) To compensate local educational
12 agencies for extraordinary costs, as deter-
13 mined by the State, of any children eligible
14 for services under this part due to—

15 “(I) unexpected enrollment or
16 placement of children eligible for serv-
17 ices under this part; or

18 “(II) a significant underestimate
19 of the average cost of providing serv-
20 ices to children eligible for services
21 under this part.

22 “(G) REMAINING FUNDS.—Funds reserved
23 under subparagraph (A) in any fiscal year but
24 not expended in that fiscal year pursuant to
25 subparagraph (D) or subparagraph (F) shall—

1 “(i) be allocated to local educational
2 agencies pursuant to subparagraphs (D) or
3 (F) for the next fiscal year; or

4 “(ii) be allocated to local educational
5 agencies in the same manner as funds are
6 allocated to local educational agencies
7 under subsection (f).

8 “(H) ASSURANCE OF A FREE APPRO-
9 PRIATE PUBLIC EDUCATION.—Nothing in this
10 section shall be construed—

11 “(i) to limit or condition the right of
12 a child with a disability who is assisted
13 under this part to receive a free appro-
14 priate public education pursuant to section
15 612(a)(1) in a least restrictive environment
16 pursuant to section 612(a)(5); or

17 “(ii) to authorize a State educational
18 agency or local educational agency to indi-
19 cate a limit on what is expected to be
20 spent on the education of a child with a
21 disability.

22 “(I) MEDICAID SERVICES NOT AF-
23 FECTED.—Disbursements provided under this
24 subsection shall not be used to pay costs that
25 otherwise would be reimbursable as medical as-

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

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

5 “(i) AVERAGE PER-PUPIL EXPENDI-
6 TURE.—The term ‘average per-pupil ex-
7 penditure’ has the meaning given the term
8 in section 9101 of the Elementary and
9 Secondary Education Act of 1965.

10 “(ii) HIGH-NEED CHILD.—The term
11 ‘high-need’, when used with respect to a
12 child with a disability, means a child with
13 a disability for whom a free appropriate
14 public education in a fiscal year costs more
15 than 4 times the average per-pupil expend-
16 iture for such fiscal year.

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

1 local educational agencies that provides services
 2 to students eligible under this part based on eli-
 3 gibility criteria for such programs that were op-
 4 erative on January 1, 2003.

5 “(4) INAPPLICABILITY OF CERTAIN PROHIBI-
 6 TIONS.—A State may use funds the State reserves
 7 under paragraphs (1), (2), and (3) without regard
 8 to—

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

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

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

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

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

22 “(f) SUBGRANTS TO LOCAL EDUCATIONAL AGEN-
 23 CIES.—

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

1 year shall distribute any funds the State does not re-
 2 serve under subsection (e) to local educational agen-
 3 cies (including public charter schools that operate as
 4 local educational agencies) in the State that have es-
 5 tablished their eligibility under section 613 for use
 6 in accordance with this part.

7 ~~“(2) PROCEDURE FOR ALLOCATIONS TO LOCAL~~
 8 ~~EDUCATIONAL AGENCIES.—~~

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

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

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

1 “(I) allocate 85 percent of any
2 remaining funds to those local edu-
3 cational agencies on the basis of the
4 relative numbers of children enrolled
5 in public and private elementary
6 schools and secondary schools within
7 the local educational agency’s jurisdic-
8 tion; and

9 “(II) allocate 15 percent of those
10 remaining funds to those local edu-
11 cational agencies in accordance with
12 their relative numbers of children liv-
13 ing in poverty, as determined by the
14 State educational agency.

15 “(3) REALLOCATION OF FUNDS.—If a State
16 educational agency determines that a local edu-
17 cational agency is adequately providing a free appro-
18 priate public education to all children with disabil-
19 ities residing in the area served by that local edu-
20 cational agency with State and local funds, the State
21 educational agency may reallocate any portion of the
22 funds under this part that are not needed by that
23 local educational agency to provide a free appro-
24 priate public education to other local educational
25 agencies in the State that are not adequately pro-

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

4 “(g) DEFINITIONS.—For the purpose of this sec-
 5 tion—

6 “(1) the term ‘average per-pupil expenditure in
 7 public elementary schools and secondary schools in
 8 the United States’ means—

9 “(A) without regard to the source of
 10 funds—

11 “(i) the aggregate current expendi-
 12 tures, during the second fiscal year pre-
 13 ceding the fiscal year for which the deter-
 14 mination is made (or, if satisfactory data
 15 for that year are not available, during the
 16 most recent preceding fiscal year for which
 17 satisfactory data are available) of all local
 18 educational agencies in the 50 States and
 19 the District of Columbia; plus

20 “(ii) any direct expenditures by the
 21 State for the operation of those local edu-
 22 cational agencies; divided by

23 “(B) the aggregate number of children in
 24 average daily attendance to whom those local

1 educational agencies provided free public edu-
 2 cation during that preceding year; and

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

6 “(h) USE OF AMOUNTS BY SECRETARY OF THE IN-
 7 TERIOR.—

8 “(1) PROVISION OF AMOUNTS FOR ASSIST-
 9 ANCE.—

10 “(A) IN GENERAL.—The Secretary of Edu-
 11 cation shall provide amounts to the Secretary of
 12 the Interior to meet the need for assistance for
 13 the education of children with disabilities on
 14 reservations aged 5 through 21 who are en-
 15 rolled in elementary schools and secondary
 16 schools for Indian children operated or funded
 17 by the Secretary of the Interior. The amount of
 18 such payment for any fiscal year shall be equal
 19 to 80 percent of the amount allotted under sub-
 20 section (e) for that fiscal year.

21 “(B) CALCULATION OF NUMBER OF CHIL-
 22 DREN.—In the case of Indian students aged 3
 23 through 5 who are enrolled in programs affili-
 24 ated with the Bureau of Indian Affairs (here-
 25 after in this subsection referred to as ‘BIA’)

1 schools, and that are required by the States in
2 which such schools are located to attain or
3 maintain State accreditation, and which schools
4 had such accreditation prior to the date of en-
5 actment of the Individuals with Disabilities
6 Education Act Amendments of 1991, the school
7 shall be allowed to count those children for the
8 purpose of distribution of the funds provided
9 under this paragraph to the Secretary of the
10 Interior. The Secretary of the Interior shall be
11 responsible for meeting all of the requirements
12 of this part for these children, in accordance
13 with paragraph (2).

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

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

24 “(A) demonstrates that the Department of
25 the Interior meets the appropriate require-

1 ments, as determined by the Secretary of Edu-
2 cation, of sections 612 (including monitoring
3 and evaluation activities) and 613;

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

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

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

21 “(E) includes an assurance that the Sec-
22 retary of the Interior and the Secretary of
23 Health and Human Services have entered into
24 a memorandum of agreement, to be provided to
25 the Secretary of Education, for the coordination

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

14 “(F) includes an assurance that the De-
15 partment of the Interior will cooperate with the
16 Department of Education in its exercise of
17 monitoring and oversight of this application,
18 and any agreements entered into between the
19 Secretary of the Interior and other entities
20 under this part, and will fulfill its duties under
21 this part. Section 616(a) shall apply to the in-
22 formation described in this paragraph.

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

1 “(A) IN GENERAL.—With funds appro-
2 priated under subsection (i), the Secretary of
3 Education shall make payments to the Sec-
4 retary of the Interior to be distributed to tribes
5 or tribal organizations (as defined under section
6 4 of the Indian Self-Determination and Edu-
7 cation Assistance Act) or consortia of the above
8 to provide for the coordination of assistance for
9 special education and related services for chil-
10 dren with disabilities aged 3 through 5 on res-
11 ervations served by elementary schools and sec-
12 ondary schools for Indian children operated or
13 funded by the Department of the Interior. The
14 amount of such payments under subparagraph
15 (B) for any fiscal year shall be equal to 20 per-
16 cent of the amount allotted under subsection
17 (e).

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

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

3 “(C) SUBMISSION OF INFORMATION.—To
4 receive a payment under this paragraph, the
5 tribe or tribal organization shall submit such
6 figures to the Secretary of the Interior as re-
7 quired to determine the amounts to be allocated
8 under subparagraph (B). This information shall
9 be compiled and submitted to the Secretary of
10 Education.

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

1 Federal entities for the provision of services or
2 further diagnosis.

3 “(E) BIENNIAL REPORT.—To be eligible to
4 receive a grant pursuant to subparagraph (A),
5 the tribe or tribal organization shall provide to
6 the Secretary of the Interior a biennial report
7 of activities undertaken under this paragraph,
8 including the number of contracts and coopera-
9 tive agreements entered into, the number of
10 children contacted and receiving services for
11 each year, and the estimated number of chil-
12 dren needing services during the 2 years fol-
13 lowing the year in which the report is made.
14 The Secretary of the Interior shall include a
15 summary of this information on a biennial basis
16 in the report to the Secretary of Education re-
17 quired under this subsection. The Secretary of
18 Education may require any additional informa-
19 tion from the Secretary of the Interior.

20 “(F) PROHIBITIONS.—None of the funds
21 allocated under this paragraph may be used by
22 the Secretary of the Interior for administrative
23 purposes, including child count and the provi-
24 sion of technical assistance.

1 “(4) PLAN FOR COORDINATION OF SERVICES.—

2 The Secretary of the Interior shall develop and im-
3 plement a plan for the coordination of services for
4 all Indian children with disabilities residing on res-
5 ervations covered under this Act. Such plan shall
6 provide for the coordination of services benefiting
7 these children from whatever source, including
8 tribes, the Indian Health Service, other BIA divi-
9 sions, and other Federal agencies. In developing the
10 plan, the Secretary of the Interior shall consult with
11 all interested and involved parties. The plan shall be
12 based on the needs of the children and the system
13 best suited for meeting those needs, and may involve
14 the establishment of cooperative agreements between
15 the BIA, other Federal agencies, and other entities.
16 The plan shall also be distributed upon request to
17 States, State and local educational agencies, and
18 other agencies providing services to infants, toddlers,
19 and children with disabilities, to tribes, and to other
20 interested parties.

21 “(5) ESTABLISHMENT OF ADVISORY BOARD.—

22 To meet the requirements of section 612(a)(20), the
23 Secretary of the Interior shall establish, under the
24 BIA, an advisory board composed of individuals in-
25 volved in or concerned with the education and provi-

1 sion of services to Indian infants, toddlers, children,
2 and youth with disabilities, including Indians with
3 disabilities, Indian parents or guardians of such chil-
4 dren, teachers, service providers, State and local
5 educational officials, representatives of tribes or trib-
6 al organizations, representatives from State Inter-
7 agency Coordinating Councils under section 641 in
8 States having reservations, and other members rep-
9 resenting the various divisions and entities of the
10 BIA. The chairperson shall be selected by the Sec-
11 retary of the Interior. The advisory board shall—

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

17 “(B) advise and assist the Secretary of the
18 Interior in the performance of the Secretary’s
19 responsibilities described in this subsection;

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

1 “(D) provide assistance and disseminate
2 information on best practices, effective program
3 coordination strategies, and recommendations
4 for improved educational programming for In-
5 dian infants, toddlers, and children with disabil-
6 ities; and

7 “(E) provide assistance in the preparation
8 of information required under paragraph
9 (2)(D).

10 “(6) ANNUAL REPORTS.—

11 “(A) IN GENERAL.—The advisory board
12 established under paragraph (5) shall prepare
13 and submit to the Secretary of the Interior and
14 to Congress an annual report containing a de-
15 scription of the activities of the advisory board
16 for the preceding year.

17 “(B) AVAILABILITY.—The Secretary of the
18 Interior shall make available to the Secretary of
19 Education the report described in subparagraph
20 (A).

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

1 **“SEC. 612. STATE ELIGIBILITY.**

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

7 “(1) **FREE APPROPRIATE PUBLIC EDU-**
8 **CATION.**—

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

15 “(B) **LIMITATION.**—The obligation to
16 make a free appropriate public education avail-
17 able to all children with disabilities does not
18 apply with respect to children—

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

1 “(ii) aged 18 through 21 to the extent
2 that State law does not require that special
3 education and related services under this
4 part be provided to children with disabili-
5 ties who, in the educational placement
6 prior to their incarceration in an adult cor-
7 rectional facility—

8 “(I) were not actually identified
9 as being a child with a disability
10 under section 602(3); or

11 “(II) did not have an individual-
12 ized education program under this
13 part.

14 “(2) FULL EDUCATIONAL OPPORTUNITY
15 GOAL.—The State has established a goal of pro-
16 viding full educational opportunity to all children
17 with disabilities and a detailed timetable for accom-
18 plishing that goal.

19 “(3) CHILD FIND.—

20 “(A) IN GENERAL.—All children with dis-
21 abilities residing in the State, including children
22 with disabilities attending private schools, re-
23 gardless of the severity of their disabilities, and
24 who are in need of special education and related
25 services, are identified, located, and evaluated

1 and a practical method is developed and imple-
2 mented to determine which children with dis-
3 abilities are currently receiving needed special
4 education and related services.

5 “(B) CONSTRUCTION.—Nothing in this
6 Act requires that children be classified by their
7 disability so long as each child who has a dis-
8 ability listed in section 602 and who, by reason
9 of that disability, needs special education and
10 related services is regarded as a child with a
11 disability under this part.

12 “(4) INDIVIDUALIZED EDUCATION PROGRAM.—
13 An individualized education program, or an individ-
14 ualized family service plan that meets the require-
15 ments of section 636(d), is developed, reviewed, and
16 revised for each child with a disability in accordance
17 with section 614(d).

18 “(5) LEAST RESTRICTIVE ENVIRONMENT.—

19 “(A) IN GENERAL.—To the maximum ex-
20 tent appropriate, children with disabilities, in-
21 cluding children in public or private institutions
22 or other care facilities, are educated with chil-
23 dren who are not disabled, and special classes,
24 separate schooling, or other removal of children
25 with disabilities from the regular educational

1 environment occurs only when the nature or se-
2 verity of the disability of a child is such that
3 education in regular classes with the use of sup-
4 plementary aids and services cannot be achieved
5 satisfactorily.

6 “(B) ADDITIONAL REQUIREMENT.—

7 “(i) IN GENERAL.—A State funding
8 mechanism shall not result in placements
9 that violate the requirements of subpara-
10 graph (A); and a State shall not use a
11 funding mechanism by which the State dis-
12 tributes funds on the basis of the type of
13 setting in which a child is served that will
14 result in the failure to provide a child with
15 a disability a free appropriate public edu-
16 cation according to the unique needs of the
17 child as described in the child’s IEP.

18 “(ii) ASSURANCE.—If the State does
19 not have policies and procedures to ensure
20 compliance with clause (i), the State shall
21 provide the Secretary an assurance that
22 the State will revise the funding mecha-
23 nism as soon as feasible to ensure that
24 such mechanism does not result in such
25 placements.

1 “(6) PROCEDURAL SAFEGUARDS.—

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

5 “(B) ADDITIONAL PROCEDURAL SAFE-
6 GUARDS.—Procedures to ensure that testing
7 and evaluation materials and procedures uti-
8 lized for the purposes of evaluation and place-
9 ment of children with disabilities will be se-
10 lected and administered so as not to be racially
11 or culturally discriminatory. Such materials or
12 procedures shall be provided and administered
13 in the child’s native language or mode of com-
14 munication, unless it clearly is not feasible to
15 do so, and no single procedure shall be the sole
16 criterion for determining an appropriate edu-
17 cational program for a child.

18 “(7) EVALUATION.—Children with disabilities
19 are evaluated in accordance with subsections (a)
20 through (e) of section 614.

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

24 “(9) TRANSITION FROM PART C TO PRESCHOOL
25 PROGRAMS.—Children participating in early-inter-

1 vention programs assisted under part C, and who
 2 will participate in preschool programs assisted under
 3 this part, experience a smooth and effective transi-
 4 tion to those preschool programs in a manner con-
 5 sistent with section 637(a)(8). By the third birthday
 6 of such a child, an individualized education program
 7 or, if consistent with sections 614(d)(2)(B) and
 8 636(d), an individualized family service plan, has
 9 been developed and is being implemented for the
 10 child. The local educational agency will participate
 11 in transition planning conferences arranged by the
 12 designated lead agency under section 637(a)(8).

13 “(10) CHILDREN IN PRIVATE SCHOOLS.—

14 “(A) CHILDREN ENROLLED IN PRIVATE
 15 SCHOOLS BY THEIR PARENTS.—

16 “(i) IN GENERAL.—To the extent con-
 17 sistent with the number and location of
 18 children with disabilities in the State who
 19 are enrolled by their parents in private ele-
 20 mentary schools and secondary schools in
 21 the school district served by a local edu-
 22 cational agency, provision is made for the
 23 participation of those children in the pro-
 24 gram assisted or carried out under this
 25 part by providing for such children special

1 education and related services in accord-
2 ance with the following requirements, un-
3 less the Secretary has arranged for serv-
4 ices to those children under subsection (f):

5 “(I) Amounts to be expended for
6 the provision of those services (includ-
7 ing direct services to parentally placed
8 children) by the local educational
9 agency shall be equal to a propor-
10 tionate amount of Federal funds made
11 available under this part.

12 “(II) Such services may be pro-
13 vided to children with disabilities on
14 the premises of private, including reli-
15 gious, schools, to the extent consistent
16 with law.

17 “(III) Each local educational
18 agency shall maintain in its records
19 and provide to the State educational
20 agency the number of children evalu-
21 ated under this paragraph, the num-
22 ber of children determined to be a
23 child with a disability, and the num-
24 ber of children served under this sub-
25 section.

1 “(ii) ~~CHILD-FIND REQUIREMENT.~~—

2 “(I) ~~IN GENERAL.~~—The require-
3 ments of paragraph (3) of this sub-
4 section (relating to child find) shall
5 apply with respect to children with
6 disabilities in the State who are en-
7 rolled in private, including religious,
8 elementary schools and secondary
9 schools. Such child find process shall
10 be conducted in a comparable time pe-
11 riod as for other students attending
12 public schools in the local educational
13 agency.

14 “(II) ~~EQUITABLE PARTICIPA-~~
15 ~~TION.~~—The child find process shall be
16 designed to ensure the equitable par-
17 ticipation of parentally placed private
18 school children and an accurate count
19 of such children.

20 “(III) ~~ACTIVITIES.~~—In carrying
21 out this clause, the local educational
22 agency, or where applicable, the State
23 educational agency, shall undertake
24 activities similar to those activities un-
25 dertaken for its public school children.

1 “(IV) COST.—The cost of ear-
2 rying out this clause, including indi-
3 vidual evaluations, may not be consid-
4 ered in determining whether a local
5 education agency has met its obliga-
6 tions under clause (i).

7 “(V) COMPLETION PERIOD.—
8 Such child find process shall be com-
9 pleted in a time period comparable to
10 that for other students attending pub-
11 lic schools served by the local edu-
12 cational agency.

13 “(iii) CONSULTATION.—To ensure
14 timely and meaningful consultation, a local
15 educational agency, or where appropriate,
16 a State educational agency, shall consult,
17 with representatives of children with dis-
18 abilities parentally placed in private
19 schools, during the design and development
20 of special education and related services
21 for these children, including consultation
22 regarding—

23 “(I) the child find process and
24 how parentally placed private school
25 children suspected of having a dis-

1 ability can participate equitably, in-
2 cluding how parents, teachers, and
3 private school officials will be in-
4 formed of the process;

5 “(II) the determination of the
6 proportionate share of Federal funds
7 available to serve parentally placed
8 private school children with disabili-
9 ties under this paragraph, including
10 the determination of how the propor-
11 tionate share of those funds were cal-
12 culated;

13 “(III) the consultation process
14 among the school district, private
15 school officials, and parents of paren-
16 tally placed private school children
17 with disabilities, including how such
18 process will operate throughout the
19 school year to ensure that parentally
20 placed children with disabilities identi-
21 fied through the child find process can
22 meaningfully participate in special
23 education and related services;

24 “(IV) how, where, and by whom
25 special education and related services

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

9 “(V) how, if the local educational
10 agency disagrees with the views of the
11 private school officials on the provi-
12 sion of services through a contract,
13 the local educational agency shall pro-
14 vide to the private school officials a
15 written explanation of the reasons
16 why such the local educational agency
17 chose not to use a contractor.

18 “(iv) WRITTEN AFFIRMATION.—When
19 timely and meaningful consultation as re-
20 quired by this section has occurred, the
21 local educational agency shall obtain a
22 written affirmation signed by the rep-
23 resentatives of participating private
24 schools; and if such officials do not provide
25 such affirmations within a reasonable pe-

1 riod of time, the local educational agency
2 shall forward the documentation of the
3 consultation process to the State edu-
4 cational agency.

5 “(v) COMPLIANCE.—

6 “(I) IN GENERAL.—A private
7 school official shall have the right to
8 complain to the State educational
9 agency that the local educational
10 agency did not engage in consultation
11 that was meaningful and timely, or
12 did not give due consideration to the
13 views of the private school official.

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

1 the Secretary by providing the basis
2 of the noncompliance with this section
3 by the local educational agency to the
4 Secretary, and the State educational
5 agency shall forward the appropriate
6 documentation to the Secretary.

7 “(vi) ~~PROVISION OF EQUITABLE SERV-~~
8 ~~ICES.—~~

9 “(I) ~~DIRECT SERVICES.—~~To the
10 extent practicable, the local edu-
11 cational agency shall provide direct
12 services to children with disabilities
13 parentally placed in private schools.

14 “(II) ~~DIRECTLY OR THROUGH~~
15 ~~CONTRACTS.—~~A public agency may
16 provide special education and related
17 services directly or through contracts
18 with public and private agencies, orga-
19 nizations, and institutions.

20 “(III) ~~SECULAR, NEUTRAL, NON-~~
21 ~~IDEOLOGICAL.—~~Special education and
22 related services provided to children
23 with disabilities attending private
24 schools, including materials and

1 equipment, shall be secular, neutral,
2 and nonideological.

3 “(vii) PUBLIC CONTROL OF FUNDS.—

4 The control of funds used to provide spe-
5 cial education and related services under
6 this section, and title to materials, equip-
7 ment, and property purchased with those
8 funds, shall be in a public agency for the
9 uses and purposes provided in this Act,
10 and a public agency shall administer the
11 funds and property.

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

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

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

3 “(ii) STANDARDS.—In all cases de-
4 scribed in clause (i), the State educational
5 agency shall determine whether such
6 schools and facilities meet standards that
7 apply to State and local educational agen-
8 cies and that children so served have all
9 the rights the children would have if served
10 by such agencies.

11 “(C) PAYMENT FOR EDUCATION OF CHIL-
12 DREN ENROLLED IN PRIVATE SCHOOLS WITH-
13 OUT CONSENT OF OR REFERRAL BY THE PUB-
14 LIC AGENCY.—

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

1 “(ii) REIMBURSEMENT FOR PRIVATE
2 SCHOOL PLACEMENT.—If the parents of a
3 child with a disability, who previously re-
4 ceived special education and related serv-
5 ices under the authority of a public agency,
6 enroll the child in a private elementary
7 school or secondary school without the con-
8 sent of or referral by the public agency, a
9 court or a hearing officer may require the
10 agency to reimburse the parents for the
11 cost of that enrollment if the court or
12 hearing officer finds that the agency had
13 not made a free appropriate public edu-
14 cation available to the child in a timely
15 manner prior to that enrollment.

16 “(iii) LIMITATION ON REIMBURSE-
17 MENT.—The cost of reimbursement de-
18 scribed in clause (ii) may be reduced or de-
19 nied—

20 “(I) if—

21 “(aa) at the most recent
22 IEP meeting that the parents at-
23 tended prior to removal of the
24 child from the public school, the
25 parents did not inform the IEP

1 Team that they were rejecting
2 the placement proposed by the
3 public agency to provide a free
4 appropriate public education to
5 their child, including stating their
6 concerns and their intent to en-
7 roll their child in a private school
8 at public expense; or

9 “(bb) 10 business days (in-
10 cluding any holidays that occur
11 on a business day) prior to the
12 removal of the child from the
13 public school, the parents did not
14 give written notice to the public
15 agency of the information de-
16 scribed in division (aa);

17 “(II) if, prior to the parents’ re-
18 moval of the child from the public
19 school, the public agency informed the
20 parents, through the notice require-
21 ments described in section 615(b)(3),
22 of its intent to evaluate the child (in-
23 cluding a statement of the purpose of
24 the evaluation that was appropriate
25 and reasonable); but the parents did

1 not make the child available for such
2 evaluation; or

3 “(III) upon a judicial finding of
4 unreasonableness with respect to ac-
5 tions taken by the parents.

6 “(iv) EXCEPTION.—Notwithstanding
7 the notice requirement in clause (iii)(I),
8 the cost of reimbursement—

9 “(I) shall not be reduced or de-
10 nied for failure to provide such notice
11 if—

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

15 “(bb) the parents had not
16 received notice, pursuant to sec-
17 tion 615, of the notice require-
18 ment in clause (iii)(I); and

19 “(II) may, in the discretion of a
20 court or a hearing officer, not be re-
21 duced or denied for failure to provide
22 such notice if—

23 “(aa) the parent is illiterate
24 and cannot write in English; or

1 “(bb) compliance with clause
2 (iii)(I) would likely have resulted
3 in physical or serious emotional
4 harm to the child.

5 “(11) STATE EDUCATIONAL AGENCY RESPON-
6 SIBLE FOR GENERAL SUPERVISION.—

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

9 “(i) the requirements of this part are
10 met; and

11 “(ii) all educational programs for chil-
12 dren with disabilities in the State, includ-
13 ing all such programs administered by any
14 other State or local agency—

15 “(I) are under the general super-
16 vision of individuals in the State who
17 are responsible for educational pro-
18 grams for children with disabilities;
19 and

20 “(II) meet the educational stand-
21 ards of the State educational agency.

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

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

3 “(C) EXCEPTION.—Notwithstanding sub-
 4 paragraphs (A) and (B), the Governor (or an-
 5 other individual pursuant to State law), con-
 6 sistent with State law, may assign to any public
 7 agency in the State the responsibility of ensur-
 8 ing that the requirements of this part are met
 9 with respect to children with disabilities who
 10 are convicted as adults under State law and in-
 11 carcerated in adult prisons.

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

14 “(A) ESTABLISHING RESPONSIBILITY FOR
 15 SERVICES.—The Chief Executive Officer of a
 16 State or designee of the officer shall ensure
 17 that an interagency agreement or other mecha-
 18 nism for interagency coordination is in effect
 19 between each public agency described in sub-
 20 paragraph (B) and the State educational agen-
 21 cy, in order to ensure that all services described
 22 in subparagraph (B)(i) that are needed to en-
 23 sure a free appropriate public education are
 24 provided, including the provision of such serv-
 25 ices during the pendency of any dispute under

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

3 “(i) AGENCY FINANCIAL RESPONSIBI-
4 BILITY.—An identification of, or a method
5 for defining, the financial responsibility of
6 each agency for providing services de-
7 scribed in subparagraph (B)(i) to ensure a
8 free appropriate public education to chil-
9 dren with disabilities, provided that the fi-
10 nancial responsibility of each public agency
11 described in subparagraph (B), including
12 the State Medicaid agency and other public
13 insurers of children with disabilities, shall
14 precede the financial responsibility of the
15 local educational agency (or the State
16 agency responsible for developing the
17 child’s IEP).

18 “(ii) CONDITIONS AND TERMS OF RE-
19 IMBURSEMENT.—The conditions, terms,
20 and procedures under which a local edu-
21 cational agency shall be reimbursed by
22 other agencies.

23 “(iii) INTERAGENCY DISPUTES.—Pro-
24 cedures for resolving interagency disputes
25 (including procedures under which local

1 educational agencies may initiate pro-
2 ceedings) under the agreement or other
3 mechanism to secure reimbursement from
4 other agencies or otherwise implement the
5 provisions of the agreement or mechanism.

6 “(iv) COORDINATION OF SERVICES
7 PROCEDURES.—Policies and procedures for
8 agencies to determine and identify the
9 interagency coordination responsibilities of
10 each agency to promote the coordination
11 and timely and appropriate delivery of
12 services described in subparagraph (B)(i).

13 “(B) OBLIGATION OF PUBLIC AGENCY.—

14 “(i) IN GENERAL.—If any public
15 agency other than an educational agency is
16 otherwise obligated under Federal or State
17 law, or assigned responsibility under State
18 policy, pursuant to subparagraph (A), or
19 pursuant to an agreement under para-
20 graph (C), to provide or pay for any serv-
21 ices that are also considered special edu-
22 cation or related services (such as, but not
23 limited to, services described in section
24 602(1) relating to assistive technology de-
25 vices, 602(2) relating to assistive tech-

1 nology services, 602(24) relating to related
2 services, 602(31) relating to supplementary
3 aids and services, and 602(32) relating to
4 transition services) that are necessary for
5 ensuring a free appropriate public edu-
6 cation to children with disabilities within
7 the State, such public agency shall fulfill
8 that obligation or responsibility, either di-
9 rectly or through contract or other ar-
10 rangement pursuant to subparagraph (A).

11 “(ii) REIMBURSEMENT FOR SERVICES
12 BY PUBLIC AGENCY.—If a public agency
13 other than an educational agency fails to
14 provide or pay for the special education
15 and related services described in clause (i),
16 the local educational agency (or State
17 agency responsible for developing the
18 child’s IEP) shall provide or pay for such
19 services to the child. Such local educational
20 agency or State agency is authorized to
21 claim reimbursement for the services from
22 the public agency that failed to provide or
23 pay for such services and such public agen-
24 cy shall reimburse the local educational
25 agency or State agency pursuant to the

1 terms of the interagency agreement or
 2 other mechanism described in subpara-
 3 graph (A)(i) according to the procedures
 4 established in such agreement pursuant to
 5 subparagraph (A)(ii).

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

8 “(i) State statute or regulation;

9 “(ii) signed agreements between re-
 10 spective agency officials that clearly iden-
 11 tify the responsibilities of each agency re-
 12 lating to the provision of services; or

13 “(iii) other appropriate written meth-
 14 ods as determined by the Chief Executive
 15 Officer of the State or designee of the offi-
 16 cer and approved by the Secretary through
 17 the review and approval of the State’s plan
 18 pursuant to this section.

19 “(13) PROCEDURAL REQUIREMENTS RELATING
 20 TO LOCAL EDUCATIONAL AGENCY ELIGIBILITY.—

21 The State educational agency will not make a final
 22 determination that a local educational agency is not
 23 eligible for assistance under this part without first
 24 affording that agency reasonable notice and an op-
 25 portunity for a hearing.

1 “(14) PERSONNEL STANDARDS.—

2 “(A) IN GENERAL.—The State educational
3 agency has established and maintains standards
4 to ensure that personnel necessary to carry out
5 this part are appropriately and adequately pre-
6 pared and trained, including that those per-
7 sonnel have the content knowledge and skills to
8 serve children with disabilities.

9 “(B) RELATED SERVICES PERSONNEL AND
10 PARAPROFESSIONALS.—The standards under
11 subparagraph (A) include standards for related
12 services personnel and paraprofessionals that—

13 “(i) are consistent with any State-ap-
14 proved or State-recognized certification, li-
15 censing, registration, or other comparable
16 requirements that apply to the professional
17 discipline in which those personnel are pro-
18 viding special education or related services;
19 and

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

1 and related services under this part to chil-
2 dren with disabilities.

3 ~~“(C) STANDARDS FOR SPECIAL EDUCATION~~
4 ~~TEACHERS.—~~The standards described in sub-
5 paragraph (A) shall ensure that each special
6 education teacher in the State who teaches in
7 an elementary, middle, or secondary school is
8 highly qualified not later than the 2006–2007
9 school year.

10 ~~“(D) POLICY.—~~In implementing this sec-
11 tion, a State shall adopt a policy that includes
12 a requirement that local educational agencies in
13 the State take measurable steps to recruit, hire,
14 train, and retain highly qualified personnel to
15 provide special education and related services
16 under this part to children with disabilities.

17 ~~“(15) PERFORMANCE GOALS AND INDICA-~~
18 ~~TORS.—~~The State—

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

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

24 ~~“(ii) are the same as the State’s defi-~~
25 ~~inition of adequate yearly progress, includ-~~

1 ing the State’s objectives for progress by
 2 children with disabilities, under section
 3 1111(b)(2)(C) of the Elementary and Sec-
 4 ondary Education Act of 1965;

5 “(iii) address drop out rates, as well
 6 as such other factors as the State may de-
 7 termine; and

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

11 “(B) has established performance indica-
 12 tors the State will use to assess progress toward
 13 achieving the goals described in subparagraph
 14 (A), including measurable annual objectives for
 15 progress by children with disabilities under sec-
 16 tion 1111(b)(2)(C)(v)(II)(cc) of the Elementary
 17 and Secondary Education Act of 1965; and

18 “(C) will annually report to the Secretary
 19 and the public on the progress of the State, and
 20 of children with disabilities in the State, toward
 21 meeting the goals established under subpara-
 22 graph (A).

23 “(16) PARTICIPATION IN ASSESSMENTS.—

24 “(A) IN GENERAL.— All children with dis-
 25 abilities are included in all general State and

1 districtwide assessment programs and account-
2 ability systems, including assessments and ac-
3 countability systems described under section
4 1111 of the Elementary and Secondary Edu-
5 cation Act of 1965, with appropriate accom-
6 modations, alternate assessments where nec-
7 essary, and as indicated in their respective indi-
8 vidualized education programs.

9 “(B) ACCOMMODATION GUIDELINES.—The
10 State (or, in the case of a districtwide assess-
11 ment, the local educational agency) has devel-
12 oped guidelines for the provision of appropriate
13 accommodations.

14 “(C) ALTERNATE ASSESSMENTS.—

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

1 “(ii) REQUIREMENTS FOR ALTERNATE
2 ASSESSMENTS.—The guidelines under
3 clause (i) shall provide for alternate assess-
4 ments that—

5 “(I) are aligned with the State’s
6 challenging academic content and aca-
7 demic achievement standards; or

8 “(II) measure the achievement of
9 students against alternate academic
10 achievement standards that are
11 aligned with the State’s academic con-
12 tent standards.

13 “(iii) CONDUCT OF ALTERNATIVE AS-
14 SESSMENTS.—The State conducts the al-
15 ternate assessments described in this sub-
16 paragraph.

17 “(D) REPORTS.—The State educational
18 agency (or, in the case of a districtwide assess-
19 ment, the local educational agency) makes
20 available to the public, and reports to the public
21 with the same frequency and in the same detail
22 as it reports on the assessment of nondisabled
23 children, the following:

24 “(i) The number of children with dis-
25 abilities participating in regular assess-

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

4 “(ii) The number of children with dis-
5 abilities participating in alternate assess-
6 ments described in subparagraph (C)(ii)(I).

7 “(iii) The number of children with
8 disabilities participating in alternate as-
9 sessments described in subparagraph
10 (C)(ii)(II).

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

23 “(E) UNIVERSAL DESIGN.—The State edu-
24 cational agency (or, in the case of a districtwide
25 assessment, the local educational agency) shall,

1 to the extent possible, use universal design prin-
2 ciples in developing and administering any as-
3 sessments under this paragraph.

4 “(17) SUPPLEMENTATION OF STATE, LOCAL,
5 AND OTHER FEDERAL FUNDS.—

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

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

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

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

5 “(18) MAINTENANCE OF STATE FINANCIAL
6 SUPPORT.—

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

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

22 “(C) WAIVERS FOR EXCEPTIONAL OR UN-
23 CONTROLLABLE CIRCUMSTANCES.—The Sec-
24 retary may waive the requirement of subpara-

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

3 “(i) granting a waiver would be equi-
4 table due to exceptional or uncontrollable
5 circumstances such as a natural disaster or
6 a precipitous and unforeseen decline in the
7 financial resources of the State; or

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

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

21 “(E) REGULATIONS.—

22 “(i) IN GENERAL.—The Secretary
23 shall, by regulation, establish procedures
24 (including objective criteria and consider-
25 ation of the results of compliance reviews

1 of the State conducted by the Secretary)
2 for determining whether to grant a waiver
3 under subparagraph (C)(ii).

4 “(ii) TIMELINE.—The Secretary shall
5 publish proposed regulations under clause
6 (i) not later than 6 months after the date
7 of enactment of the Individuals with Dis-
8 abilities Education Improvement Act of
9 2003, and shall issue final regulations
10 under clause (i) not later than 1 year after
11 such date of enactment.

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

20 “(20) STATE ADVISORY PANEL.—

21 “(A) IN GENERAL.—The State has estab-
22 lished and maintains an advisory panel for the
23 purpose of providing policy guidance with re-
24 spect to special education and related services
25 for children with disabilities in the State.

1 “(B) MEMBERSHIP.—Such advisory panel
2 shall consist of members appointed by the Gov-
3 ernor, or any other official authorized under
4 State law to make such appointments, that is
5 representative of the State population and that
6 is composed of individuals involved in, or con-
7 cerned with, the education of children with dis-
8 abilities, including—

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

11 “(ii) individuals with disabilities;

12 “(iii) teachers;

13 “(iv) representatives of institutions of
14 higher education that prepare special edu-
15 cation and related services personnel;

16 “(v) State and local education offi-
17 cials;

18 “(vi) administrators of programs for
19 children with disabilities;

20 “(vii) representatives of other State
21 agencies involved in the financing or deliv-
22 ery of related services to children with dis-
23 abilities;

24 “(viii) representatives of private
25 schools and public charter schools;

1 ~~“(ix) at least 1 representative of a vo-~~
 2 ~~ational, community, or business organiza-~~
 3 ~~tion concerned with the provision of transi-~~
 4 ~~tion services to children with disabilities;~~
 5 ~~and~~

6 ~~“(x) representatives from the State~~
 7 ~~juvenile and adult corrections agencies.~~

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

12 ~~“(D) DUTIES.—The advisory panel shall—~~

13 ~~“(i) advise the State educational agen-~~
 14 ~~cy of unmet needs within the State in the~~
 15 ~~education of children with disabilities;~~

16 ~~“(ii) comment publicly on any rules or~~
 17 ~~regulations proposed by the State regard-~~
 18 ~~ing the education of children with disabil-~~
 19 ~~ities;~~

20 ~~“(iii) advise the State educational~~
 21 ~~agency in developing evaluations and re-~~
 22 ~~porting on data to the Secretary under sec-~~
 23 ~~tion 618;~~

24 ~~“(iv) advise the State educational~~
 25 ~~agency in developing corrective action~~

1 plans to address findings identified in Fed-
 2 eral monitoring reports under this part;
 3 and

4 “(v) advise the State educational
 5 agency in developing and implementing
 6 policies relating to the coordination of serv-
 7 ices for children with disabilities.

8 “(21) SUSPENSION AND EXPULSION RATES.—

9 “(A) IN GENERAL.—The State educational
 10 agency examines data to determine if signifi-
 11 cant discrepancies are occurring in the rate of
 12 long-term suspensions and expulsions of chil-
 13 dren with disabilities—

14 “(i) among local educational agencies
 15 in the State; or

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

18 “(B) REVIEW AND REVISION OF POLI-
 19 CIES.—If such discrepancies are occurring, the
 20 State educational agency reviews and, if appro-
 21 priate, revises (or requires the affected State or
 22 local educational agency to revise) its policies,
 23 procedures, and practices relating to the devel-
 24 opment and implementation of IEPs, the use of
 25 behavioral interventions, and procedural safe-

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

3 ~~“(22) INSTRUCTIONAL MATERIALS.—~~

4 ~~“(A) IN GENERAL.—The State adopts the~~
5 ~~national instructional materials accessibility~~
6 ~~standard for the purposes of providing instruc-~~
7 ~~tional materials to blind persons or other per-~~
8 ~~sons with print disabilities in a timely manner~~
9 ~~after the publication of the standard by the~~
10 ~~Secretary in the Federal Register.~~

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

24 ~~“(C) DEFINITION.—For purposes of this~~
25 ~~paragraph, the term ‘instructional materials’~~

1 means printed textbooks and related core mate-
 2 rials that are written and published primarily
 3 for use in elementary school and secondary
 4 school instruction and are required by a State
 5 educational agency or local educational agency
 6 for use by pupils in the classroom.

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

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

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

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

20 “(1) IN GENERAL.—If a State has on file with
 21 the Secretary policies and procedures that dem-
 22 onstrate that such State meets any requirement of
 23 subsection (a), including any policies and procedures
 24 filed under this part as in effect before the effective
 25 date of the Individuals with Disabilities Education

1 Improvement Act of 2003, the Secretary shall con-
2 sider such State to have met such requirement for
3 purposes of receiving a grant under this part.

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

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

24 “(d) APPROVAL BY THE SECRETARY.—

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

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

9 “(A) with reasonable notice; and

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

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

17 “(f) BY-PASS FOR CHILDREN IN PRIVATE
18 SCHOOLS.—

19 “(1) IN GENERAL.—If, on the date of enact-
20 ment of the Education of the Handicapped Act
21 Amendments of 1983, a State educational agency
22 was prohibited by law from providing for the equi-
23 table participation in special programs of children
24 with disabilities enrolled in private elementary
25 schools and secondary schools as required by sub-

1 section (a)(10)(A), or if the Secretary determines
 2 that a State educational agency, local educational
 3 agency, or other entity has substantially failed or is
 4 unwilling to provide for such equitable participation;
 5 then the Secretary shall, notwithstanding such provi-
 6 sion of law, arrange for the provision of services to
 7 such children through arrangements which shall be
 8 subject to the requirements of such subsection.

9 ~~“(2) PAYMENTS.—~~

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

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

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

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

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

17 “(3) NOTICE AND HEARING.—

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

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

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

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

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

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

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

16 “(a) IN GENERAL.—A local educational agency is eli-
17 gible for assistance under this part for a fiscal year if such
18 agency submits a plan that provides assurances to the
19 State educational agency that the local educational agency
20 meets each of the following conditions:

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

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

3 ~~“(2) USE OF AMOUNTS.—~~

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

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

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

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

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

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

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

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

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

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

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

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

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

3 “(i) 8 PERCENT RULE.—Notwith-
4 standing clauses (ii) and (iii) of subpara-
5 graph (A), a local educational agency may
6 treat as local funds, for the purposes of
7 such clauses, not more than 8 percent of
8 the amount of funds the local educational
9 agency receives under this part.

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

20 “(iii) EARLY INTERVENING
21 PREREFERRAL SERVICES.—

22 “(I) 8 PERCENT RULE.—If a
23 local educational agency exercises au-
24 thority pursuant to clause (i), the 8
25 percent funds shall be counted toward

1 the percentage and amount of funds
 2 that may be used to provide early in-
 3 tervening prereferral services pursu-
 4 ant to subsection (f).

5 “(II) ~~40 PERCENT RULE.~~—If a
 6 local educational agency exercises au-
 7 thority pursuant to clause (ii), the
 8 local educational agency shall use an
 9 amount of the ~~40~~ percent funds from
 10 clause (ii) that represents ~~15~~ percent
 11 of the total amount of funds the local
 12 educational agency receives under this
 13 part, to provide early intervening
 14 prereferral services pursuant to sub-
 15 section (f).

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

20 “(I) clauses (ii) and (iii) of sub-
 21 paragraph (A); and

22 “(II) the provision of the local
 23 share of costs for title XIX of the So-
 24 cial Security Act.

1 “(v) PROHIBITION.—If a State edu-
2 cational agency determines that a local
3 educational agency is unable to establish
4 and maintain programs of free appropriate
5 public education that meet the require-
6 ments of this subsection, then the State
7 educational agency shall prohibit the local
8 educational agency from treating funds re-
9 ceived under this part as local funds under
10 clause (i) or (ii) for that fiscal year, but
11 only if the State educational agency is au-
12 thorized to do so by the State constitution
13 or a State statute.

14 “(vi) REPORT.—For each fiscal year
15 in which a local educational agency exer-
16 cises its authority pursuant to this para-
17 graph and treats Federal funds as local
18 funds, the local educational agency shall
19 report to the State educational agency the
20 amount of funds so treated and the activi-
21 ties that were funded with such funds.

22 “(D) SCHOOLWIDE PROGRAMS UNDER
23 TITLE I OF THE ESEA.—Notwithstanding sub-
24 paragraph (A) or any other provision of this
25 part, a local educational agency may use funds

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

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

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

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

14 “(3) PERSONNEL DEVELOPMENT.—The local
 15 educational agency shall ensure that all personnel
 16 necessary to carry out this part are appropriately
 17 and adequately prepared, consistent with the re-
 18 quirements of section 612(a)(14) of this Act and
 19 section 2122 of the Elementary and Secondary Edu-
 20 cation Act of 1965.

21 “(4) PERMISSIVE USE OF FUNDS.—

22 “(A) USES.—Notwithstanding paragraph
 23 (2)(A) or section 612(a)(17)(B) (relating to
 24 commingled funds), funds provided to the local

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

3 “(i) SERVICES AND AIDS THAT ALSO
4 BENEFIT NONDISABLED CHILDREN.—For
5 the costs of special education and related
6 services, and supplementary aids and serv-
7 ices, provided in a regular class or other
8 education-related setting to a child with a
9 disability in accordance with the individual-
10 ized education program of the child, even
11 if 1 or more nondisabled children benefit
12 from such services.

13 “(ii) EARLY INTERVENING SERV-
14 ICES.—To develop and implement com-
15 prehensive, coordinated, early intervening
16 educational services in accordance with
17 subsection (f).

18 “(B) CASE MANAGEMENT AND ADMINIS-
19 TRATION.—A local educational agency may use
20 funds received under this part to purchase ap-
21 propriate technology, for recordkeeping, data
22 collection, and related case management activi-
23 ties of teachers and related services personnel
24 providing services described in the individual-
25 ized education program of children with disabil-

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

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

8 “(A) serves children with disabilities at-
9 tending those charter schools in the same man-
10 ner as the local educational agency serves chil-
11 dren with disabilities in its other schools, in-
12 cluding providing supplementary and related
13 services on site at the charter school to the
14 same extent to which the local educational
15 agency has a policy or practice of providing
16 such services on the site to its other public
17 schools; and

18 “(B) provides funds under this part to
19 those charter schools on the same basis, includ-
20 ing proportional distribution based on relative
21 enrollment of children with disabilities, and at
22 the same time, as the local educational agency
23 distributes State, local, or a combination of
24 State and local, funds to those charter schools
25 under the State’s charter school law.

1 “(6) PURCHASE OF INSTRUCTIONAL MATE-
2 RIALS.—Not later than 2 years after the date of the
3 enactment of the Individuals with Disabilities Edu-
4 cation Improvement Act of 2003, the local edu-
5 cational agency, when purchasing instructional mate-
6 rials for use in public elementary schools or sec-
7 ondary schools served by the local educational agen-
8 cy, requires the publisher of the instructional mate-
9 rials, as a part of any purchase agreement that is
10 made, renewed, or revised, to prepare and supply
11 electronic files containing the contents of the in-
12 structional materials using the national instructional
13 materials accessibility standard described in section
14 612(a)(22).

15 “(7) INFORMATION FOR STATE EDUCATIONAL
16 AGENCY.—The local educational agency shall provide
17 the State educational agency with information nec-
18 essary to enable the State educational agency to
19 carry out its duties under this part, including, with
20 respect to paragraphs (15) and (16) of section
21 612(a), information relating to the performance of
22 children with disabilities participating in programs
23 carried out under this part.

24 “(8) PUBLIC INFORMATION.—The local edu-
25 cational agency shall make available to parents of

1 children with disabilities and to the general public
2 all documents relating to the eligibility of such agen-
3 cy under this part.

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

5 “(1) IN GENERAL.—If a local educational agen-
6 cy or State agency has on file with the State edu-
7 cational agency policies and procedures that dem-
8 onstrate that such local educational agency, or such
9 State agency, as the case may be, meets any require-
10 ment of subsection (a), including any policies and
11 procedures filed under this part as in effect before
12 the effective date of the Individuals with Disabilities
13 Education Improvement Act of 2003, the State edu-
14 cational agency shall consider such local educational
15 agency or State agency, as the case may be, to have
16 met such requirement for purposes of receiving as-
17 sistance under this part.

18 “(2) MODIFICATION MADE BY LOCAL EDU-
19 CATIONAL AGENCY.—Subject to paragraph (3), an
20 application submitted by a local educational agency
21 in accordance with this section shall remain in effect
22 until the local educational agency submits to the
23 State educational agency such modifications as the
24 local educational agency determines necessary.

1 “(3) MODIFICATIONS REQUIRED BY STATE
2 EDUCATIONAL AGENCY.—If, after the effective date
3 of the Individuals with Disabilities Education Im-
4 provement Act of 2002, the provisions of this Act
5 are amended (or the regulations developed to carry
6 out this Act are amended), there is a new interpreta-
7 tion of this Act by Federal or State courts, or there
8 is an official finding of noncompliance with Federal
9 or State law or regulations, then the State edu-
10 cational agency may require a local educational
11 agency to modify its application only to the extent
12 necessary to ensure the local educational agency’s
13 compliance with this part or State law.

14 “(e) NOTIFICATION OF LOCAL EDUCATIONAL AGEN-
15 CY OR STATE AGENCY IN CASE OF INELIGIBILITY.—If the
16 State educational agency determines that a local edu-
17 cational agency or State agency is not eligible under this
18 section, then the State educational agency shall notify the
19 local educational agency or State agency, as the case may
20 be, of that determination and shall provide such local edu-
21 cational agency or State agency with reasonable notice and
22 an opportunity for a hearing.

23 “(d) LOCAL EDUCATIONAL AGENCY COMPLIANCE.—

24 “(1) IN GENERAL.—If the State educational
25 agency, after reasonable notice and an opportunity

1 for a hearing, finds that a local educational agency
2 or State agency that has been determined to be eligi-
3 ble under this section is failing to comply with any
4 requirement described in subsection (a), the State
5 educational agency shall reduce or shall not provide
6 any further payments to the local educational agency
7 or State agency until the State educational agency
8 is satisfied that the local educational agency or State
9 agency, as the case may be, is complying with that
10 requirement.

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

18 “(3) CONSIDERATION.—In carrying out its re-
19 sponsibilities under paragraph (1), the State edu-
20 cational agency shall consider any decision made in
21 a hearing held under section 615 that is adverse to
22 the local educational agency or State agency involved
23 in that decision.

24 “(c) JOINT ESTABLISHMENT OF ELIGIBILITY.—

25 “(1) JOINT ESTABLISHMENT.—

1 “(A) IN GENERAL.—A State educational
2 agency may require a local educational agency
3 to establish its eligibility jointly with another
4 local educational agency if the State educational
5 agency determines that the local educational
6 agency will be ineligible under this section be-
7 cause the local educational agency will not be
8 able to establish and maintain programs of suf-
9 ficient size and scope to effectively meet the
10 needs of children with disabilities.

11 “(B) CHARTER SCHOOL EXCEPTION.—A
12 State educational agency may not require a
13 charter school that is a local educational agency
14 to jointly establish its eligibility under subpara-
15 graph (A) unless the charter school is explicitly
16 permitted to do so under the State’s charter
17 school law.

18 “(2) AMOUNT OF PAYMENTS.—If a State edu-
19 cational agency requires the joint establishment of
20 eligibility under paragraph (1), the total amount of
21 funds made available to the affected local edu-
22 cational agencies shall be equal to the sum of the
23 payments that each such local educational agency
24 would have received under section 611(f) if such
25 agencies were eligible for such payments.

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

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

7 “(B) be jointly responsible for imple-
 8 menting programs that receive assistance under
 9 this part.

10 “(4) REQUIREMENTS FOR EDUCATIONAL SERV-
 11 ICE AGENCIES.—

12 “(A) IN GENERAL.—If an educational serv-
 13 ice agency is required by State law to carry out
 14 programs under this part, the joint responsibil-
 15 ities given to local educational agencies under
 16 this subsection shall—

17 “(i) not apply to the administration
 18 and disbursement of any payments re-
 19 ceived by that educational service agency;
 20 and

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

23 “(B) ADDITIONAL REQUIREMENT.—Not-
 24 withstanding any other provision of this sub-
 25 section, an educational service agency shall pro-

1 vide for the education of children with disabil-
2 ities in the least restrictive environment, as re-
3 quired by section 612(a)(5).

4 “(f) EARLY INTERVENING SERVICES.—

5 “(1) IN GENERAL.—A local educational agency
6 may not use more than 15 percent of the amount
7 such agency receives under this part for any fiscal
8 year, less any amount treated as local funds pursu-
9 ant to subsection (a)(2)(C), if any, in combination
10 with other amounts (which may include amounts
11 other than education funds), to develop and imple-
12 ment comprehensive, coordinated, early intervening
13 educational services, which may include interagency
14 financing structures, for students in kindergarten
15 through grade 12 (with a particular emphasis on
16 students in kindergarten through grade 3) who have
17 not been identified as needing special education or
18 related services but who require additional academic
19 and behavioral support to succeed in a general edu-
20 cation environment.

21 “(2) ACTIVITIES.—In implementing comprehen-
22 sive, coordinated, early intervening educational serv-
23 ices under this subsection, a local educational agency
24 may carry out activities that include—

1 “(A) professional development (which may
2 be provided by entities other than local edu-
3 cational agencies) for teachers and other school
4 staff to enable such personnel to deliver sci-
5 entifically based academic and behavioral inter-
6 ventions, including scientifically based literacy
7 instruction, and, where appropriate, instruction
8 on the use of adaptive and instructional soft-
9 ware;

10 “(B) providing educational and behavioral
11 evaluations, services, and supports, including
12 scientifically based literacy instruction; and

13 “(C) developing and implementing inter-
14 agency financing structures for the provision of
15 such services and supports.

16 “(3) CONSTRUCTION.—Nothing in this sub-
17 section shall be construed to either limit or create a
18 right to a free appropriate public education under
19 this part.

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

1 “(A) the number of children served under
2 this subsection; and

3 “(B) the number of children served under
4 this subsection who are subsequently referred to
5 special education.

6 ~~“(5) COORDINATION WITH CERTAIN PROJECTS
7 UNDER ELEMENTARY AND SECONDARY EDUCATION
8 ACT OF 1965.—Funds made available to carry out
9 this subsection may be used to carry out comprehen-
10 sive, coordinated, early intervening educational serv-
11 ices aligned with activities funded by, and carried
12 out under, the Elementary and Secondary Education
13 Act of 1965 if such funds are used to supplement,
14 and not supplant, funds made available under the
15 Elementary and Secondary Education Act of 1965
16 for the activities and services assisted under this
17 subsection.~~

18 ~~“(g) DIRECT SERVICES BY THE STATE EDU-
19 CATIONAL AGENCY.—~~

20 ~~“(1) IN GENERAL.—A State educational agency
21 shall use the payments that would otherwise have
22 been available to a local educational agency or to a
23 State agency to provide special education and re-
24 lated services directly to children with disabilities re-
25 siding in the area served by that local educational~~

1 agency, or for whom that State agency is respon-
 2 sible, if the State educational agency determines
 3 that the local educational agency or State agency, as
 4 the case may be—

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

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

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

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

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

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

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

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

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

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

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

9 “(j) STATE AGENCY FLEXIBILITY.—

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

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

1 “(A) 8 PERCENT RULE.—A State edu-
2 cational agency may treat not more than 8 per-
3 cent of the funds the State educational agency
4 receives under this part as general funds to
5 support any educational purpose described in
6 the Elementary and Secondary Education Act
7 of 1965, needs-based student or teacher higher
8 education programs, or the non-Federal share
9 of costs of title XIX of the Social Security Act.

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

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

1 agency uses an amount of the 40 percent funds
2 from subparagraph (B) that represents 15 per-
3 cent of the total amount of funds the State edu-
4 cational agency receives under this part, to pro-
5 vide, or to pay or reimburse local educational
6 agencies for providing, early intervening
7 prereferral services pursuant to subsection (f).

8 “(2) PROHIBITION.—Notwithstanding sub-
9 section (a), if the Secretary determines that a State
10 educational agency is unable to establish, maintain,
11 or oversee programs of free appropriate public edu-
12 cation that meet the requirements of this part, then
13 the Secretary shall prohibit the State educational
14 agency from treating funds allocated under this part
15 as general funds pursuant to paragraph (1).

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

1 **“SEC. 614. EVALUATIONS, ELIGIBILITY DETERMINATIONS,**
2 **INDIVIDUALIZED EDUCATION PROGRAMS,**
3 **AND EDUCATIONAL PLACEMENTS.**

4 **“(a) EVALUATIONS AND REEVALUATIONS.—**

5 **“(1) INITIAL EVALUATIONS.—**

6 **“(A) IN GENERAL.—**A State educational
7 agency, other State agency, or local educational
8 agency shall conduct a full and individual initial
9 evaluation in accordance with this paragraph
10 and subsection (b), before the initial provision
11 of special education and related services to a
12 child with a disability under this part.

13 **“(B) REQUEST FOR INITIAL EVALUA-**
14 **TION.—**Consistent with subparagraph (D), ei-
15 ther a parent of a child, or a State educational
16 agency, other State agency, or local educational
17 agency may initiate a request for an initial eval-
18 uation to determine if the child is a child with
19 a disability.

20 **“(C) PROCEDURES.—**Such initial evalua-
21 tion shall consist of procedures—

22 **“(i)** to determine whether a child is a
23 child with a disability (as defined in sec-
24 tion 602(3)) within 60 days of receiving
25 parental consent for the evaluation, or, if
26 the State has established a timeframe

1 within which the evaluation must be con-
2 ducted; within such timeframe; and

3 “(ii) to determine the educational
4 needs of such child.

5 “(D) PARENTAL CONSENT.—

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

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

23 “(iii) REFUSAL OR FAILURE TO CON-
24 SENT.—If the parent of a child does not
25 provide informed consent to the receipt of

1 special education and related services; or
 2 the parent fails to respond to a request to
 3 provide the consent, the local educational
 4 agency shall not be considered to be in vio-
 5 lation of the requirement to make available
 6 a free appropriate public education to the
 7 child.

8 “(2) REEVALUATIONS.—

9 “(A) IN GENERAL.—A local educational
 10 agency shall ensure that a reevaluation of each
 11 child with a disability is conducted in accord-
 12 ance with subsections (b) and (c)—

13 “(i) if the local educational agency de-
 14 termines that the educational or related
 15 services needs, including improved aca-
 16 demic achievement and functional perform-
 17 ance, of the child warrant a reevaluation;
 18 or

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

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

23 “(i) not more than once a year, unless
 24 the parent and the local educational agen-
 25 cy agree otherwise; and

1 “(ii) at least once every 3 years, un-
 2 less the parent and the local educational
 3 agency agree that a reevaluation is unnee-
 4 essary.

5 “(b) EVALUATION PROCEDURES.—

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

12 “(2) CONDUCT OF EVALUATION.—In con-
 13 ducting the evaluation, the local educational agency
 14 shall—

15 “(A) use a variety of assessment tools and
 16 strategies to gather relevant functional, develop-
 17 mental, and academic information, including in-
 18 formation provided by the parent, that may as-
 19 sist in determining—

20 “(i) whether the child is a child with
 21 a disability; and

22 “(ii) the content of the child’s individ-
 23 ualized education program, including infor-
 24 mation related to enabling the child to be
 25 involved in and progress in the general

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

3 ~~“(B) not use any single procedure, meas-~~
4 ~~ure, or assessment as the sole criterion for de-~~
5 ~~termining whether a child is a child with a dis-~~
6 ~~ability or determining an appropriate edu-~~
7 ~~ational program for the child; and~~

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

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

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

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

19 ~~“(ii) are provided and administered,~~
20 ~~to the extent practicable, in the language~~
21 ~~and form most likely to yield accurate in-~~
22 ~~formation on what the child knows and can~~
23 ~~do academically, developmentally, and~~
24 ~~functionally;~~

1 “(iii) are used for purposes for which
2 the assessments or measures are valid and
3 reliable;

4 “(iv) are administered by trained and
5 knowledgeable personnel; and

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

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

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

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

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

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

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

6 “(A) lack of scientifically based instruction
7 in reading;

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

9 “(C) limited English proficiency.

10 “(6) SPECIFIC LEARNING DISABILITIES.—

11 “(A) IN GENERAL.—Notwithstanding sec-
12 tion 607, when determining whether a child has
13 a specific learning disability as defined in sec-
14 tion 602, a local educational agency shall not be
15 required to take into consideration whether a
16 child has a severe discrepancy between achieve-
17 ment and intellectual ability in oral expression,
18 listening comprehension, written expression,
19 basic reading skill, reading comprehension,
20 mathematical calculation, or mathematical rea-
21 soning.

22 “(B) ADDITIONAL AUTHORITY.—In deter-
23 mining whether a child has a specific learning
24 disability, a local educational agency may use a

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

3 “(e) ADDITIONAL REQUIREMENTS FOR EVALUATION
4 AND REEVALUATIONS.—

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

11 “(A) review existing evaluation data on the
12 child, including evaluations and information
13 provided by the parents of the child, current
14 classroom-based assessments, and observations,
15 and teacher and related services providers ob-
16 servations; and

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

20 “(i) whether the child has a particular
21 category of disability, as described in sec-
22 tion 602(3), or, in case of a reevaluation of
23 a child, whether the child continues to have
24 such a disability;

1 “(ii) the present levels of performance
2 and educational needs of the child;

3 “(iii) whether the child needs special
4 education and related services, or in the
5 ease of a reevaluation of a child, whether
6 the child continues to need special edu-
7 cation and related services; and

8 “(iv) whether any additions or modi-
9 fications to the special education and re-
10 lated services are needed to enable the
11 child to meet the measurable annual goals
12 set out in the individualized education pro-
13 gram of the child and to participate, as ap-
14 propriate, in the general curriculum.

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

19 “(3) PARENTAL CONSENT.—Each local edu-
20 cational agency shall obtain informed parental con-
21 sent, in accordance with subsection (a)(1)(D), prior
22 to conducting any reevaluation of a child with a dis-
23 ability, except that such informed parental consent
24 need not be obtained if the local educational agency
25 can demonstrate that the local educational agency

1 had taken reasonable measures to obtain such con-
 2 sent and the child's parent has failed to respond.

3 ~~“(4) REQUIREMENTS IF ADDITIONAL DATA ARE~~
 4 ~~NOT NEEDED.—~~If the IEP Team and other qualified
 5 professionals, as appropriate, determine that no ad-
 6 ditional data are needed to determine whether the
 7 child is or continues to be a child with a disability
 8 the local educational agency—

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

10 ~~“(i) that determination and the rea-~~
 11 ~~sons for the determination; and~~

12 ~~“(ii) the right of such parents to re-~~
 13 ~~quest an assessment to determine whether~~
 14 ~~the child is or continues to be a child with~~
 15 ~~a disability; and~~

16 ~~“(B) shall not be required to conduct such~~
 17 ~~an assessment unless requested by the child's~~
 18 ~~parents.~~

19 ~~“(5) EVALUATIONS BEFORE CHANGE IN ELIGI-~~
 20 ~~BILITY.—~~

21 ~~“(A) IN GENERAL.—~~Except as provided in
 22 subparagraph (B), a local educational agency
 23 shall evaluate a child with a disability in ac-
 24 cordance with this section before determining

1 that the child is no longer a child with a dis-
2 ability.

3 “(B) EXCEPTION.—

4 “(i) IN GENERAL.—The evaluation de-
5 scribed in subparagraph (A) shall not be
6 required before the termination of a child’s
7 eligibility under this part due to gradua-
8 tion from secondary school with a regular
9 diploma, or to exceeding the age eligibility
10 for a free appropriate public education
11 under State law.

12 “(ii) SUMMARY OF PERFORMANCE.—

13 For a child whose eligibility under this
14 part terminates under circumstances de-
15 scribed in clause (i), a local educational
16 agency shall provide the child with a sum-
17 mary of the child’s academic achievement
18 and functional performance, which shall in-
19 clude any further recommendations on how
20 to assist the child in meeting the child’s
21 postsecondary goals.

22 “(d) INDIVIDUALIZED EDUCATION PROGRAMS.—

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

24 “(A) INDIVIDUALIZED EDUCATION PRO-
25 GRAM.—

1 “(i) IN GENERAL.—The term ‘individ-
2 ualized education program’ or ‘IEP’ means
3 a written statement for each child with a
4 disability that is developed, reviewed, and
5 revised in accordance with this section and
6 that includes—

7 “(I) a statement of the child’s
8 present levels of academic achieve-
9 ment and functional performance, in-
10 cluding—

11 “(aa) how the child’s dis-
12 ability affects the child’s involve-
13 ment and progress in the general
14 curriculum; or

15 “(bb) for preschool children,
16 as appropriate, how the disability
17 affects the child’s participation in
18 appropriate activities;

19 “(II) a statement of measurable
20 annual goals, including academic and
21 functional goals, designed to—

22 “(aa) meet the child’s needs
23 that result from the child’s dis-
24 ability to enable the child to be

1 involved in and make progress in
2 the general curriculum; and

3 “(bb) meet each of the
4 child’s other educational needs
5 that result from the child’s dis-
6 ability;

7 “(III) a statement of how the
8 child’s progress toward the annual
9 goals described in subelause (II) will
10 be measured, including through the
11 use of quarterly or other periodic re-
12 ports, concurrent with the issuance of
13 report cards, that delineate the
14 progress the child is making toward
15 meeting the annual goals;

16 “(IV) a statement of the special
17 education and related services, and
18 supplementary aids and services, to be
19 provided to the child, or on behalf of
20 the child, and a statement of the pro-
21 gram modifications or supports for
22 school personnel that will be provided
23 for the child—

1 “(aa) to advance appro-
2 priately toward attaining the an-
3 nual goals;

4 “(bb) to be involved in and
5 make progress in the general cur-
6 riculum in accordance with sub-
7 clause (I) and to participate in
8 extracurricular and other nonaca-
9 demic activities; and

10 “(cc) to be educated and
11 participate with other children
12 with disabilities and nondisabled
13 children in the activities de-
14 scribed in this paragraph;

15 “(V) an explanation of the ex-
16 tent, if any, to which the child will not
17 participate with nondisabled children
18 in the regular class and in the activi-
19 ties described in subclause (IV)(cc);

20 “(VI)(aa) a statement of any in-
21 dividual appropriate accommodations
22 that are necessary to measure the
23 academic achievement and functional
24 performance of the child on State and

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

3 “(bb) if the IEP Team deter-
4 mines that the child shall take an al-
5 ternate assessment on a particular
6 State or districtwide assessment of
7 student achievement; a statement of
8 why—

9 “(AA) the child cannot par-
10 ticipate in the regular assess-
11 ment; and

12 “(BB) the particular alter-
13 nate assessment selected is ap-
14 propriate for the child;

15 “(VII) the projected date for the
16 beginning of the services and modi-
17 fications described in subclause (IV),
18 and the anticipated frequency, loca-
19 tion; and duration of those services
20 and modifications; and

21 “(VIII) beginning not later than
22 the first IEP to be in effect when the
23 child is 14, and updated annually
24 thereafter—

1 “(aa) appropriate measur-
2 able postsecondary goals based
3 upon age appropriate transition
4 assessments related to training,
5 education, employment, and,
6 where appropriate, independent
7 living skills;

8 “(bb) the transition services
9 (including courses of study) need-
10 ed by the child to reach those
11 goals, including services to be
12 provided by other agencies when
13 needed; and

14 “(cc) beginning at least 1
15 year before the child reaches the
16 age of majority under State law,
17 a statement that the child has
18 been informed of the child’s
19 rights under this title, if any,
20 that will transfer to the child on
21 reaching the age of majority
22 under section 615(m).

23 “(ii) RULE OF CONSTRUCTION.—

24 Nothing in this section shall be construed
25 to require—

1 “(I) that additional information
2 be included in a child’s IEP beyond
3 what is explicitly required in this sec-
4 tion; and

5 “(II) the IEP Team to include
6 information under 1 component of a
7 child’s IEP that is already contained
8 under another component of such
9 IEP.

10 “(B) INDIVIDUALIZED EDUCATION PRO-
11 GRAM TEAM.—The term ‘individualized edu-
12 cation program team’ or ‘IEP Team’ means a
13 group of individuals composed of—

14 “(i) the parents of a child with a dis-
15 ability;

16 “(ii) at least 1 regular education
17 teacher of such child (if the child is, or
18 may be, participating in the regular edu-
19 cation environment);

20 “(iii) at least 1 special education
21 teacher, or where appropriate, at least 1
22 special education provider of such child;

23 “(iv) a representative of the local edu-
24 cational agency who—

1 “(I) is qualified to provide, or su-
2 pervise the provision of, specially de-
3 signed instruction to meet the unique
4 needs of children with disabilities;

5 “(II) is knowledgeable about the
6 general curriculum; and

7 “(III) is knowledgeable about the
8 availability of resources of the local
9 educational agency;

10 “(v) an individual who can interpret
11 the instructional implications of evaluation
12 results, who may be a member of the team
13 described in clauses (ii) through (vi);

14 “(vi) at the discretion of the parent or
15 the agency; other individuals who have
16 knowledge or special expertise regarding
17 the child, including related services per-
18 sonnel as appropriate; and

19 “(vii) whenever appropriate, the child
20 with a disability.

21 “(C) IEP TEAM ATTENDANCE.—

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

1 with a disability and the local educational
 2 agency agree that the attendance of such
 3 member is not necessary because no modi-
 4 fication to the member's area of the cur-
 5 riculum or related services is being modi-
 6 fied or discussed in the meeting.

7 “(ii) EXCUSAL.—A member of the
 8 IEP Team may be excused from attending
 9 an IEP meeting, in whole or in part, when
 10 the meeting involves a modification to or
 11 discussion of the member's area of the cur-
 12 riculum or related services, if—

13 “(I) the parent and the local edu-
 14 cational agency consent to the excusal;
 15 and

16 “(II) the member submits input
 17 into the development of the IEP prior
 18 to the meeting.

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

21 “(A) IN GENERAL.—At the beginning of
 22 each school year, each local educational agency,
 23 State educational agency, or other State agen-
 24 cy, as the case may be, shall have in effect, for
 25 each child with a disability in its jurisdiction,

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

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

14 “(i) consistent with State policy; and

15 “(ii) agreed to by the agency and the
16 child’s parents.

17 “(3) DEVELOPMENT OF IEP.—

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

21 “(i) the strengths of the child;

22 “(ii) the concerns of the parents for
23 enhancing the education of their child;

1 “(iii) the results of the initial evalua-
2 tion or most recent evaluation of the child;
3 and

4 “(iv) the academic, developmental,
5 and functional needs of the child.

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

8 “(i) in the case of a child whose be-
9 havior impedes the child’s learning or that
10 of others; provide for positive behavioral
11 interventions and supports, and other
12 strategies to address that behavior;

13 “(ii) in the case of a child with limited
14 English proficiency, consider the language
15 needs of the child as such needs relate to
16 the child’s IEP;

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

19 “(I) provide for instruction in
20 Braille and the use of Braille unless
21 the IEP Team determines, after an
22 evaluation of the child’s reading and
23 writing skills, needs, and appropriate
24 reading and writing media (including
25 an evaluation of the child’s future

1 needs for instruction in Braille or the
2 use of Braille); that instruction in
3 Braille or the use of Braille is not ap-
4 propriate for the child; and

5 “(II) consider, when appropriate,
6 instructional services related to func-
7 tional performance skills, orientation
8 and mobility, and skills in the use of
9 assistive technology devices, including
10 low vision devices;

11 “(iv) in the case of a child who is deaf
12 or hard of hearing, consider the child’s lan-
13 guage and communication needs, opportu-
14 nities for direct communications with peers
15 and professional personnel, and access to
16 the general curriculum and instruction at
17 the child’s academic level in the child’s lan-
18 guage and communication mode; and

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

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

1 participate in the development of the IEP of
2 the child, including the determination of appro-
3 priate positive behavioral interventions and sup-
4 ports, and other strategies, and the determina-
5 tion of supplementary aids and services, pro-
6 gram modifications, and support for school per-
7 sonnel consistent with paragraph (1)(A)(i)(IV).

8 “(D) AGREEMENT.—In making changes to
9 a child’s IEP after the annual IEP meeting for
10 a school year, the parent of a child with a dis-
11 ability and the local educational agency may
12 agree not to convene an IEP meeting for the
13 remainder of the school year, and instead de-
14 velop a written document to amend or modify
15 the child’s current IEP.

16 “(E) CONSOLIDATION OF IEP TEAM MEET-
17 INGS.—To the extent possible, the local edu-
18 cational agency shall encourage the consolida-
19 tion of reevaluations of a child with IEP Team
20 meetings for the child.

21 “(4) REVIEW AND REVISION OF IEP.—

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

1 “(i) reviews the child’s IEP periodi-
 2 cally, but not less than annually, to deter-
 3 mine whether the annual goals for the
 4 child are being achieved; and

5 “(ii) revise the IEP as appropriate to
 6 address—

7 “(I) any lack of expected
 8 progress toward the annual goals and
 9 in the general curriculum, where ap-
 10 propriate;

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

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

16 “(IV) the child’s anticipated
 17 needs; or

18 “(V) other matters.

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

25 “(5) THREE-YEAR IEP.—

1 “(A) DEVELOPMENT OF 3-YEAR IEP.—The
2 local educational agency may offer a child with
3 a disability who has reached the age of 18, the
4 option of developing a comprehensive 3-year
5 IEP. With the consent of the parent, when ap-
6 propriate, the IEP Team shall develop an IEP,
7 as described in paragraphs (1) and (2), that is
8 designed to serve the child for the final 3-year
9 transition period, which includes a statement
10 of—

11 “(i) measurable goals that will enable
12 the child to be involved in and make
13 progress in the general education cur-
14 rriculum and that will meet the child’s tran-
15 sitional and postsecondary needs that re-
16 sult from the child’s disability; and

17 “(ii) measurable annual goals for
18 measuring progress toward meeting the
19 postsecondary goals described in clause (i).

20 “(B) REVIEW AND REVISION OF 3-YEAR
21 IEP.—

22 “(i) REQUIREMENT.—Each year the
23 local educational agency shall ensure that
24 the IEP Team—

1 “(I) provides an annual review of
2 the child’s IEP to determine the
3 child’s current levels of progress and
4 determine whether the annual goals
5 for the child are being achieved; and

6 “(II) revises the IEP, as appro-
7 priate, to enable the child to continue
8 to meet the measurable transition
9 goals set out in the IEP.

10 “(ii) COMPREHENSIVE REVIEW.—If
11 the review under clause (i) determines that
12 the child is not making sufficient progress
13 toward the goals described in subpara-
14 graph (A), the local educational agency
15 shall ensure that the IEP Team provides a
16 review, within 30 calendar days, of the
17 IEP under paragraph (4).

18 “(iii) PREFERENCE.—At the request
19 of the child, or when appropriate, the par-
20 ent, the IEP Team shall conduct a review
21 of the child’s 3-year IEP under paragraph
22 (4) rather than an annual review under
23 subparagraph (B)(i).

24 “(6) FAILURE TO MEET TRANSITION OBJEC-
25 TIVES.—If a participating agency, other than the

1 local educational agency, fails to provide the transi-
 2 tion services described in the IEP in accordance with
 3 paragraph (1)(A)(i)(VIII), the local educational
 4 agency shall reconvene the IEP Team to identify al-
 5 ternative strategies to meet the transition objectives
 6 for the child set out in that program.

7 “(7) CHILDREN WITH DISABILITIES IN ADULT
 8 PRISONS.—

9 “(A) IN GENERAL.—The following require-
 10 ments shall not apply to children with disabil-
 11 ities who are convicted as adults under State
 12 law and incarcerated in adult prisons:

13 “(i) The requirements contained in
 14 section 612(a)(16) and paragraph
 15 (1)(A)(i)(V) (relating to participation of
 16 children with disabilities in general assess-
 17 ments);

18 “(ii) The requirements of items (aa)
 19 and (bb) of paragraph (1)(A)(i)(VII) (re-
 20 lating to transition planning and transition
 21 services); do not apply with respect to such
 22 children whose eligibility under this part
 23 will end, because of their age, before they
 24 will be released from prison.

1 “(B) **ADDITIONAL REQUIREMENT.**—If a
2 child with a disability is convicted as an adult
3 under State law and incarcerated in an adult
4 prison, the child’s IEP Team may modify the
5 child’s IEP or placement notwithstanding the
6 requirements of sections 612(a)(5)(A) and
7 614(d)(1)(A) if the State has demonstrated a
8 bona fide security or compelling penological in-
9 terest that cannot otherwise be accommodated.

10 “(c) **EDUCATIONAL PLACEMENTS.**—Each local edu-
11 cational agency or State educational agency shall ensure
12 that the parents of each child with a disability are mem-
13 bers of any group that makes decisions on the educational
14 placement of their child.

15 “(f) **ALTERNATIVE MEANS OF MEETING PARTICIPA-**
16 **TION.**—When conducting IEP Team meetings and place-
17 ment meetings pursuant to this section, the parent of a
18 child with a disability and a local educational agency may
19 agree to use alternative means of meeting participation,
20 such as video conferences and conference calls.

21 **“SEC. 615. PROCEDURAL SAFEGUARDS.**

22 “(a) **ESTABLISHMENT OF PROCEDURES.**—Any State
23 educational agency, State agency, or local educational
24 agency that receives assistance under this part shall estab-
25 lish and maintain procedures in accordance with this sec-

1 tion to ensure that children with disabilities and their par-
2 ents are guaranteed procedural safeguards with respect to
3 the provision of free appropriate public education by such
4 agencies.

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

7 “(1) an opportunity for the parents of a child
8 with a disability to examine all records relating to
9 such child and to participate in meetings with re-
10 spect to the identification, evaluation, and edu-
11 cational placement of the child, and the provision of
12 a free appropriate public education to such child,
13 and to obtain an independent educational evaluation
14 of the child;

15 “(2) procedures to protect the rights of the
16 child whenever the parents of the child are not
17 known, the agency cannot, after reasonable efforts,
18 locate the parents, or the child is a ward of the
19 State, including the assignment of an individual
20 (who shall not be an employee of the State edu-
21 cational agency, the local educational agency, or any
22 other agency that is involved in the education or
23 care of the child) to act as a surrogate for the par-
24 ents;

1 ~~“(3) written prior notice to the parents of the~~
2 ~~child, in accordance with subsection (e)(1), whenever~~
3 ~~the local educational agency—~~

4 ~~“(A) proposes to initiate or change; or~~

5 ~~“(B) refuses to initiate or change;~~

6 ~~the identification, evaluation, or educational place-~~
7 ~~ment of the child, or the provision of a free appro-~~
8 ~~priate public education to the child;~~

9 ~~“(4) procedures designed to ensure that the no-~~
10 ~~tice required by paragraph (3) is in the native lan-~~
11 ~~guage of the parents, unless it clearly is not feasible~~
12 ~~to do so;~~

13 ~~“(5) an opportunity for mediation in accordance~~
14 ~~with subsection (e);~~

15 ~~“(6) an opportunity for either party to present~~
16 ~~complaints with respect to any matter relating to the~~
17 ~~identification, evaluation, or educational placement~~
18 ~~of the child, or the provision of a free appropriate~~
19 ~~public education to such child;~~

20 ~~“(7)(A) procedures that require either party, or~~
21 ~~the attorney representing a party, to provide due~~
22 ~~process complaint notice in accordance with sub-~~
23 ~~section (e)(2) (which shall remain confidential)—~~

24 ~~“(i) to the other party, in the complaint~~

25 ~~filed under paragraph (6), and forward a copy~~

1 of such notice to the State educational agency;
2 and

3 “(ii) that shall include—

4 “(I) the name of the child, the ad-
5 dress of the residence of the child, and the
6 name of the school the child is attending;

7 “(II) a description of the nature of
8 the problem of the child relating to such
9 proposed initiation or change, including
10 facts relating to such problem; and

11 “(III) a proposed resolution of the
12 problem to the extent known and available
13 to the party at the time; and

14 “(B) a requirement that a party may not have
15 a due process hearing until the party, or the attor-
16 ney representing the party, files a notice that meets
17 the requirements of subparagraph (A)(ii);

18 “(8) a requirement that the local educational
19 agency shall send a prior written notice pursuant to
20 subsection (e)(1) in response to a parent’s due proe-
21 cess complaint notice under paragraph (7) if the local
22 educational agency has not sent such a prior written
23 notice to the parent regarding the subject matter
24 contained in the parent’s due process complaint no-
25 tice; and

1 “(9) procedures that require the State edu-
2 cational agency to develop a model form to assist
3 parents in filing a complaint and due process com-
4 plaint notice in accordance with paragraphs (6) and
5 (7), respectively.

6 “(e) NOTIFICATION REQUIREMENTS.—

7 “(1) CONTENT OF PRIOR WRITTEN NOTICE.—

8 The prior written notice of the local educational
9 agency required by subsection (b)(3) shall include—

10 “(A) a description of the action proposed
11 or refused by the agency;

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

14 “(C) a description of any other options
15 that the agency considered and the reasons why
16 those options were rejected;

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

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

23 “(F) a statement that the parents of a
24 child with a disability have protection under the
25 procedural safeguards of this part and, if this

1 notice is not an initial referral for evaluation;
2 the means by which a copy of a description of
3 the procedural safeguards can be obtained; and

4 “(G) sources for parents to contact to ob-
5 tain assistance in understanding the provisions
6 of this part.

7 “(2) DUE PROCESS COMPLAINT NOTICE.—

8 “(A) IN GENERAL.—The due process com-
9 plaint notice required under subsection
10 (b)(7)(A) shall be deemed to be sufficient un-
11 less the party receiving the notice notifies the
12 hearing officer in writing that the party believes
13 the notice has not met the requirements of that
14 subsection.

15 “(B) TIMING.—The party sending a hear-
16 ing officer notification under subparagraph (A)
17 shall send the notification within 20 days of re-
18 ceiving the complaint.

19 “(C) DETERMINATION.—Within 5 days of
20 receipt of the notification provided under sub-
21 paragraph (B), the hearing officer shall make a
22 determination on the face of the notice of
23 whether the notification meets the requirements
24 of subsection (b)(7)(A).

25 “(d) PROCEDURAL SAFEGUARDS NOTICE.—

1 “(1) IN GENERAL.—A copy of the procedural
2 safeguards available to the parents of a child with
3 a disability shall be given to the parents only 1 time
4 a year, except that a copy also shall be given to the
5 parents—

6 “(A) upon initial referral or parental re-
7 quest for evaluation;

8 “(B) upon registration of a complaint
9 under subsection (b)(6);

10 “(C) at any individualized education pro-
11 gram meeting required in accordance with sub-
12 section (k)(1); and

13 “(D) upon request by a parent.

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

21 “(A) independent educational evaluation;

22 “(B) prior written notice;

23 “(C) parental consent;

24 “(D) access to educational records;

1 “(E) opportunity to present complaints, in-
2 cluding the time period in which to make those
3 complaints;

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

6 “(G) procedures for students who are sub-
7 ject to placement in an interim alternative edu-
8 cational setting;

9 “(H) requirements for unilateral placement
10 by parents of children in private schools at pub-
11 lic expense;

12 “(I) mediation;

13 “(J) due process hearings, including re-
14 quirements for disclosure of evaluation results
15 and recommendations;

16 “(K) State-level appeals (if applicable in
17 that State);

18 “(L) civil actions, including the time pe-
19 riod in which to file such actions; and

20 “(M) attorney’s fees.

21 “(e) MEDIATION.—

22 “(1) IN GENERAL.—Any State educational
23 agency or local educational agency that receives as-
24 sistance under this part shall ensure that procedures
25 are established and implemented to allow parties to

1 disputes involving any matter, including matters
2 arising prior to the filing of a complaint pursuant to
3 subsection (b)(6), to resolve such disputes through a
4 mediation process.

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

7 “(A) The procedures shall ensure that the
8 mediation process—

9 “(i) is voluntary on the part of the
10 parties;

11 “(ii) is not used to deny or delay a
12 parent’s right to a due process hearing
13 under subsection (f), or to deny any other
14 rights afforded under this part; and

15 “(iii) is conducted by a qualified and
16 impartial mediator who is trained in effec-
17 tive mediation techniques.

18 “(B) OPPORTUNITY TO MEET WITH A DIS-
19 INTERESTED PARTY.—A local educational agen-
20 cy or a State agency may establish procedures
21 to offer to parents who choose not to use the
22 mediation process, an opportunity to meet, at a
23 time and location convenient to the parents,
24 with a disinterested party who is under contract
25 with—

1 “(i) a parent training and information
2 center or community parent resource cen-
3 ter in the State established under section
4 671 or 672; or

5 “(ii) an appropriate alternative dis-
6 pute resolution entity;

7 to encourage the use, and explain the benefits,
8 of the mediation process to the parents.

9 “(C) LIST OF QUALIFIED MEDIATORS.—
10 The State shall maintain a list of individuals
11 who are qualified mediators and knowledgeable
12 in laws and regulations relating to the provision
13 of special education and related services.

14 “(D) COSTS.—The State shall bear the
15 cost of the mediation process, including the
16 costs of meetings described in subparagraph
17 (B).

18 “(E) SCHEDULING AND LOCATION.—Each
19 session in the mediation process shall be sched-
20 uled in a timely manner and shall be held in a
21 location that is convenient to the parties to the
22 dispute.

23 “(F) WRITTEN MEDIATION AGREEMENT.—
24 An agreement reached by the parties to the dis-
25 pute in the mediation process shall be set forth

1 in a written mediation agreement that is en-
 2 forceable in any State court of competent juris-
 3 diction or in a district court of the United
 4 States.

5 “(G) MEDIATION DISCUSSIONS.—Discus-
 6 sions that occur during the mediation process
 7 shall be confidential and may not be used as
 8 evidence in any subsequent due process hear-
 9 ings or civil proceedings, and the parties to the
 10 mediation process may be required to sign a
 11 confidentiality pledge prior to the commence-
 12 ment of such process.

13 “(f) IMPARTIAL DUE PROCESS HEARING.—

14 “(1) IN GENERAL.—

15 “(A) HEARING.—Whenever a complaint
 16 has been received under subsection (b)(6) or
 17 (k), the parents or the local educational agency
 18 involved in such complaint shall have an oppor-
 19 tunity for an impartial due process hearing,
 20 which shall be conducted by the State edu-
 21 cational agency or by the local educational
 22 agency, as determined by State law or by the
 23 State educational agency.

24 “(B) OPPORTUNITY TO RESOLVE COM-
 25 PLAIN.—

1 “(i) PRELIMINARY MEETING.—Prior
2 to the opportunity for an impartial due
3 process hearing under subparagraph (A),
4 the local educational agency shall convene
5 a meeting with the parents and the IEP
6 Team—

7 “(I) within 15 days of receiving
8 notice of the parents’ complaint;

9 “(II) which shall include a rep-
10 resentative of the public agency who
11 has decisionmaking authority on be-
12 half of such agency; and

13 “(III) which may not include an
14 attorney of the local educational agen-
15 cy unless the parent is accompanied
16 by an attorney; and

17 “(IV) where the parents of the
18 child discuss their complaint, and the
19 specific issues that form the basis of
20 the complaint, and the local edu-
21 cational agency is provided the oppor-
22 tunity to resolve the complaint,
23 unless the parents and the local edu-
24 cational agency agree in writing to waive

1 such meeting, or agree to use the medi-
2 ation process described in subsection (e).

3 “(ii) HEARING.—If the local edu-
4 cational agency has not resolved the com-
5 plaint to the satisfaction of the parents
6 within 15 days of the receipt of the com-
7 plaint, the due process hearing may occur,
8 and all of the applicable timelines for a
9 due process hearing under this part shall
10 commence.

11 “(iii) WRITTEN SETTLEMENT AGREE-
12 MENT.—In the case that an agreement is
13 reached to resolve the complaint at such
14 meeting, the agreement shall be set forth
15 in a written settlement agreement that is
16 enforceable in any State court of com-
17 petent jurisdiction or in a district court of
18 the United States and signed by both the
19 parent and a representative of the public
20 agency who has decisionmaking authority
21 on behalf of such agency.

22 “(2) DISCLOSURE OF EVALUATIONS AND REC-
23 OMMENDATIONS.—

24 “(A) IN GENERAL.—Not less than 5 busi-
25 ness days prior to a hearing conducted pursu-

1 ant to paragraph (1), each party shall disclose
 2 to all other parties all evaluations completed by
 3 that date, and recommendations based on the
 4 offering party's evaluations, that the party in-
 5 tends to use at the hearing.

6 “(B) FAILURE TO DISCLOSE.—A hearing
 7 officer may bar any party that fails to comply
 8 with subparagraph (A) from introducing the
 9 relevant evaluation or recommendation at the
 10 hearing without the consent of the other party.

11 “(3) LIMITATIONS ON HEARING.—

12 “(A) PERSON CONDUCTING HEARING.—A
 13 hearing officer conducting a hearing pursuant
 14 to paragraph (1)(A) shall, at a minimum—

15 “(i) not be—

16 “(I) an employee of the State
 17 educational agency or the local edu-
 18 cational agency involved in the edu-
 19 cation or care of the child; or

20 “(II) a person having a personal
 21 or professional interest that conflicts
 22 with the person's objectivity in the
 23 hearing;

24 “(ii) possess a fundamental under-
 25 standing of this Act, Federal and State

1 regulations pertaining to this Act, and in-
2 terpretations of this Act by State and Fed-
3 eral courts;

4 “(iii) possess the knowledge and abil-
5 ity to conduct hearings in accordance with
6 appropriate, standard legal practice; and

7 “(iv) possess the knowledge and abil-
8 ity to render and write decisions in accord-
9 ance with appropriate, standard legal prac-
10 tice.

11 “(B) SUBJECT MATTER OF HEARING.—

12 The party requesting the due process hearing
13 shall not be allowed to raise issues at the due
14 process hearing that were not raised in the no-
15 tice filed under subsection (b)(7), unless the
16 other party agrees otherwise.

17 “(C) RULE OF CONSTRUCTION.—Nothing

18 in this section shall be construed to preclude a
19 parent from filing a separate due process com-
20 plaint on an issue separate from a due process
21 complaint already filed.

22 “(D) STATUTE OF LIMITATIONS.—A par-

23 ent or public agency shall request an impartial
24 due process hearing within 2 years of the date
25 the parent or public agency knew or should

1 have known about the alleged action that forms
 2 the basis of the complaint, or, if the State has
 3 an explicit time limitation for requesting such a
 4 hearing under this part, in such time as the
 5 State law allows.

6 “(E) EXCEPTION TO THE STATUTE OF
 7 LIMITATIONS.—The statute of limitations de-
 8 scribed in subparagraph (D) shall not apply if
 9 the parent was prevented from requesting the
 10 hearing due to—

11 “(i) failure of the local educational
 12 agency to provide prior written or proce-
 13 dural safeguards notices;

14 “(ii) false representations that the
 15 local educational agency was attempting to
 16 resolve the problem forming the basis of
 17 the complaint; or

18 “(iii) the local educational agency’s
 19 withholding of information from parents.

20 “(F) DECISION OF HEARING OFFICER.—

21 “(i) IN GENERAL.—Subject to clause
 22 (ii), a decision made by a hearing officer
 23 shall be made on substantive grounds
 24 based on a determination of whether the

1 child received a free appropriate public
2 education.

3 “(ii) **PROCEDURAL ISSUES.**—In mat-
4 ters alleging a procedural violation, a hear-
5 ing officer may find that a child did not re-
6 ceive a free appropriate public education
7 only if the procedural inadequacies—

8 “(I) compromised the child’s
9 right to an appropriate public edu-
10 cation;

11 “(II) seriously hampered the par-
12 ents’ opportunity to participate in the
13 process; or

14 “(III) caused a deprivation of
15 educational benefits.

16 “(iii) **ENFORCEABILITY.**—A decision
17 made by the hearing officer is enforceable
18 in any State court of competent jurisdic-
19 tion or in a district court of the United
20 States, unless either party appeals such de-
21 cision under the provision of subsection (g)
22 or (i)(2).

23 “(G) **RULE OF CONSTRUCTION.**—Nothing
24 in this section shall be construed to affect the

1 right of a parent to file a complaint with the
2 State educational agency.

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

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

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

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

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

1 “(4) the right to a written, or, at the option of
2 the parents, electronic findings of fact and decisions,
3 which findings and decisions—

4 “(A) shall be made available to the public
5 consistent with the requirements of section
6 617(e) (relating to the confidentiality of data,
7 information, and records); and

8 “(B) shall be transmitted to the advisory
9 panel established pursuant to section
10 612(a)(20).

11 “(i) ADMINISTRATIVE PROCEDURES.—

12 “(1) IN GENERAL.—

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

19 “(B) DECISION MADE AT APPEAL.—A de-
20 cision made under subsection (g) shall be final,
21 except that any party may bring an action
22 under paragraph (2).

23 “(2) RIGHT TO BRING CIVIL ACTION.—

24 “(A) IN GENERAL.—Any party aggrieved
25 by the findings and decision made under sub-

1 section (f) or (k) who does not have the right
2 to an appeal under subsection (g), and any
3 party aggrieved by the findings and decision
4 under this subsection, shall have the right to
5 bring a civil action with respect to the com-
6 plaint presented pursuant to this section, which
7 action may be brought in any State court of
8 competent jurisdiction or in a district court of
9 the United States, without regard to the
10 amount in controversy.

11 “(B) LIMITATION.—The party bringing the
12 action shall have 90 days from the date of the
13 decision of the hearing officer to bring such an
14 action, or, if the State has an explicit time limi-
15 tation for bringing such action under this part,
16 in such time as the State law allows.

17 “(C) ADDITIONAL REQUIREMENTS.—In
18 any action brought under this paragraph, the
19 court—

20 “(i) shall receive the records of the
21 administrative proceedings;

22 “(ii) shall hear additional evidence at
23 the request of a party; and

24 “(iii) basing its decision on the pre-
25 ponderance of the evidence, shall grant

1 such relief as the court determines is ap-
2 propriate.

3 “(3) JURISDICTION OF DISTRICT COURTS; AT-
4 TORNEYS’ FEES.—

5 “(A) IN GENERAL.—The district courts of
6 the United States shall have jurisdiction of ac-
7 tions brought under this section without regard
8 to the amount in controversy.

9 “(B) AWARD OF ATTORNEYS’ FEES.—In
10 any action or proceeding brought under this
11 section, the court, in its discretion, may award
12 reasonable attorneys’ fees as part of the costs
13 to the parents of a child with a disability who
14 is the prevailing party.

15 “(C) DETERMINATION OF AMOUNT OF AT-
16 TORNEYS’ FEES.—Fees awarded under this
17 paragraph shall be based on rates prevailing in
18 the community in which the action or pro-
19 ceeding arose for the kind and quality of serv-
20 ices furnished. No bonus or multiplier may be
21 used in calculating the fees awarded under this
22 subsection.

23 “(D) PROHIBITION OF ATTORNEYS’ FEES
24 AND RELATED COSTS FOR CERTAIN SERV-
25 ICES.—

1 “(i) IN GENERAL.—Attorneys’ fees
2 may not be awarded and related costs may
3 not be reimbursed in any action or pro-
4 ceeding under this section for services per-
5 formed subsequent to the time of a written
6 offer of settlement to a parent if—

7 “(I) the offer is made within the
8 time prescribed by Rule 68 of the
9 Federal Rules of Civil Procedure or,
10 in the case of an administrative pro-
11 ceeding, at any time more than 10
12 days before the proceeding begins;

13 “(II) the offer is not accepted
14 within 10 days; and

15 “(III) the court or administrative
16 hearing officer finds that the relief fi-
17 nally obtained by the parents is not
18 more favorable to the parents than
19 the offer of settlement.

20 “(ii) IEP TEAM MEETINGS.—Attor-
21 neys’ fees may not be awarded relating to
22 any meeting of the IEP Team unless such
23 meeting is convened as a result of an ad-
24 ministrative proceeding or judicial action;

1 or, at the discretion of the State, for a me-
 2 diation described in subsection (e).

3 “(iii) OPPORTUNITY TO RESOLVE
 4 COMPLAINTS.—A meeting conducted pur-
 5 suant to subsection (f)(1)(B)(i) shall not
 6 be considered—

7 “(I) a meeting convened as a re-
 8 sult of an administrative hearing or
 9 judicial action; or

10 “(II) an administrative hearing
 11 or judicial action for purposes of this
 12 paragraph.

13 “(E) EXCEPTION TO PROHIBITION ON AT-
 14 TORNEYS’ FEES AND RELATED COSTS.—Not-
 15 withstanding subparagraph (D), an award of
 16 attorneys’ fees and related costs may be made
 17 to a parent who is the prevailing party and who
 18 was substantially justified in rejecting the set-
 19 tlement offer.

20 “(F) REDUCTION IN AMOUNT OF ATTOR-
 21 NEYS’ FEES.—Except as provided in subpara-
 22 graph (G), whenever the court finds that—

23 “(i) the parent, or the parent’s attor-
 24 ney, during the course of the action or pro-

1 ceeding, unreasonably protracted the final
2 resolution of the controversy;

3 “(ii) the amount of the attorneys’ fees
4 otherwise authorized to be awarded unrea-
5 sonably exceeds the hourly rate prevailing
6 in the community for similar services by
7 attorneys of reasonably comparable skill,
8 reputation, and experience;

9 “(iii) the time spent and legal services
10 furnished were excessive considering the
11 nature of the action or proceeding; or

12 “(iv) the attorney representing the
13 parent did not provide to the local edu-
14 cational agency the appropriate informa-
15 tion in the notice of the complaint de-
16 scribed in subsection (b)(7)(A);

17 the court shall reduce, accordingly, the amount
18 of the attorneys’ fees awarded under this sec-
19 tion.

20 “(G) EXCEPTION TO REDUCTION IN
21 AMOUNT OF ATTORNEYS’ FEES.—The provi-
22 sions of subparagraph (F) shall not apply in
23 any action or proceeding if the court finds that
24 the State or local educational agency unreason-
25 ably protracted the final resolution of the action

1 or proceeding or there was a violation of this
2 section.

3 “(j) MAINTENANCE OF CURRENT EDUCATIONAL
4 PLACEMENT.—Except as provided in subsection (k)(4),
5 during the pendency of any proceedings conducted pursu-
6 ant to this section, unless the State or local educational
7 agency and the parents otherwise agree, the child shall
8 remain in the then-current educational placement of such
9 child, or, if applying for initial admission to a public
10 school, shall, with the consent of the parents, be placed
11 in the public school program until all such proceedings
12 have been completed.

13 “(k) PLACEMENT IN ALTERNATIVE EDUCATIONAL
14 SETTING.—

15 “(1) AUTHORITY OF SCHOOL PERSONNEL.—

16 “(A) IN GENERAL.—School personnel
17 under this section may order a change in the
18 placement of a child with a disability who vio-
19 lates a code of student conduct to an appro-
20 priate interim alternative educational setting,
21 another setting, or suspension, for not more
22 than 10 school days (to the extent such alter-
23 natives are applied to children without disabili-
24 ties).

1 “(B) ADDITIONAL AUTHORITY.—If school
 2 personnel seek to order a change in placement
 3 that would exceed 10 school days and the be-
 4 havior that gave rise to the violation of the
 5 school code is determined not to be a manifesta-
 6 tion of the child’s disability pursuant to sub-
 7 paragraph (C), the relevant disciplinary proce-
 8 dures applicable to children without disabilities
 9 may be applied to the child in the same manner
 10 in which the procedures would be applied to
 11 children without disabilities, except as provided
 12 in section 612(a)(1).

13 “(C) MANIFESTATION DETERMINATION.—

14 “(i) IN GENERAL.—Except as pro-
 15 vided in subparagraphs (A) and (D), with-
 16 in 10 school days of any decision to change
 17 the placement of a child with a disability
 18 because of a violation of a code of student
 19 conduct, the IEP Team shall review all rel-
 20 evant information in the student’s file, any
 21 information provided by the parents, and
 22 teacher observations, to determine—

23 “(I) if the conduct in question
 24 was the result of the child’s disability;
 25 or

1 “(H) if the conduct in question
2 resulted from the failure to implement
3 the IEP or develop and implement be-
4 havioral interventions as required by
5 section 614(d)(3)(B)(i).

6 “(ii) MANIFESTATION.—If the IEP
7 Team determines that either subclause (I)
8 or (II) of clause (i) is applicable for the
9 child, the conduct shall be determined to
10 be a manifestation of the child’s disability.

11 “(D) SPECIAL CIRCUMSTANCES.—In cases
12 where a child carries or possesses a weapon at
13 school or a school function, possesses or uses
14 drugs or sells or solicits the sale of drugs while
15 at school or a school function, or has committed
16 serious bodily injury upon another person while
17 at school or at a school function, school per-
18 sonnel may remove a student to an interim al-
19 ternative educational setting for not more than
20 45 school days, without regard to whether the
21 behavior is determined to be a manifestation of
22 the child’s disability.

23 “(E) SERVICES.—A child with a disability
24 who is removed from the child’s current place-
25 ment under subparagraph (B) or (D) shall—

1 “(i) continue to receive educational
2 services pursuant to section 612(a)(1), so
3 as to enable the child to continue to par-
4 ticipate in the general education cur-
5 riculum, although in another setting, and
6 to progress toward meeting the goals set
7 out in the child’s IEP; and

8 “(ii) receive behavioral intervention
9 services as described in section
10 614(d)(3)(B)(i) designed to address the be-
11 havior violation so that the violation does
12 not recur.

13 “(2) DETERMINATION OF SETTING.—The alter-
14 native educational setting shall be determined by the
15 IEP Team.

16 “(3) APPEAL.—

17 “(A) IN GENERAL.—The parent of a child
18 with a disability who disagrees with any deci-
19 sion regarding disciplinary action, placement, or
20 the manifestation determination under this sub-
21 section may request a hearing.

22 “(B) AUTHORITY OF HEARING OFFICER.—

23 “(i) IN GENERAL.—If a parent of a
24 child with a disability disagrees with a de-
25 cision as described in subparagraph (A),

1 the hearing officer may determine whether
2 the decision regarding such action was ap-
3 propriate.

4 “(ii) CHANGE OF PLACEMENT
5 ORDER.—A hearing officer under this sec-
6 tion may order a change in placement of a
7 child with a disability to an appropriate in-
8 terim alternative educational setting for
9 not more than 45 school days if the hear-
10 ing officer determines that maintaining the
11 current placement of such child is substan-
12 tially likely to result in injury to the child
13 or to others.

14 “(4) PLACEMENT DURING APPEALS.—When a
15 parent requests a hearing regarding a disciplinary
16 procedure described in paragraph (1)(B) or chal-
17 lenges the interim alternative educational setting or
18 manifestation determination—

19 “(A) the child shall remain in the interim
20 alternative educational setting pending the deci-
21 sion of the hearing officer or until the expira-
22 tion of the time period provided for in para-
23 graph (1)(B), whichever occurs first, unless the
24 parent and the State or local educational agen-
25 cy agree otherwise; and

1 “(B) the State or local educational agency
2 shall arrange for an expedited hearing which
3 shall occur within 20 school days of the date
4 the hearing is requested.

5 “(5) PROTECTIONS FOR CHILDREN NOT YET
6 ELIGIBLE FOR SPECIAL EDUCATION AND RELATED
7 SERVICES.—

8 “(A) IN GENERAL.—A child who has not
9 been determined to be eligible for special edu-
10 cation and related services under this part and
11 who has engaged in behavior that violates a
12 code of student conduct, may assert any of the
13 protections provided for in this part if the local
14 educational agency had knowledge (as deter-
15 mined in accordance with this paragraph) that
16 the child was a child with a disability before the
17 behavior that precipitated the disciplinary ac-
18 tion occurred.

19 “(B) BASIS OF KNOWLEDGE.—A local edu-
20 cational agency shall be deemed to have knowl-
21 edge that a child is a child with a disability if,
22 before the behavior that precipitated the dis-
23 ciplinary action occurred—

24 “(i) the parent of the child has ex-
25 pressed concern in writing (unless the par-

1 ent is illiterate or has a disability that pre-
2 vents compliance with the requirements
3 contained in this clause) to personnel of
4 the appropriate educational agency that
5 the child is in need of special education
6 and related services;

7 “(ii) the parent of the child has re-
8 quested an evaluation of the child pursuant
9 to section 614;

10 “(iii) the teacher of the child, or other
11 personnel of the local educational agency,
12 has expressed concern about a pattern of
13 behavior demonstrated by the child, to the
14 director of special education of such agen-
15 cy or to other administrative personnel of
16 the agency; or

17 “(iv) the child has engaged in a pat-
18 tern of behavior that should have alerted
19 personnel of the local educational agency
20 that the child may be in need of special
21 education and related services.

22 “(C) EXCEPTION.—A local educational
23 agency shall not be deemed to have knowledge
24 that the child has a disability if the parent of

1 the child has not agreed to allow an evaluation
2 of the child pursuant to section 614.

3 “(D) CONDITIONS THAT APPLY IF NO
4 BASIS OF KNOWLEDGE.—

5 “(i) IN GENERAL.—If a local edu-
6 cational agency does not have knowledge
7 that a child is a child with a disability (in
8 accordance with subparagraph (B) or (C))
9 prior to taking disciplinary measures
10 against the child, the child may be sub-
11 jected to disciplinary measures applied to
12 children without disabilities who engaged
13 in comparable behaviors consistent with
14 clause (ii).

15 “(ii) LIMITATIONS.—If a request is
16 made for an evaluation of a child during
17 the time period in which the child is sub-
18 jected to disciplinary measures under para-
19 graph (1), the evaluation shall be con-
20 ducted in an expedited manner. If the child
21 is determined to be a child with a dis-
22 ability, taking into consideration informa-
23 tion from the evaluation conducted by the
24 agency and information provided by the
25 parents, the agency shall provide special

1 education and related services in accord-
2 ance with this part, except that, pending
3 the results of the evaluation, the child shall
4 remain in the educational placement deter-
5 mined by school authorities.

6 ~~“(6) REFERRAL TO AND ACTION BY LAW EN-
7 FORCEMENT AND JUDICIAL AUTHORITIES.—~~

8 ~~“(A) CONSTRUCTION.—Nothing in this
9 part shall be construed to prohibit an agency
10 from reporting a crime committed by a child
11 with a disability to appropriate authorities or to
12 prevent State law enforcement and judicial au-
13 thorities from exercising their responsibilities
14 with regard to the application of Federal and
15 State law to crimes committed by a child with
16 a disability.~~

17 ~~“(B) TRANSMITTAL OF RECORDS.—An
18 agency reporting a crime committed by a child
19 with a disability shall ensure that copies of the
20 special education and disciplinary records of the
21 child are transmitted for consideration by the
22 appropriate authorities to whom the agency re-
23 ports the crime.~~

24 ~~“(7) DEFINITIONS.—For purposes of this sub-
25 section, the following definitions apply:~~

1 “(A) DRUG.—The term ‘drug’—

2 “(i) means a drug or other substance
3 identified under schedules I, II, III, IV, or
4 V in section 202(e) of the Controlled Sub-
5 stances Act (21 U.S.C. 812(e)); and

6 “(ii) does not include such a sub-
7 stance that is legally possessed or used
8 under the supervision of a licensed health-
9 care professional or that is legally pos-
10 sessed or used under any other authority
11 under that Act or under any other provi-
12 sion of Federal law.

13 “(B) WEAPON.—The term ‘weapon’ has
14 the meaning given the term ‘dangerous weapon’
15 under section 930(g)(2) of title 18, United
16 States Code.

17 “(C) SERIOUS BODILY INJURY.—The term
18 ‘serious bodily injury’ has the meaning given
19 the term ‘serious bodily injury’ under para-
20 graph (3) of subsection (h) of section 1365 of
21 title 18, United States Code.

22 “(1) RULE OF CONSTRUCTION.—Nothing in this title
23 shall be construed to restrict or limit the rights, proce-
24 dures, and remedies available under the Constitution, the
25 Americans with Disabilities Act of 1990, title V of the Re-

1 habilitation Act of 1973, or other Federal laws protecting
 2 the rights of children with disabilities, except that before
 3 the filing of a civil action under such laws seeking relief
 4 that is also available under this part, the procedures under
 5 subsections (f) and (g) shall be exhausted to the same ex-
 6 tent as would be required had the action been brought
 7 under this part.

8 “(m) TRANSFER OF PARENTAL RIGHTS AT AGE OF
 9 MAJORITY.—

10 “(1) IN GENERAL.—A State that receives
 11 amounts from a grant under this part may provide
 12 that, when a child with a disability reaches the age
 13 of majority under State law (except for a child with
 14 a disability who has been determined to be incom-
 15 petent under State law)—

16 “(A) the public agency shall provide any
 17 notice required by this section to both the indi-
 18 vidual and the parents;

19 “(B) all other rights accorded to parents
 20 under this part transfer to the child;

21 “(C) the agency shall notify the individual
 22 and the parents of the transfer of rights; and

23 “(D) all rights accorded to parents under
 24 this part transfer to children who are incarcerated.

1 ated in an adult or juvenile Federal, State, or
2 local correctional institution.

3 “(2) SPECIAL RULE.—If, under State law, a
4 child with a disability who has reached the age of
5 majority under State law, who has not been deter-
6 mined to be incompetent, but who is determined not
7 to have the ability to provide informed consent with
8 respect to the educational program of the child, the
9 State shall establish procedures for appointing the
10 parent of the child, or if the parent is not available,
11 another appropriate individual, to represent the edu-
12 cational interests of the child throughout the period
13 of eligibility of the child under this part.

14 **“SEC. 616. MONITORING, TECHNICAL ASSISTANCE, AND EN-**
15 **FORCEMENT.**

16 “(a) FEDERAL AND STATE MONITORING.—

17 “(1) IN GENERAL.—The Secretary shall—

18 “(A) monitor implementation of this Act
19 through—

20 “(i) oversight of the States’ exercise
21 of general supervision, as required in sec-
22 tion 612(a)(11); and

23 “(ii) the system of indicators, de-
24 scribed in subsection (b)(2);

1 “(B) enforce this Act in accordance with
2 subsection (e); and

3 “(C) require States to monitor implemen-
4 tation of this Act by local educational agencies
5 and enforce this Act in accordance with para-
6 graph (3) of this subsection and subsection (e).

7 “(2) FOCUSED MONITORING.—The primary
8 focus of Federal and State monitoring activities de-
9 scribed in paragraph (1) shall be on improving edu-
10 cational results and functional outcomes for all chil-
11 dren with disabilities, while ensuring compliance
12 with program requirements, with a particular em-
13 phasis on those requirements that are most closely
14 related to improving educational results for children
15 with disabilities.

16 “(3) MONITORING PRIORITIES.—The Secretary
17 shall monitor, and shall require States to monitor,
18 the following priority areas:

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

21 “(B) Provision of transition services, as
22 defined in section 602(32).

23 “(C) State exercise of general supervisory
24 authority, including the effective use of com-
25 plaint resolution and mediation.

1 “(D) Overrepresentation of racial and eth-
2 nic groups in special education and related serv-
3 ices, to the extent the overrepresentation is the
4 result of inappropriate policies, procedures, and
5 practices.

6 “(4) PERMISSIVE AREAS OF REVIEW.—The Sec-
7 retary may examine other relevant information and
8 data, including data provided by States under sec-
9 tion 618, and data from the State’s compliance plan
10 under subsection (b)(2)(C).

11 “(b) INDICATORS.—

12 “(1) SYSTEM.—The Secretary shall implement
13 and administer a system of required indicators as
14 described in paragraph (2) that measures the
15 progress of States in improving their performance
16 under this Act.

17 “(2) INDICATORS.—

18 “(A) IN GENERAL.—Using the perform-
19 ance indicators established by States under sec-
20 tion 612(a)(15), the Secretary shall review—

21 “(i) the performance of children with
22 disabilities in the State on assessments, in-
23 cluding alternate assessments, dropout
24 rates, and graduation rates, which for pur-
25 poses of this paragraph means the number

1 and percentage of students with disabilities
2 who graduate with a regular diploma with-
3 in the number of years specified in a stu-
4 dent's IEP; and

5 “(ii) the performance of children with
6 disabilities in the State on assessments, in-
7 cluding alternate assessments, dropout
8 rates, and graduation rates, as compared
9 to the performance and rates for all chil-
10 dren.

11 “(B) SECRETARY'S ASSESSMENT.—Based
12 on that review and a review of the State's com-
13 pliance plan under subparagraph (C), the Sec-
14 retary shall assess the State's progress in im-
15 proving educational results for children with
16 disabilities.

17 “(C) STATE COMPLIANCE PLAN.—Not
18 later than 1 year after the date of the enact-
19 ment of the Individuals with Disabilities Edu-
20 cation Improvement Act of 2003, each State
21 shall have in place a compliance plan developed
22 in collaboration with the Secretary. Each
23 State's compliance plan shall—

1 “(i) include benchmarks to measure
2 continuous progress on the priority areas
3 described in subsection (a)(3);

4 “(ii) describe strategies the State will
5 use to achieve the benchmarks; and

6 “(iii) be approved by the Secretary.

7 “(3) DATA COLLECTION AND ANALYSIS.—The
8 Secretary shall—

9 “(A) review the data collection and anal-
10 ysis capacity of States to ensure that data and
11 information determined necessary for implemen-
12 tation of this subsection is collected, analyzed,
13 and accurately reported to the Secretary; and

14 “(B) provide technical assistance to im-
15 prove the capacity of States to meet these data
16 collection requirements.

17 “(e) COMPLIANCE AND ENFORCEMENT.—

18 “(1) IN GENERAL.—The Secretary shall exam-
19 ine relevant State information and data annually, to
20 determine whether the State is making satisfactory
21 progress toward improving educational results for
22 children with disabilities using the indicators de-
23 scribed in subsection (b)(2)(A) and the benchmarks
24 established in the State compliance plan under sub-

1 section (b)(2)(C), and is in compliance with the pro-
2 visions of this Act.

3 ~~“(2) LACK OF SATISFACTORY PROGRESS BY A~~
4 ~~STATE.—~~

5 ~~“(A) IN GENERAL.—If after examining~~
6 ~~data, as provided in subsection (b)(2) (A) and~~
7 ~~(C), the Secretary determines that a State~~
8 ~~failed to make satisfactory progress in meeting~~
9 ~~the indicators described in subsection (b)(2)(A)~~
10 ~~or has failed to meet the benchmarks described~~
11 ~~in subsection (b)(2)(C) for 2 consecutive years~~
12 ~~after the State has developed its compliance~~
13 ~~plan, the Secretary shall notify the State that~~
14 ~~the State has failed to make satisfactory~~
15 ~~progress, and shall take 1 or more of the fol-~~
16 ~~lowing actions:~~

17 ~~“(i) Direct the use of State level~~
18 ~~funds for technical assistance, services, or~~
19 ~~other expenditures to ensure that the State~~
20 ~~resolves the area or areas of unsatisfactory~~
21 ~~progress.~~

22 ~~“(ii) Withhold not less than 20, but~~
23 ~~not more than 50, percent of the State’s~~
24 ~~funds for State administration and activi-~~
25 ~~ties for the fiscal year under section~~

1 611(e), after providing the State the op-
 2 portunity to show cause why the with-
 3 holding should not occur, until the Sec-
 4 retary determines that sufficient progress
 5 has been made in improving educational
 6 results for children with disabilities.

7 “(B) ADDITIONAL SECRETARIAL AC-
 8 TION.—If, at the end of the 5th year after the
 9 Secretary has approved the compliance plan
 10 that the State has developed under subsection
 11 (b)(2)(C), the Secretary determines that a
 12 State failed to meet the benchmarks in the
 13 State compliance plan and make satisfactory
 14 progress in improving educational results for
 15 children with disabilities pursuant to the indica-
 16 tors described in subsection (b)(2)(A), the Sec-
 17 retary shall take 1 or more of the following ac-
 18 tions:

19 “(i) Seek to recover funds under sec-
 20 tion 452 of the General Education Provi-
 21 sions Act.

22 “(ii) After providing reasonable notice
 23 and an opportunity for a hearing to the
 24 State educational agency involved, with-
 25 hold, in whole or in part, any further pay-

1 ments to the State under this part pursu-
2 ant to subsection (e)(5).

3 “(iii) After providing reasonable no-
4 tice and an opportunity for a hearing to
5 the State educational agency involved,
6 refer the matter for appropriate enforce-
7 ment action, which may include referral to
8 the Department of Justice.

9 “(iv) Pending the outcome of any
10 hearing to withhold payments under clause
11 (ii), the Secretary may suspend payments
12 to a recipient, suspend the authority of the
13 recipient to obligate Federal funds, or
14 both, after such recipient has been given
15 reasonable notice and an opportunity to
16 show cause why future payments or au-
17 thority to obligate Federal funds should
18 not be suspended.

19 “(C) SUBSTANTIAL NONCOMPLIANCE.—
20 Notwithstanding subparagraph (B), at any time
21 that the Secretary determines that a State is
22 not in substantial compliance with any provision
23 of this part or that there is a substantial failure
24 to comply with any condition of a local agency’s
25 or State agency’s eligibility under this part, the

1 Secretary shall take 1 or more of the following
2 actions:

3 “(i) Request that the State prepare a
4 corrective action plan or improvement plan
5 if the Secretary determines that the State
6 should be able to correct the problem with-
7 in 1 year.

8 “(ii) Identify the State as a high-risk
9 grantee and impose special conditions on
10 the State’s grant under this part.

11 “(iii) Require the State to enter into
12 a compliance agreement under section 457
13 of the General Education Provisions Act, if
14 the Secretary has reason to believe that
15 the State cannot correct the problem with-
16 in 1 year.

17 “(iv) Recovery of funds under section
18 452 of the General Education Provisions
19 Act.

20 “(v) After providing reasonable notice
21 and an opportunity for a hearing to the
22 State educational agency involved, with-
23 hold, in whole or in part, any further pay-
24 ments to the State under this part.

1 “(vi) After providing reasonable notice
2 and an opportunity for a hearing to the
3 State educational agency involved, refer
4 the matter for appropriate enforcement ac-
5 tion, which may include referral to the De-
6 partment of Justice.

7 “(vii) Pending the outcome of any
8 hearing to withhold payments under clause
9 (v), the Secretary may suspend payments
10 to a recipient, suspend the authority of the
11 recipient to obligate Federal funds, or
12 both, after such recipient has been given
13 reasonable notice and an opportunity to
14 show cause why future payments or au-
15 thority to obligate Federal funds should
16 not be suspended.

17 “(3) EGREGIOUS NONCOMPLIANCE.—At any
18 time that the Secretary determines that a State is
19 in egregious noncompliance or is willfully dis-
20 regarding the provisions of this Act, the Secretary
21 shall take such additional enforcement actions as the
22 Secretary determines to be appropriate from among
23 those actions specified in paragraph (2)(C), and, ad-
24 ditionally, may impose 1 or more of the following
25 sanctions upon that State:

1 “(A) Institute a cease and desist action
2 under section 456 of the General Education
3 Provisions Act.

4 “(B) Refer the case to the Office of the In-
5 spector General.

6 “(4) REPORT TO CONGRESS.—The Secretary
7 shall report to Congress within 30 days of taking en-
8 forcement action pursuant to paragraph (2) (B) or
9 (C), or (3), on the specific action taken and the rea-
10 sons why enforcement action was taken.

11 “(5) NATURE OF WITHHOLDING.—If the Sec-
12 retary withholds further payments under paragraphs
13 (2)(B)(ii) and (2)(C)(v), the Secretary may deter-
14 mine that such withholding will be limited to pro-
15 grams or projects, or portions thereof, affected by
16 the failure, or that the State educational agency
17 shall not make further payments under this part to
18 specified local educational agencies or State agencies
19 affected by the failure. Until the Secretary is satis-
20 fied that there is no longer any failure to make sat-
21 isfactory progress as specified in paragraph (2)(B),
22 or to comply with the provisions of this part, as
23 specified in paragraph (2)(C), payments to the State
24 under this part shall be withheld in whole or in part,
25 or payments by the State educational agency under

1 this part shall be limited to local educational agen-
2 cies and State agencies whose actions did not cause
3 or were not involved in the failure, as the case may
4 be. Any State educational agency, State agency, or
5 local educational agency that has received notice
6 under paragraph (2)(B) or (2)(C) shall, by means of
7 a public notice, take such measures as may be nec-
8 essary to bring the pendency of an action pursuant
9 to this subsection to the attention of the public with-
10 in the jurisdiction of such agency.

11 “(6) JUDICIAL REVIEW.—

12 “(A) IN GENERAL.—If any State is dissat-
13 isfied with the Secretary’s final action with re-
14 spect to the eligibility of the State under section
15 612, such State may, not later than 60 days
16 after notice of such action, file with the United
17 States court of appeals for the circuit in which
18 such State is located a petition for review of
19 that action. A copy of the petition shall be
20 forthwith transmitted by the clerk of the court
21 to the Secretary. The Secretary thereupon shall
22 file in the court the record of the proceedings
23 upon which the Secretary’s action was based, as
24 provided in section 2112 of title 28, United
25 States Code.

1 “(B) JURISDICTION; REVIEW BY UNITED
2 STATES SUPREME COURT.—Upon the filing of
3 such petition, the court shall have jurisdiction
4 to affirm the action of the Secretary or to set
5 it aside, in whole or in part. The judgment of
6 the court shall be subject to review by the Su-
7 preme Court of the United States upon certio-
8 rari or certification as provided in section 1254
9 of title 28, United States Code.

10 “(C) STANDARD OF REVIEW.—The find-
11 ings of fact by the Secretary, if supported by
12 substantial evidence, shall be conclusive, but the
13 court, for good cause shown, may remand the
14 case to the Secretary to take further evidence,
15 and the Secretary may thereupon make new or
16 modified findings of fact and may modify the
17 Secretary’s previous action, and shall file in the
18 court the record of the further proceedings.
19 Such new or modified findings of fact shall like-
20 wise be conclusive if supported by substantial
21 evidence.

22 “(d) DIVIDED STATE AGENCY RESPONSIBILITY.—
23 For purposes of this section, where responsibility for en-
24 suring that the requirements of this part are met with re-
25 spect to children with disabilities who are convicted as

1 adults under State law and incarcerated in adult prisons
2 is assigned to a public agency other than the State edu-
3 cational agency pursuant to section 612(a)(11)(C); the
4 Secretary, in instances where the Secretary finds that the
5 failure to comply substantially with the provisions of this
6 part are related to a failure by the public agency, shall
7 take appropriate corrective action to ensure compliance
8 with this part, except that—

9 “(1) any reduction or withholding of payments
10 to the State shall be proportionate to the total funds
11 allotted under section 611 to the State as the num-
12 ber of eligible children with disabilities in adult pris-
13 ons under the supervision of the other public agency
14 is proportionate to the number of eligible individuals
15 with disabilities in the State under the supervision
16 of the State educational agency; and

17 “(2) any withholding of funds under paragraph
18 (1) shall be limited to the specific agency responsible
19 for the failure to comply with this part.

20 “(e) STATE AND LOCAL MONITORING.—

21 “(1) IN GENERAL.—The State educational
22 agency shall monitor and enforce implementation of
23 this Act, implement a system of monitoring the
24 benchmarks in the State’s compliance plan under
25 subsection (b)(2)(C), and require local educational

1 agencies to monitor and enforce implementation of
2 this Act.

3 ~~“(2) ADDITIONAL ENFORCEMENT OPTIONS.—If~~
4 a State educational agency determines that a local
5 educational agency is not meeting the requirements
6 of this part, including the benchmarks in the State’s
7 compliance plan, the State educational agency shall
8 prohibit the local educational agency from treating
9 funds received under this part as local funds under
10 section 613(a)(2)(C) for any fiscal year.

11 **“SEC. 617. ADMINISTRATION.**

12 ~~“(a) RESPONSIBILITIES OF SECRETARY.—The Sec-~~
13 ~~retary shall—~~

14 ~~“(1) cooperate with, and (directly or by grant~~
15 ~~or contract) furnish technical assistance necessary~~
16 ~~to, a State in matters relating to—~~

17 ~~“(A) the education of children with disabil-~~
18 ~~ities; and~~

19 ~~“(B) carrying out this part; and~~

20 ~~“(2) provide short-term training programs and~~
21 ~~institutes.~~

22 ~~“(b) RULES AND REGULATIONS.—In carrying out~~
23 ~~the provisions of this part, the Secretary shall issue regu-~~
24 ~~lations under this Act only to the extent that such regula-~~

1 tions are necessary to ensure that there is compliance with
2 the specific requirements of this Act.

3 “(e) CONFIDENTIALITY.—The Secretary shall take
4 appropriate action, in accordance with section 444 of the
5 General Education Provisions Act (20 U.S.C. 1232g), to
6 assure the protection of the confidentiality of any person-
7 ally identifiable data, information, and records collected
8 or maintained by the Secretary and by State and local
9 educational agencies pursuant to this part.

10 “(d) PERSONNEL.—The Secretary is authorized to
11 hire qualified personnel necessary to carry out the Sec-
12 retary’s duties under subsection (a) and under sections
13 618, 661, and 664, without regard to the provisions of
14 title 5, United States Code, relating to appointments in
15 the competitive service and without regard to chapter 51
16 and subchapter III of chapter 53 of such title relating to
17 classification and general schedule pay rates, except that
18 not more than 20 such personnel shall be employed at any
19 1 time.

20 “(e) MODEL FORMS.—Not later than the date that
21 the Secretary publishes final regulations under this Act,
22 to implement amendments made by the Individuals with
23 Disabilities Education Improvement Act of 2003, the Sec-
24 retary shall publish and disseminate widely to States, local

1 educational agencies, and parent and community training
2 and information centers—

3 “(1) a model IEP form;

4 “(2) a model form of the notice of procedural
5 safeguards described in section 615(d); and

6 “(3) a model form of the prior written notice
7 described in section 615 (b)(3) and (e)(1) that is
8 consistent with the requirements of this part and is
9 sufficient to meet such requirements.

10 **“SEC. 618. PROGRAM INFORMATION.**

11 “(a) IN GENERAL.—Each State that receives assist-
12 ance under this part, and the Secretary of the Interior,
13 shall provide data each year to the Secretary of Education
14 on—

15 “(1)(A)—the number and percentage of chil-
16 dren with disabilities, by race, ethnicity, limited
17 English proficiency status, and disability category,
18 who are receiving a free appropriate public edu-
19 cation;

20 “(B) the number and percentage of children
21 with disabilities, by race, ethnicity, and limited
22 English proficiency status who are receiving early
23 intervention services;

24 “(C) the number and percentage of children
25 with disabilities, by race, ethnicity, limited English

1 proficiency status, and disability category, who are
2 participating in regular education;

3 “(D) the number and percentage of children
4 with disabilities, by race, ethnicity, limited English
5 proficiency status, and disability category, who are
6 in separate classes, separate schools or facilities, or
7 public or private residential facilities;

8 “(E) the number and percentage of children
9 with disabilities, by race, ethnicity, limited English
10 proficiency status, and disability category, who, for
11 each year of age from age 14 through 21, stopped
12 receiving special education and related services be-
13 cause of program completion or other reasons, and
14 the reasons why those children stopped receiving
15 special education and related services;

16 “(F) the number and percentage of children
17 with disabilities, by race, and ethnicity, who, from
18 birth through age 2, stopped receiving early inter-
19 vention services because of program completion or
20 for other reasons;

21 “(G)(i) the number and percentage of children
22 with disabilities, by race, ethnicity, limited English
23 proficiency status, and disability category, who are
24 removed to an interim alternative educational setting
25 under section 615(k)(1);

1 “(ii) the acts or items precipitating those re-
2 movals; and

3 “(iii) the number of children with disabilities
4 who are subject to long-term suspensions or expul-
5 sions;

6 “(H) the incidence and duration of disciplinary
7 actions by race, ethnicity, limited English proficiency
8 status, and disability category, of children with dis-
9 abilities, including suspensions of 1 day or more;

10 “(I) the number and percentage of children
11 with disabilities who are removed to alternative edu-
12 cational settings or expelled as compared to children
13 without disabilities who are removed to alternative
14 educational settings or expelled;

15 “(J) the number of due process complaints filed
16 under section 615 and the number of hearings con-
17 ducted;

18 “(K) the number of hearings requested under
19 section 615(k) and the number of changes in place-
20 ments ordered as a result of those hearings;

21 “(L) the number of hearings requested under
22 section 615(k)(3)(B) and the number of changes in
23 placements ordered as a result of those hearings;
24 and

1 ~~“(M)~~ the number of mediations held and the
2 number of settlement agreements reached through
3 such mediations;

4 ~~“(2)~~ the number and percentage of infants and
5 toddlers, by race, and ethnicity, who are at risk of
6 having substantial developmental delays (as defined
7 in section 632), and who are receiving early inter-
8 vention services under part C; and

9 ~~“(3)~~ any other information that may be re-
10 quired by the Secretary.

11 ~~“(b) TECHNICAL ASSISTANCE.—~~The Secretary may
12 provide technical assistance to States to ensure compliance
13 with the data collection and reporting requirements under
14 this Act.

15 ~~“(c) DISPROPORTIONALITY.—~~

16 ~~“(1) IN GENERAL.—~~Each State that receives
17 assistance under this part, and the Secretary of the
18 Interior, shall provide for the collection and exam-
19 ination of data to determine if significant
20 disproportionality based on race is occurring in the
21 State with respect to—

22 ~~“(A)~~ the identification of children as chil-
23 dren with disabilities, including the identifica-
24 tion of children as children with disabilities in

1 accordance with a particular impairment de-
2 scribed in section 602(3);

3 “(B) the placement in particular edu-
4 cational settings of such children; and

5 “(C) the incidence, duration, and type of
6 disciplinary actions, including suspensions and
7 expulsions.

8 “(2) REVIEW AND REVISION OF POLICIES,
9 PRACTICES, AND PROCEDURES.—In the case of a de-
10 termination of significant disproportionality with re-
11 spect to the identification of children as children
12 with disabilities, or the placement in particular edu-
13 cational settings of such children, in accordance with
14 paragraph (1), the State or the Secretary of the In-
15 terior, as the case may be, shall provide for the re-
16 view and, if appropriate, revision of the policies, pro-
17 cedures, and practices used in such identification or
18 placement to ensure that such policies, procedures,
19 and practices comply with the requirements of this
20 Act.

21 **“SEC. 619. PRESCHOOL GRANTS.**

22 “(a) IN GENERAL.—The Secretary shall provide
23 grants under this section to assist States to provide special
24 education and related services, in accordance with this
25 part—

1 “(1) to children with disabilities aged 3 through
2 5, inclusive; and

3 “(2) at the State’s discretion, to 2-year-old chil-
4 dren with disabilities who will turn 3 during the
5 school year.

6 “(b) ELIGIBILITY.—A State shall be eligible for a
7 grant under this section if such State—

8 “(1) is eligible under section 612 to receive a
9 grant under this part; and

10 “(2) makes a free appropriate public education
11 available to all children with disabilities, aged 3
12 through 5, residing in the State.

13 “(c) ALLOCATIONS TO STATES.—

14 “(1) IN GENERAL.—The Secretary shall allo-
15 cate the amount made available to carry out this
16 section for a fiscal year among the States in accord-
17 ance with paragraph (2) or (3), as the case may be.

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

24 “(A) ALLOCATION.—

1 “(i) IN GENERAL.—Except as pro-
2 vided in subparagraph (B), the Secretary
3 shall—

4 “(I) allocate to each State the
5 amount the State received under this
6 section for fiscal year 1997;

7 “(II) allocate 85 percent of any
8 remaining funds to States on the
9 basis of the States’ relative popu-
10 lations of children aged 3 through 5;
11 and

12 “(III) allocate 15 percent of
13 those remaining funds to States on
14 the basis of the States’ relative popu-
15 lations of all children aged 3 through
16 5 who are living in poverty.

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

23 “(B) LIMITATIONS.—Notwithstanding sub-
24 paragraph (A), allocations under this paragraph
25 shall be subject to the following:

1 “(i) PRECEDING YEARS.—No State’s
2 allocation shall be less than its allocation
3 under this section for the preceding fiscal
4 year.

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

7 “(I) the sum of—

8 “(aa) the amount the State
9 received under this section for
10 fiscal year 1997; and

11 “(bb) $\frac{1}{3}$ of 1 percent of the
12 amount by which the amount ap-
13 propriated under subsection (j)
14 for the fiscal year exceeds the
15 amount appropriated for this sec-
16 tion for fiscal year 1997;

17 “(II) the sum of—

18 “(aa) the amount the State
19 received under this section for
20 the preceding fiscal year; and

21 “(bb) that amount multi-
22 plied by the percentage by which
23 the increase in the funds appro-
24 priated under this section from

1 the preceding fiscal year exceeds
2 1.5 percent; or

3 “(III) the sum of—

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

7 “(bb) that amount multi-
8 plied by 90 percent of the per-
9 centage increase in the amount
10 appropriated under this section
11 from the preceding fiscal year.

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

15 “(I) the amount the State re-
16 ceived under this section for the pre-
17 ceeding fiscal year; and

18 “(II) that amount multiplied by
19 the sum of 1.5 percent and the per-
20 centage increase in the amount appro-
21 priated under this section from the
22 preceding fiscal year.

23 “(C) RATABLE REDUCTIONS.—If the
24 amount available for allocations under this
25 paragraph is insufficient to pay those alloca-

1 tions in full; those allocations shall be ratably
2 reduced, subject to subparagraph (B)(i).

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

8 “(A) ALLOCATIONS.—If the amount avail-
9 able for allocations is greater than the amount
10 allocated to the States for fiscal year 1997,
11 each State shall be allocated the sum of—

12 “(i) the amount the State received
13 under this section for fiscal year 1997; and

14 “(ii) an amount that bears the same
15 relation to any remaining funds as the in-
16 crease the State received under this section
17 for the preceding fiscal year over fiscal
18 year 1997 bears to the total of all such in-
19 creases for all States.

20 “(B) If the amount available for alloca-
21 tions under this paragraph is equal to or less
22 than the amount allocated under this section to
23 the States for fiscal year 1997, each State shall
24 be allocated the amount the State received for
25 that year, ratably reduced, if necessary.

1 “(d) RESERVATION FOR STATE ACTIVITIES.—

2 “(1) IN GENERAL.—Each State may reserve
3 not more than the amount described in paragraph
4 (2) for administration and other State-level activities
5 in accordance with subsections (e) and (f).

6 “(2) AMOUNT DESCRIBED.—For each fiscal
7 year, the Secretary shall determine and report to the
8 State educational agency an amount that is 25 per-
9 cent of the amount the State received under this sec-
10 tion for fiscal year 1997, cumulatively adjusted by
11 the Secretary for each succeeding fiscal year by the
12 lesser of—

13 “(A) the percentage increase, if any, from
14 the preceding fiscal year in the State’s alloca-
15 tion under this section; or

16 “(B) the percentage increase, if any, from
17 the preceding fiscal year in the Consumer Price
18 Index For All Urban Consumers published by
19 the Bureau of Labor Statistics of the Depart-
20 ment of Labor.

21 “(e) STATE ADMINISTRATION.—

22 “(1) IN GENERAL.—For the purpose of admin-
23 istering this section (including the coordination of
24 activities under this part with, and providing tech-
25 nical assistance to, other programs that provide

1 services to children with disabilities) a State may
 2 use not more than 20 percent of the maximum
 3 amount the State may reserve under subsection (d)
 4 for any fiscal year.

5 “(2) ADMINISTRATION OF PART C.—Funds de-
 6 scribed in paragraph (1) may also be used for the
 7 administration of part C of this Act, if the State
 8 educational agency is the lead agency for the State
 9 under that part.

10 “(f) OTHER STATE-LEVEL ACTIVITIES.—Each State
 11 shall use any funds the State reserves under subsection
 12 (d) and does not use for administration under subsection
 13 (e)—

14 “(1) for support services (including establishing
 15 and implementing the mediation process required by
 16 section 615(e)), which may benefit children with dis-
 17 abilities younger than 3 or older than 5 as long as
 18 those services also benefit children with disabilities
 19 aged 3 through 5;

20 “(2) for direct services for children eligible for
 21 services under this section;

22 “(3) for activities at the State and local levels
 23 to meet the performance goals established by the
 24 State under section 612(a)(15) and to support im-
 25 plementation of the State plan under subpart 1 of

1 part D if the State receives funds under that sub-
 2 part; or

3 “(4) to supplement other funds used to develop
 4 and implement a statewide coordinated services sys-
 5 tem designed to improve results for children and
 6 families, including children with disabilities and their
 7 families, but not more than 1 percent of the amount
 8 received by the State under this section for a fiscal
 9 year.

10 “(g) SUBGRANTS TO LOCAL EDUCATIONAL AGEN-
 11 CIES.—

12 “(1) SUBGRANTS REQUIRED.—Each State that
 13 receives a grant under this section for any fiscal
 14 year shall distribute all of the grant funds that the
 15 State does not reserve under subsection (d) to local
 16 educational agencies in the State that have estab-
 17 lished their eligibility under section 613, as follows:

18 “(A) BASE PAYMENTS.—The State shall
 19 first award each local educational agency de-
 20 scribed in paragraph (1) the amount that agen-
 21 cy would have received under this section for
 22 fiscal year 1997 if the State had distributed 75
 23 percent of its grant for that year under section
 24 619(e)(3), as such section was then in effect.

1 “(B) ALLOCATION OF REMAINING
2 FUNDS.—After making allocations under sub-
3 paragraph (A), the State shall—

4 “(i) allocate 85 percent of any re-
5 maining funds to those local educational
6 agencies on the basis of the relative num-
7 bers of children enrolled in public and pri-
8 vate elementary schools and secondary
9 schools within the local educational agen-
10 cy’s jurisdiction; and

11 “(ii) allocate 15 percent of those re-
12 maining funds to those local educational
13 agencies in accordance with their relative
14 numbers of children living in poverty, as
15 determined by the State educational agen-
16 cy.

17 “(2) REALLOCATION OF FUNDS.—If a State
18 educational agency determines that a local edu-
19 cational agency is adequately providing a free appro-
20 priate public education to all children with disabil-
21 ities aged 3 through 5 residing in the area served by
22 that agency with State and local funds, the State
23 educational agency may reallocate any portion of the
24 funds under this section that are not needed by that
25 local educational agency to provide a free appro-

1 prorate public education to other local educational
2 agencies in the State that are not adequately pro-
3 viding special education and related services to all
4 children with disabilities aged 3 through 5 residing
5 in the areas the other local educational agencies
6 serve.

7 “(h) PART C INAPPLICABLE.—Part C of this Act
8 does not apply to any child with a disability receiving a
9 free appropriate public education, in accordance with this
10 part, with funds received under this section.

11 “(i) DEFINITION.—For the purpose of this section,
12 the term ‘State’ means each of the 50 States, the District
13 of Columbia, and the Commonwealth of Puerto Rico.

14 “(j) AUTHORIZATION OF APPROPRIATIONS.—For the
15 purpose of carrying out this section, there are authorized
16 to be appropriated to the Secretary such sums as may be
17 necessary for each of the fiscal years 2004 through 2009.

18 **“PART C—INFANTS AND**
19 **TODDLERS WITH DISABILITIES**

20 **“SEC. 631. FINDINGS AND POLICY.**

21 “(a) FINDINGS.—Congress finds that there is an ur-
22 gent and substantial need—

23 “(1) to enhance the development of infants and
24 toddlers with disabilities; to minimize their potential
25 for developmental delay; and to recognize the signifi-

1 eant brain development which occurs during a child's
2 first 3 years of life;

3 “(2) to reduce the educational costs to our soci-
4 ety, including our Nation's schools, by minimizing
5 the need for special education and related services
6 after infants and toddlers with disabilities reach
7 school age;

8 “(3) to maximize the potential for individuals
9 with disabilities to live independently in society;

10 “(4) to enhance the capacity of families to meet
11 the special needs of their infants and toddlers with
12 disabilities; and

13 “(5) to enhance the capacity of State and local
14 agencies and service providers to identify, evaluate,
15 and meet the needs of all children, particularly mi-
16 nority, low-income, inner city, and rural children.

17 “(b) POLICY.—It is the policy of the United States
18 to provide financial assistance to States—

19 “(1) to develop and implement a statewide,
20 comprehensive, coordinated, multidisciplinary, inter-
21 agency system that provides early intervention serv-
22 ices for infants and toddlers with disabilities and
23 their families;

24 “(2) to facilitate the coordination of payment
25 for early intervention services from Federal, State,

1 local, and private sources (including public and pri-
2 vate insurance coverage);

3 “(3) to enhance State capacity to provide qual-
4 ity early intervention services and expand and im-
5 prove existing early intervention services being pro-
6 vided to infants and toddlers with disabilities and
7 their families; and

8 “(4) to encourage States to expand opportuni-
9 ties for children under 3 years of age who would be
10 at risk of having substantial developmental delay if
11 they did not receive early intervention services.

12 **“SEC. 632. DEFINITIONS.**

13 “As used in this part:

14 “(1) **AT-RISK INFANT OR TODDLER.**—The term
15 ‘at-risk infant or toddler’ means an individual under
16 3 years of age who would be at risk of experiencing
17 a substantial developmental delay if early interven-
18 tion services were not provided to the individual.

19 “(2) **COUNCIL.**—The term ‘council’ means a
20 State interagency coordinating council established
21 under section 641.

22 “(3) **DEVELOPMENTAL DELAY.**—The term ‘de-
23 velopmental delay’, when used with respect to an in-
24 dividual residing in a State, has the meaning given
25 such term by the State under section 635(a)(1).

1 “(4) EARLY INTERVENTION SERVICES.—The
2 term ‘early intervention services’ means develop-
3 mental services that—

4 “(A) are provided under public supervision;

5 “(B) are provided at no cost except where
6 Federal or State law provides for a system of
7 payments by families, including a schedule of
8 sliding fees;

9 “(C) are designed to meet the develop-
10 mental needs of an infant or toddler with a dis-
11 ability in any 1 or more of the following areas:

12 “(i) physical development;

13 “(ii) cognitive development;

14 “(iii) communication development;

15 “(iv) social or emotional development;

16 or

17 “(v) adaptive development;

18 “(D) meet the standards of the State in
19 which the services are provided, including the
20 requirements of this part;

21 “(E) include—

22 “(i) family training, counseling, and
23 home visits;

24 “(ii) special instruction;

- 1 ~~“(iii) speech-language pathology and~~
2 ~~audiology services;~~
- 3 ~~“(iv) occupational therapy;~~
- 4 ~~“(v) physical therapy;~~
- 5 ~~“(vi) psychological services;~~
- 6 ~~“(vii) service coordination services;~~
- 7 ~~“(viii) medical services only for diag-~~
8 ~~nostic or evaluation purposes;~~
- 9 ~~“(ix) early identification, screening,~~
10 ~~and assessment services;~~
- 11 ~~“(x) health services necessary to en-~~
12 ~~able the infant or toddler to benefit from~~
13 ~~the other early intervention services;~~
- 14 ~~“(xi) social work services;~~
- 15 ~~“(xii) vision services;~~
- 16 ~~“(xiii) assistive technology devices and~~
17 ~~assistive technology services; and~~
- 18 ~~“(xiv) transportation and related costs~~
19 ~~that are necessary to enable an infant or~~
20 ~~toddler and the infant’s or toddler’s family~~
21 ~~to receive another service described in this~~
22 ~~paragraph;~~
- 23 ~~“(F) are provided by qualified personnel,~~
24 ~~including—~~
- 25 ~~“(i) special educators;~~

- 1 “(ii) speech-language pathologists and
2 audiologists;
3 “(iii) occupational therapists;
4 “(iv) physical therapists;
5 “(v) psychologists;
6 “(vi) social workers;
7 “(vii) nurses;
8 “(viii) nutritionists;
9 “(ix) family therapists;
10 “(x) orientation and mobility special-
11 ists; and
12 “(xi) pediatricians and other physi-
13 cians;
14 “(G) to the maximum extent appropriate,
15 are provided in natural environments, including
16 the home, and community settings in which
17 children without disabilities participate; and
18 “(H) are provided in conformity with an
19 individualized family service plan adopted in ac-
20 cordance with section 636.
21 “(5) INFANT OR TODDLER WITH A DIS-
22 ABILITY.—The term ‘infant or toddler with a dis-
23 ability’—

1 “(A) means an individual under 3 years of
2 age who needs early intervention services be-
3 cause the individual—

4 “(i) is experiencing developmental
5 delays, as measured by appropriate diag-
6 nostic instruments and procedures in 1 or
7 more of the areas of cognitive development,
8 physical development, communication de-
9 velopment, social or emotional develop-
10 ment, and adaptive development; or

11 “(ii) has a diagnosed physical or men-
12 tal condition which has a high probability
13 of resulting in developmental delay; and

14 “(B) may also include, at a State’s discre-
15 tion, at-risk infants and toddlers.

16 **“SEC. 633. GENERAL AUTHORITY.**

17 “The Secretary shall, in accordance with this part,
18 make grants to States (from their allotments under sec-
19 tion 642) to assist each State to maintain and implement
20 a statewide, comprehensive, coordinated, multidisciplinary,
21 interagency system to provide early intervention services
22 for infants and toddlers with disabilities and their families.

1 **“SEC. 634. ELIGIBILITY.**

2 “~~In order to be eligible for a grant under section 633,~~
3 a State shall demonstrate to the Secretary that the
4 State—

5 “(1) has adopted a policy that appropriate early
6 intervention services are available to all infants and
7 toddlers with disabilities in the State and their fami-
8 lies, including Indian infants and toddlers with dis-
9 abilities and their families residing on a reservation
10 geographically located in the State; and

11 “(2) has in effect a statewide system that meets
12 the requirements of section 635.

13 **“SEC. 635. REQUIREMENTS FOR STATEWIDE SYSTEM.**

14 “(a) ~~IN GENERAL.~~—A statewide system described in
15 section 633 shall include, at a minimum, the following
16 components:

17 “(1) A definition of the term ‘developmental
18 delay’ that—

19 “(A) will be used by the State in carrying
20 out programs under this part; and

21 “(B) covers, at a minimum, all infants and
22 toddlers with—

23 “(i) a developmental delay of 35 per-
24 cent or more in 1 of the developmental
25 areas described in section 632(5)(A)(i); or

1 “(ii) a developmental delay of 25 per-
2 cent or more in 2 or more of the develop-
3 mental areas described in section
4 632(5)(A)(i).

5 “(2) A State policy that is in effect and that
6 ensures that appropriate early intervention services
7 are available to all infants and toddlers with disabil-
8 ities and their families, including Indian infants and
9 toddlers and their families residing on a reservation
10 geographically located in the State.

11 “(3) A timely, comprehensive, multidisciplinary
12 evaluation of the functioning of each infant or tod-
13 dler with a disability in the State, and a family-di-
14 rected identification of the needs of each family of
15 such an infant or toddler, to appropriately assist in
16 the development of the infant or toddler.

17 “(4) For each infant or toddler with a disability
18 in the State, an individualized family service plan in
19 accordance with section 636, including service co-
20 ordination services in accordance with such service
21 plan.

22 “(5) A comprehensive child find system, con-
23 sistent with part B, including a system for making
24 referrals to service providers that includes timelines

1 and provides for participation by primary referral
2 sources.

3 “(6) A public awareness program focusing on
4 early identification of infants and toddlers with dis-
5 abilities, including the preparation and dissemination
6 by the lead agency designated or established under
7 paragraph (10) to all primary referral sources, espe-
8 cially hospitals and physicians, of information for
9 parents on the availability of early intervention serv-
10 ices, and procedures for determining the extent to
11 which such sources disseminate such information to
12 parents of infants and toddlers.

13 “(7) A central directory that includes informa-
14 tion on early intervention services, resources, and ex-
15 perts available in the State and research and dem-
16 onstration projects being conducted in the State.

17 “(8) A comprehensive system of personnel de-
18 velopment, including the training of paraprofes-
19 sionals and the training of primary referral sources
20 with respect to the basic components of early inter-
21 vention services available in the State, which com-
22 prehensive system may include—

23 “(A) implementing innovative strategies
24 and activities for the recruitment and retention
25 of early education service providers;

1 “(B) promoting the preparation of early
2 intervention providers who are fully and appro-
3 priately qualified to provide early intervention
4 services under this part;

5 “(C) training personnel to work in rural
6 and inner-city areas; and

7 “(D) training personnel to coordinate tran-
8 sition services for infants and toddlers served
9 under this part from an early intervention pro-
10 gram under this part to preschool or other ap-
11 propriate services.

12 “(9) Subject to subsection (b), policies and pro-
13 cedures relating to the establishment and mainte-
14 nance of standards to ensure that personnel nec-
15 essary to carry out this part are appropriately and
16 adequately prepared and trained; including the es-
17 tablishment and maintenance of standards which are
18 consistent with any State-approved or recognized
19 certification, licensing, registration, or other com-
20 parable requirements which apply to the area in
21 which such personnel are providing early interven-
22 tion services; except that nothing in this part (in-
23 cluding this paragraph) shall be construed to pro-
24 hibit the use of paraprofessionals and assistants who
25 are appropriately trained in accordance with State

1 law, regulation, or written policy, to assist in the
2 provision of early intervention services under this
3 part to infants and toddlers with disabilities.

4 “(10) A single line of responsibility in a lead
5 agency designated or established by the Governor for
6 carrying out—

7 “(A) the general administration and super-
8 vision of programs and activities receiving as-
9 sistance under section 633, and the monitoring
10 of programs and activities used by the State to
11 carry out this part, whether or not such pro-
12 grams or activities are receiving assistance
13 made available under section 633, to ensure
14 that the State complies with this part;

15 “(B) the identification and coordination of
16 all available resources within the State from
17 Federal, State, local, and private sources;

18 “(C) the assignment of financial responsi-
19 bility in accordance with section 637(a)(2) to
20 the appropriate agencies;

21 “(D) the development of procedures to en-
22 sure that services are provided to infants and
23 toddlers with disabilities and their families
24 under this part in a timely manner pending the

1 resolution of any disputes among public agen-
2 cies or service providers;

3 “(E) the resolution of intra- and inter-
4 agency disputes; and

5 “(F) the entry into formal interagency
6 agreements that define the financial responsi-
7 bility of each agency for paying for early inter-
8 vention services (consistent with State law) and
9 procedures for resolving disputes and that in-
10 clude all additional components necessary to en-
11 sure meaningful cooperation and coordination.

12 “(11) A policy pertaining to the contracting or
13 making of other arrangements with service providers
14 to provide early intervention services in the State,
15 consistent with the provisions of this part, including
16 the contents of the application used and the condi-
17 tions of the contract or other arrangements.

18 “(12) A procedure for securing timely reim-
19 bursements of funds used under this part in accord-
20 ance with section 640(a).

21 “(13) Procedural safeguards with respect to
22 programs under this part, as required by section
23 639.

1 “(14) A system for compiling data requested by
2 the Secretary under section 618 that relates to this
3 part.

4 “(15) A State interagency coordinating council
5 that meets the requirements of section 641.

6 “(16) Policies and procedures to ensure that,
7 consistent with section 636(d)(5) to the maximum
8 extent appropriate, early intervention services are
9 provided in natural environments unless a specific
10 outcome cannot be met satisfactorily for the infant
11 or toddler in a natural environment.

12 “(b) POLICY.—In implementing subsection (a)(9), a
13 State may adopt a policy that includes making ongoing
14 good-faith efforts to recruit and hire appropriately and
15 adequately trained personnel to provide early intervention
16 services to infants and toddlers with disabilities, including,
17 in a geographic area of the State where there is a shortage
18 of such personnel, the most qualified individuals available
19 who are making satisfactory progress toward completing
20 applicable coursework necessary to meet the standards de-
21 scribed in subsection (a)(9), consistent with State law
22 within 3 years.

23 **“SEC. 636. INDIVIDUALIZED FAMILY SERVICE PLAN.**

24 “(a) ASSESSMENT AND PROGRAM DEVELOPMENT.—
25 A statewide system described in section 633 shall provide,

1 at a minimum, for each infant or toddler with a disability,
2 and the infant's or toddler's family, to receive—

3 “(1) a multidisciplinary assessment of the
4 unique strengths and needs of the infant or toddler
5 and the identification of services appropriate to meet
6 such needs;

7 “(2) a family-directed assessment of the re-
8 sources, priorities, and concerns of the family and
9 the identification of the supports and services nec-
10 essary to enhance the family's capacity to meet the
11 developmental needs of the infant or toddler; and

12 “(3) a written individualized family service plan
13 developed by a multidisciplinary team, including the
14 parents, as required by subsection (e), including a
15 description of the appropriate transition services for
16 the child.

17 “(b) PERIODIC REVIEW.—The individualized family
18 service plan shall be evaluated once a year and the family
19 shall be provided a review of the plan at 6-month intervals
20 (or more often where appropriate based on infant or tod-
21 dler and family needs).

22 “(c) PROMPTNESS AFTER ASSESSMENT.—The indi-
23 vidualized family service plan shall be developed within a
24 reasonable time after the assessment required by sub-
25 section (a)(1) is completed. With the parents' consent,

1 early intervention services may commence prior to the
2 completion of the assessment.

3 “(d) CONTENT OF PLAN.—The individualized family
4 service plan shall be in writing and contain—

5 “(1) a statement of the infant’s or toddler’s
6 present levels of physical development, cognitive de-
7 velopment, communication development, social or
8 emotional development, and adaptive development,
9 based on objective criteria;

10 “(2) a statement of the family’s resources, pri-
11 orities, and concerns relating to enhancing the devel-
12 opment of the family’s infant or toddler with a dis-
13 ability;

14 “(3) a statement of the measurable outcomes
15 expected to be achieved for the infant or toddler and
16 the family, including, as appropriate, pre-literacy
17 and language skills, and the criteria, procedures,
18 and timelines used to determine the degree to which
19 progress toward achieving the outcomes is being
20 made and whether modifications or revisions of the
21 outcomes or services are necessary;

22 “(4) a statement of specific early intervention
23 services necessary to meet the unique needs of the
24 infant or toddler and the family, including the fre-
25 quency, intensity, and method of delivering services;

1 “(5) a statement of the natural environments in
2 which early intervention services will appropriately
3 be provided, including a justification of the extent,
4 if any, to which the services will not be provided in
5 a natural environment;

6 “(6) the projected dates for initiation of serv-
7 ices and the anticipated length, duration, and fre-
8 quency of the services;

9 “(7) the identification of the service coordinator
10 from the profession most immediately relevant to the
11 infant’s or toddler’s or family’s needs (or who is oth-
12 erwise qualified to carry out all applicable respon-
13 sibilities under this part) who will be responsible for
14 the implementation of the plan and coordination
15 with other agencies and persons, including transition
16 services; and

17 “(8) the steps to be taken to support the transi-
18 tion of the toddler with a disability to preschool or
19 other appropriate services.

20 “(e) PARENTAL CONSENT.—The contents of the indi-
21 vidualized family service plan shall be fully explained to
22 the parents and informed written consent from the par-
23 ents shall be obtained prior to the provision of early inter-
24 vention services described in such plan. If the parents do
25 not provide consent with respect to a particular early

1 intervention service, then only the early intervention serv-
2 ices to which consent is obtained shall be provided.

3 **“SEC. 637. STATE APPLICATION AND ASSURANCES.**

4 “(a) APPLICATION.—A State desiring to receive a
5 grant under section 633 shall submit an application to the
6 Secretary at such time and in such manner as the Sec-
7 retary may reasonably require. The application shall con-
8 tain—

9 “(1) a designation of the lead agency in the
10 State that will be responsible for the administration
11 of funds provided under section 633;

12 “(2) a designation of an individual or entity re-
13 sponsible for assigning financial responsibility
14 among appropriate agencies;

15 “(3) information demonstrating eligibility of the
16 State under section 634, including—

17 “(A) information demonstrating to the
18 Secretary’s satisfaction that the State has in ef-
19 fect the statewide system required by section
20 633; and

21 “(B) a description of services to be pro-
22 vided to infants and toddlers with disabilities
23 and their families through the system;

1 “(4) if the State provides services to at-risk in-
2 fants and toddlers through the system; a description
3 of such services;

4 “(5) a description of the uses for which funds
5 will be expended in accordance with this part;

6 “(6) a description of the State policies and pro-
7 cedures that require the referral for early interven-
8 tion services of a child under the age of 3 who—

9 “(A) is involved in a substantiated case of
10 child abuse or neglect; or

11 “(B) is identified as affected by illegal sub-
12 stance abuse; or withdrawal symptoms resulting
13 from prenatal drug exposure;

14 “(7) a description of the procedure used to en-
15 sure that resources are made available under this
16 part for all geographic areas within the State;

17 “(8) a description of State policies and proce-
18 dures that ensure that, prior to the adoption by the
19 State of any other policy or procedure necessary to
20 meet the requirements of this part, there are public
21 hearings, adequate notice of the hearings, and an
22 opportunity for comment available to the general
23 public, including individuals with disabilities and
24 parents of infants and toddlers with disabilities;

1 ~~“(9) a description of the policies and procedures~~
2 ~~to be used—~~

3 ~~“(A) to ensure a smooth transition for tod-~~
4 ~~dlers receiving early intervention services under~~
5 ~~this part to preschool; other appropriate serv-~~
6 ~~ices; or exiting the program, including a de-~~
7 ~~scription of how—~~

8 ~~“(i) the families of such toddlers will~~
9 ~~be included in the transition plans required~~
10 ~~by subparagraph (C); and~~

11 ~~“(ii) the lead agency designated or es-~~
12 ~~tablished under section 635(a)(10) will—~~

13 ~~“(I) notify the local educational~~
14 ~~agency for the area in which such a~~
15 ~~child resides that the child will shortly~~
16 ~~reach the age of eligibility for pre-~~
17 ~~school services under part B; as deter-~~
18 ~~mined in accordance with State law;~~

19 ~~“(II) in the case of a child who~~
20 ~~may be eligible for such preschool~~
21 ~~services, with the approval of the fam-~~
22 ~~ily of the child, convene a conference~~
23 ~~among the lead agency, the family,~~
24 ~~and the local educational agency at~~
25 ~~least 90 days (and at the discretion of~~

1 all such parties, not more than 6
2 months) before the child is eligible for
3 the preschool services, to discuss any
4 such services that the child may re-
5 ceive; and

6 “(III) in the case of a child who
7 may not be eligible for such preschool
8 services, with the approval of the fam-
9 ily, make reasonable efforts to con-
10 vene a conference among the lead
11 agency, the family, and providers of
12 other appropriate services for children
13 who are not eligible for preschool serv-
14 ices under part B, to discuss the ap-
15 propriate services that the child may
16 receive;

17 “(B) to review the child’s program options
18 for the period from the child’s third birthday
19 through the remainder of the school year; and

20 “(C) to establish a transition plan, includ-
21 ing, as appropriate, steps to exit from the pro-
22 gram; and

23 “(10) such other information and assurances as
24 the Secretary may reasonably require.

1 “(b) ASSURANCES.—The application described in
2 subsection (a)—

3 “(1) shall provide satisfactory assurance that
4 Federal funds made available under section 643 to
5 the State will be expended in accordance with this
6 part;

7 “(2) shall contain an assurance that the State
8 will comply with the requirements of section 640;

9 “(3) shall provide satisfactory assurance that
10 the control of funds provided under section 643, and
11 title to property derived from those funds, will be in
12 a public agency for the uses and purposes provided
13 in this part and that a public agency will administer
14 such funds and property;

15 “(4) shall provide for—

16 “(A) making such reports in such form
17 and containing such information as the Sec-
18 retary may require to carry out the Secretary’s
19 functions under this part; and

20 “(B) keeping such reports and affording
21 such access to the reports as the Secretary may
22 find necessary to ensure the correctness and
23 verification of the reports and proper disburse-
24 ment of Federal funds under this part;

1 “(5) provide satisfactory assurance that Federal
2 funds made available under section 643 to the
3 State—

4 “(A) will not be commingled with State
5 funds; and

6 “(B) will be used so as to supplement the
7 level of State and local funds expended for in-
8 fants and toddlers with disabilities and their
9 families and in no case to supplant those State
10 and local funds;

11 “(6) shall provide satisfactory assurance that
12 such fiscal control and fund accounting procedures
13 will be adopted as may be necessary to ensure prop-
14 er disbursement of, and accounting for, Federal
15 funds paid under section 643 to the State;

16 “(7) shall provide satisfactory assurance that
17 policies and procedures have been adopted to ensure
18 meaningful involvement of underserved groups, in-
19 cluding minority, low-income, and rural families, in
20 the planning and implementation of all the require-
21 ments of this part; and

22 “(8) shall contain such other information and
23 assurances as the Secretary may reasonably require
24 by regulation.

1 “(c) STANDARD FOR DISAPPROVAL OF APPLICA-
2 TION.—The Secretary may not disapprove such an appli-
3 cation unless the Secretary determines, after notice and
4 opportunity for a hearing, that the application fails to
5 comply with the requirements of this section.

6 “(d) SUBSEQUENT STATE APPLICATION.—If a State
7 has on file with the Secretary a policy, procedure, or as-
8 surance that demonstrates that the State meets a require-
9 ment of this section, including any policy or procedure
10 filed under part C, as in effect before the date of enact-
11 ment of the Individuals with Disabilities Education Im-
12 provement Act of 2003, the Secretary shall consider the
13 State to have met the requirement for purposes of receiv-
14 ing a grant under this part.

15 “(e) MODIFICATION OF APPLICATION.—An applica-
16 tion submitted by a State in accordance with this section
17 shall remain in effect until the State submits to the Sec-
18 retary such modifications as the State determines nec-
19 essary. This section shall apply to a modification of an
20 application to the same extent and in the same manner
21 as this section applies to the original application.

22 “(f) MODIFICATIONS REQUIRED BY THE SEC-
23 RETARY.—The Secretary may require a State to modify
24 its application under this section, but only to the extent

1 necessary to ensure the State's compliance with this part,
2 if—

3 “(1) an amendment is made to this Act, or a
4 Federal regulation issued under this Act;

5 “(2) a new interpretation of this Act is made by
6 a Federal court or the State's highest court; or

7 “(3) an official finding of noncompliance with
8 Federal law or regulations is made with respect to
9 the State.

10 **“SEC. 638. USES OF FUNDS.**

11 “~~In~~ addition to using funds provided under section
12 ~~633~~ to maintain and implement the statewide system re-
13 quired by such section, a State may use such funds—

14 “(1) for direct early intervention services for in-
15 fants and toddlers with disabilities, and their fami-
16 lies, under this part that are not otherwise funded
17 through other public or private sources;

18 “(2) to expand and improve on services for in-
19 fants and toddlers and their families under this part
20 that are otherwise available;

21 “(3) to provide a free appropriate public edu-
22 cation, in accordance with part B, to children with
23 disabilities from their third birthday to the begin-
24 ning of the following school year; and

1 “(4) in any State that does not provide services
 2 for at-risk infants and toddlers under section
 3 637(a)(4), to strengthen the statewide system by ini-
 4 tiating, expanding, or improving collaborative efforts
 5 related to at-risk infants and toddlers, including es-
 6 tablishing linkages with appropriate public or private
 7 community-based organizations, services, and per-
 8 sonnel for the purposes of—

9 “(A) identifying and evaluating at-risk in-
 10 fants and toddlers;

11 “(B) making referrals of the infants and
 12 toddlers identified and evaluated under sub-
 13 paragraph (A); and

14 “(C) conducting periodic follow-up on each
 15 such referral to determine if the status of the
 16 infant or toddler involved has changed with re-
 17 spect to the eligibility of the infant or toddler
 18 for services under this part.

19 **“SEC. 639. PROCEDURAL SAFEGUARDS.**

20 “(a) MINIMUM PROCEDURES.—The procedural safe-
 21 guards required to be included in a statewide system
 22 under section 635(a)(13) shall provide, at a minimum, the
 23 following:

24 “(1) The timely administrative resolution of
 25 complaints by parents. Any party aggrieved by the

1 findings and decision regarding an administrative
2 complaint shall have the right to bring a civil action
3 with respect to the complaint in any State court of
4 competent jurisdiction or in a district court of the
5 United States without regard to the amount in con-
6 troversy. In any action brought under this para-
7 graph, the court shall receive the records of the ad-
8 ministrative proceedings, shall hear additional evi-
9 dence at the request of a party, and, basing its deci-
10 sion on the preponderance of the evidence, shall
11 grant such relief as the court determines is appro-
12 priate.

13 “(2) The right to confidentiality of personally
14 identifiable information, including the right of par-
15 ents to written notice of and written consent to the
16 exchange of such information among agencies con-
17 sistent with Federal and State law.

18 “(3) The right of the parents to determine
19 whether they, their infant or toddler, or other family
20 members will accept or decline any early intervention
21 service under this part in accordance with State law
22 without jeopardizing other early intervention services
23 under this part.

24 “(4) The opportunity for parents to examine
25 records relating to assessment, screening, eligibility

1 determinations, and the development and implemen-
2 tation of the individualized family service plan.

3 “(5) Procedures to protect the rights of the in-
4 fant or toddler whenever the parents of the infant or
5 toddler are not known or cannot be found or the in-
6 fant or toddler is a ward of the State, including the
7 assignment of an individual (who shall not be an em-
8 ployee of the State lead agency, or other State agen-
9 cy, and who shall not be any person, or any em-
10 ployee of a person, providing early intervention serv-
11 ices to the infant or toddler or any family member
12 of the infant or toddler) to act as a surrogate for the
13 parents.

14 “(6) Written prior notice to the parents of the
15 infant or toddler with a disability whenever the State
16 agency or service provider proposes to initiate or
17 change, or refuses to initiate or change, the identi-
18 fication, evaluation, or placement of the infant or
19 toddler with a disability, or the provision of appro-
20 priate early intervention services to the infant or
21 toddler.

22 “(7) Procedures designed to ensure that the no-
23 tice required by paragraph (6) fully informs the par-
24 ents, in the parents’ native language, unless it clear-

1 ly is not feasible to do so, of all procedures available
 2 pursuant to this section.

3 ~~“(8) The right of parents to use mediation in~~
 4 ~~accordance with section 615, except that—~~

5 ~~“(A) any reference in the section to a~~
 6 ~~State educational agency shall be considered to~~
 7 ~~be a reference to a State’s lead agency estab-~~
 8 ~~lished or designated under section 635(a)(10);~~

9 ~~“(B) any reference in the section to a local~~
 10 ~~educational agency shall be considered to be a~~
 11 ~~reference to a local service provider or the~~
 12 ~~State’s lead agency under this part, as the case~~
 13 ~~may be; and~~

14 ~~“(C) any reference in the section to the~~
 15 ~~provision of free appropriate public education to~~
 16 ~~children with disabilities shall be considered to~~
 17 ~~be a reference to the provision of appropriate~~
 18 ~~early intervention services to infants and tod-~~
 19 ~~dlers with disabilities.~~

20 ~~“(b) SERVICES DURING PENDENCY OF PRO-~~
 21 ~~CEEDINGS.—During the pendency of any proceeding or ac-~~
 22 ~~tion involving a complaint by the parents of an infant or~~
 23 ~~toddler with a disability, unless the State agency and the~~
 24 ~~parents otherwise agree, the infant or toddler shall con-~~
 25 ~~tinue to receive the appropriate early intervention services~~

1 currently being provided or, if applying for initial services,
2 shall receive the services not in dispute.

3 **“SEC. 640. PAYOR OF LAST RESORT.**

4 “(a) NONSUBSTITUTION.—Funds provided under
5 section 643 may not be used to satisfy a financial commit-
6 ment for services that would have been paid for from an-
7 other public or private source, including any medical pro-
8 gram administered by the Secretary of Defense, but for
9 the enactment of this part, except that whenever consid-
10 ered necessary to prevent a delay in the receipt of appro-
11 priate early intervention services by an infant, toddler, or
12 family in a timely fashion, funds provided under section
13 643 may be used to pay the provider of services pending
14 reimbursement from the agency that has ultimate respon-
15 sibility for the payment.

16 “(b) REDUCTION OF OTHER BENEFITS.—Nothing in
17 this part shall be construed to permit the State to reduce
18 medical or other assistance available or to alter eligibility
19 under title V of the Social Security Act (relating to mater-
20 nal and child health) or title XIX of the Social Security
21 Act (relating to Medicaid for infants or toddlers with dis-
22 abilities) within the State.

23 **“SEC. 641. STATE INTERAGENCY COORDINATING COUNCIL.**

24 “(a) ESTABLISHMENT.—

1 “(1) IN GENERAL.—A State that desires to re-
2 ceive financial assistance under this part shall estab-
3 lish a State interagency coordinating council.

4 “(2) APPOINTMENT.—The council shall be ap-
5 pointed by the Governor. In making appointments to
6 the council, the Governor shall ensure that the mem-
7 bership of the council reasonably represents the pop-
8 ulation of the State.

9 “(3) CHAIRPERSON.—The Governor shall des-
10 ignate a member of the council to serve as the chair-
11 person of the council, or shall require the council to
12 so designate such a member. Any member of the
13 council who is a representative of the lead agency
14 designated under section 635(a)(10) may not serve
15 as the chairperson of the council.

16 “(b) COMPOSITION.—

17 “(1) IN GENERAL.—The council shall be com-
18 posed as follows:

19 “(A) PARENTS.—At least 20 percent of
20 the members shall be parents of infants or tod-
21 dlers with disabilities or children with disabili-
22 ties aged 12 or younger, with knowledge of, or
23 experience with, programs for infants and tod-
24 dlers with disabilities. At least 1 such member
25 shall be a parent of an infant or toddler with

1 a disability or a child with a disability aged 6
2 or younger.

3 “(B) SERVICE PROVIDERS.—At least 20
4 percent of the members shall be public or pri-
5 vate providers of early intervention services.

6 “(C) STATE LEGISLATURE.—At least 1
7 member shall be from the State legislature.

8 “(D) PERSONNEL PREPARATION.—At least
9 1 member shall be involved in personnel prepa-
10 ration.

11 “(E) AGENCY FOR EARLY INTERVENTION
12 SERVICES.—At least 1 member shall be from
13 each of the State agencies involved in the provi-
14 sion of, or payment for, early intervention serv-
15 ices to infants and toddlers with disabilities and
16 their families and shall have sufficient authority
17 to engage in policy planning and implementa-
18 tion on behalf of such agencies.

19 “(F) AGENCY FOR PRESCHOOL SERV-
20 ICES.—At least 1 member shall be from the
21 State educational agency responsible for pre-
22 school services to children with disabilities and
23 shall have sufficient authority to engage in pol-
24 icy planning and implementation on behalf of
25 such agency.

1 “(G) STATE MEDICAID AGENCY.—At least
2 1 member shall be from the agency responsible
3 for the State medicaid program.

4 “(H) HEAD START AGENCY.—At least 1
5 representative from a Head Start agency or
6 program in the State.

7 “(I) CHILD CARE AGENCY.—At least 1
8 representative from a State agency responsible
9 for child care.

10 “(2) OTHER MEMBERS.—The council may in-
11 clude other members selected by the Governor, in-
12 cluding a representative from the Bureau of Indian
13 Affairs, or where there is no BIA-operated or BIA-
14 funded school, from the Indian Health Service or the
15 tribe or tribal council.

16 “(e) MEETINGS.—The council shall meet at least
17 quarterly and in such places as the council determines nec-
18 essary. The meetings shall be publicly announced, and, to
19 the extent appropriate, open and accessible to the general
20 public.

21 “(d) MANAGEMENT AUTHORITY.—Subject to the ap-
22 proval of the Governor, the council may prepare and ap-
23 prove a budget using funds under this part to conduct
24 hearings and forums, to reimburse members of the council
25 for reasonable and necessary expenses for attending coun-

1 cil meetings and performing council duties (including child
2 care for parent representatives); to pay compensation to
3 a member of the council if the member is not employed
4 or must forfeit wages from other employment when per-
5 forming official council business; to hire staff; and to ob-
6 tain the services of such professional, technical, and cler-
7 ical personnel as may be necessary to carry out its func-
8 tions under this part.

9 “(e) FUNCTIONS OF COUNCIL.—

10 “(1) DUTIES.—The council shall—

11 “(A) advise and assist the lead agency des-
12 igned or established under section 635(a)(10)
13 in the performance of the responsibilities set
14 forth in such section; particularly the identifica-
15 tion of the sources of fiscal and other support
16 for services for early intervention programs; as-
17 signment of financial responsibility to the ap-
18 propriate agency; and the promotion of the
19 interagency agreements;

20 “(B) advise and assist the lead agency in
21 the preparation of applications and amend-
22 ments thereto;

23 “(C) advise and assist the State edu-
24 cational agency regarding the transition of tod-

1 dlers with disabilities to preschool and other ap-
2 propriate services; and

3 “(D) prepare and submit an annual report
4 to the Governor and to the Secretary on the
5 status of early intervention programs for in-
6 fants and toddlers with disabilities and their
7 families operated within the State.

8 “(2) AUTHORIZED ACTIVITY.—The council may
9 advise and assist the lead agency and the State edu-
10 cational agency regarding the provision of appro-
11 priate services for children from birth through age
12 5. The council may advise appropriate agencies in
13 the State with respect to the integration of services
14 for infants and toddlers with disabilities and at-risk
15 infants and toddlers and their families; regardless of
16 whether at-risk infants and toddlers are eligible for
17 early intervention services in the State.

18 “(f) CONFLICT OF INTEREST.—No member of the
19 council shall cast a vote on any matter that is likely to
20 provide a direct financial benefit to that member or other-
21 wise give the appearance of a conflict of interest under
22 State law.

1 **“SEC. 642. FEDERAL ADMINISTRATION.**

2 “Sections 616, 617, and 618 shall, to the extent not
3 inconsistent with this part, apply to the program author-
4 ized by this part, except that—

5 “(1) any reference in such sections to a State
6 educational agency shall be considered to be a ref-
7 erence to a State’s lead agency established or des-
8 igned under section 635(a)(10);

9 “(2) any reference in such sections to a local
10 educational agency, educational service agency, or a
11 State agency shall be considered to be a reference to
12 an early intervention service provider under this
13 part; and

14 “(3) any reference to the education of children
15 with disabilities or the education of all children with
16 disabilities shall be considered to be a reference to
17 the provision of appropriate early intervention serv-
18 ices to infants and toddlers with disabilities.

19 **“SEC. 643. ALLOCATION OF FUNDS.**

20 “(a) RESERVATION OF FUNDS FOR OUTLYING
21 AREAS.—

22 “(1) IN GENERAL.—From the sums appro-
23 priated to carry out this part for any fiscal year, the
24 Secretary may reserve not more than 1 percent for
25 payments to Guam, American Samoa, the United
26 States Virgin Islands, and the Commonwealth of the

1 Northern Mariana Islands in accordance with their
2 respective needs.

3 “(2) CONSOLIDATION OF FUNDS.—The provi-
4 sions of Public Law 95-134, permitting the consoli-
5 dation of grants to the outlying areas, shall not
6 apply to funds those areas receive under this part.

7 “(b) PAYMENTS TO INDIANS.—

8 “(1) IN GENERAL.—The Secretary shall, sub-
9 ject to this subsection, make payments to the Sec-
10 retary of the Interior to be distributed to tribes,
11 tribal organizations (as defined under section 4 of
12 the Indian Self-Determination and Education Assist-
13 ance Act), or consortia of the above entities for the
14 coordination of assistance in the provision of early
15 intervention services by the States to infants and
16 toddlers with disabilities and their families on res-
17 ervations served by elementary schools and sec-
18 ondary schools for Indian children operated or fund-
19 ed by the Department of the Interior. The amount
20 of such payment for any fiscal year shall be 1.25
21 percent of the aggregate of the amount available to
22 all States under this part for such fiscal year.

23 “(2) ALLOCATION.—For each fiscal year, the
24 Secretary of the Interior shall distribute the entire
25 payment received under paragraph (1) by providing

1 to each tribe, tribal organization, or consortium an
2 amount based on the number of infants and toddlers
3 residing on the reservation, as determined annually,
4 divided by the total of such children served by all
5 tribes, tribal organizations, or consortia.

6 “(3) INFORMATION.—To receive a payment
7 under this subsection, the tribe, tribal organization,
8 or consortium shall submit such information to the
9 Secretary of the Interior as is needed to determine
10 the amounts to be distributed under paragraph (2).

11 “(4) USE OF FUNDS.—The funds received by a
12 tribe, tribal organization, or consortium shall be
13 used to assist States in child find, screening, and
14 other procedures for the early identification of In-
15 dian children under 3 years of age and for parent
16 training. Such funds may also be used to provide
17 early intervention services in accordance with this
18 part. Such activities may be carried out directly or
19 through contracts or cooperative agreements with
20 the BIA, local educational agencies, and other public
21 or private nonprofit organizations. The tribe, tribal
22 organization, or consortium is encouraged to involve
23 Indian parents in the development and implementa-
24 tion of these activities. The above entities shall, as
25 appropriate, make referrals to local, State, or Fed-

1 eral entities for the provision of services or further
2 diagnosis.

3 “(5) REPORTS.—To be eligible to receive a
4 grant under paragraph (2), a tribe, tribal organiza-
5 tion, or consortium shall make a biennial report to
6 the Secretary of the Interior of activities undertaken
7 under this subsection, including the number of con-
8 tracts and cooperative agreements entered into, the
9 number of children contacted and receiving services
10 for each year, and the estimated number of children
11 needing services during the 2 years following the
12 year in which the report is made. The Secretary of
13 the Interior shall include a summary of this informa-
14 tion on a biennial basis to the Secretary of Edu-
15 cation along with such other information as required
16 under section 611(h)(3)(E). The Secretary of Edu-
17 cation may require any additional information from
18 the Secretary of the Interior.

19 “(6) PROHIBITED USES OF FUNDS.—None of
20 the funds under this subsection may be used by the
21 Secretary of the Interior for administrative pur-
22 poses, including child count, and the provision of
23 technical assistance.

24 “(c) STATE ALLOTMENTS.—

1 “(1) IN GENERAL.—Except as provided in para-
2 graphs (2) and (3) from the funds remaining for
3 each fiscal year after the reservation and payments
4 under subsections (a) and (b), the Secretary shall
5 first allot to each State an amount that bears the
6 same ratio to the amount of such remainder as the
7 number of infants and toddlers in the State bears to
8 the number of infants and toddlers in all States.

9 “(2) MINIMUM ALLOTMENTS.—Except as pro-
10 vided in paragraph (3), no State shall receive an
11 amount under this section for any fiscal year that is
12 less than the greater of—

13 “(A) $\frac{1}{2}$ of 1 percent of the remaining
14 amount described in paragraph (1); or

15 “(B) \$500,000.

16 “(3) RATABLE REDUCTION.—

17 “(A) IN GENERAL.—If the sums made
18 available under this part for any fiscal year are
19 insufficient to pay the full amounts that all
20 States are eligible to receive under this sub-
21 section for such year, the Secretary shall rat-
22 ably reduce the allotments to such States for
23 such year.

24 “(B) ADDITIONAL FUNDS.—If additional
25 funds become available for making payments

1 under this subsection for a fiscal year, allot-
 2 ments that were reduced under subparagraph
 3 (A) shall be increased on the same basis the al-
 4 lotments were reduced.

5 “(4) DEFINITIONS.—For the purpose of this
 6 subsection—

7 “(A) the terms ‘infants’ and ‘toddlers’
 8 mean children under $\frac{3}{4}$ years of age; and

9 “(B) the term ‘State’ means each of the 50
 10 States, the District of Columbia, and the Com-
 11 monwealth of Puerto Rico.

12 “(d) REALLOTMENT OF FUNDS.—If a State elects
 13 not to receive its allotment under subsection (c), the Sec-
 14 retary shall reallocate, among the remaining States, amounts
 15 from such State in accordance with such subsection.

16 **“SEC. 644. AUTHORIZATION OF APPROPRIATIONS.**

17 “For the purpose of carrying out this part, there are
 18 authorized to be appropriated such sums as may be nec-
 19 essary for each of the fiscal years 2004 through 2009.

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

22 **“SEC. 650. FINDINGS.**

23 “Congress finds the following:

24 “(1) The Federal Government has an ongoing
 25 obligation to support activities that contribute to

1 positive results for children with disabilities, ena-
2 bling them to lead productive and independent adult
3 lives.

4 “(2) Systemic change benefiting all students,
5 including children with disabilities, requires the in-
6 volvement of States, local educational agencies, par-
7 ents, individuals with disabilities and their families,
8 teachers and other service providers, and other inter-
9 ested individuals and organizations to develop and
10 implement comprehensive strategies that improve
11 educational results for children with disabilities.

12 “(3) State educational agencies, in partnership
13 with local educational agencies, parents of children
14 with disabilities, and other individuals and organiza-
15 tions, are in the best position to improve education
16 for children with disabilities and to address their
17 special needs.

18 “(4) An effective educational system serving
19 students with disabilities should—

20 “(A) maintain high academic achievement
21 standards and clear performance goals for chil-
22 dren, consistent with the standards and expec-
23 tations for all students in the educational sys-
24 tem, and provide for appropriate and effective
25 strategies and methods to ensure that all chil-

1 dren with disabilities have the opportunity to
2 achieve those standards and goals;

3 “(B) clearly define, in objective, measur-
4 able terms, the school and post-school results
5 that children with disabilities are expected to
6 achieve; and

7 “(C) promote transition services as de-
8 scribed in section 602(32) and coordinate State
9 and local education, social, health, mental
10 health, and other services, in addressing the full
11 range of student needs, particularly the needs
12 of children with disabilities who need significant
13 levels of support to participate and learn in
14 school and the community.

15 “(5) The availability of an adequate number of
16 qualified personnel is critical to serve effectively chil-
17 dren with disabilities; to assume leadership positions
18 in administration and direct services; to provide
19 teacher training; and to conduct high quality re-
20 search to improve special education.

21 “(6) High quality, comprehensive professional
22 development programs are essential to ensure that
23 the persons responsible for the education or transi-
24 tion of children with disabilities possess the skills

1 and knowledge necessary to address the educational
2 and related needs of those children.

3 “(7) Models of professional development should
4 be scientifically based and reflect successful prac-
5 tices, including strategies for recruiting, preparing,
6 and retaining personnel.

7 “(8) Continued support is essential for the de-
8 velopment and maintenance of a coordinated and
9 high quality program of research to inform success-
10 ful teaching practices and model curricula for edu-
11 cating children with disabilities.

12 “(9) A comprehensive research agenda should
13 be established and pursued to promote the highest
14 quality and rigor in special education research, and
15 to address the full range of issues facing children
16 with disabilities, parents of children with disabilities,
17 school personnel, and others.

18 “(10) Training, technical assistance, support,
19 and dissemination activities are necessary to ensure
20 that parts B and C are fully implemented and
21 achieve high quality early intervention, educational,
22 and transitional results for children with disabilities
23 and their families.

24 “(11) Parents, teachers, administrators, and re-
25 lated services personnel need technical assistance

1 and information in a timely, coordinated, and acces-
2 sible manner in order to improve early intervention,
3 educational, and transitional services and results at
4 the State and local levels for children with disabil-
5 ities and their families.

6 “(12) Parent training and information activities
7 assist parents of a child with a disability in dealing
8 with the multiple pressures of parenting such a child
9 and are of particular importance in—

10 “(A) playing a vital role in creating and
11 preserving constructive relationships between
12 parents of children with disabilities and schools
13 by facilitating open communication between the
14 parents and schools; encouraging dispute reso-
15 lution at the earliest possible point in time; and
16 discouraging the escalation of an adversarial
17 process between the parents and schools;

18 “(B) ensuring the involvement of parents
19 in planning and decisionmaking with respect to
20 early intervention, educational, and transitional
21 services;

22 “(C) achieving high quality early interven-
23 tion, educational, and transitional results for
24 children with disabilities;

1 “(D) providing such parents information
2 on their rights, protections, and responsibilities
3 under this Act to ensure improved early inter-
4 vention, educational, and transitional results for
5 children with disabilities;

6 “(E) assisting such parents in the develop-
7 ment of skills to participate effectively in the
8 education and development of their children and
9 in the transitions described in section 602(32);

10 “(F) supporting the roles of such parents
11 as participants within partnerships seeking to
12 improve early intervention, educational, and
13 transitional services and results for children
14 with disabilities and their families; and

15 “(G) supporting such parents who may
16 have limited access to services and supports,
17 due to economic, cultural, or linguistic barriers.

18 “(13) Support is needed to improve techno-
19 logical resources and integrate technology, including
20 universally designed technologies, into the lives of
21 children with disabilities, parents of children with
22 disabilities, school personnel, and others through
23 curricula, services, and assistive technologies.

1 **“Subpart 1—State Personnel Preparation and**
2 **Professional Development Grants**

3 **“SEC. 651. PURPOSE; DEFINITION; PROGRAM AUTHORITY.**

4 “(a) PURPOSE.—The purpose of this subpart is to
5 assist State educational agencies in reforming and improv-
6 ing their systems for personnel preparation and profes-
7 sional development in early intervention, educational, and
8 transition services in order to improve results for children
9 with disabilities.

10 “(b) DEFINITION.—In this subpart the term ‘per-
11 sonnel’ means special education teachers, general edu-
12 cation teachers, principals, administrators, related services
13 personnel, paraprofessionals, and early intervention per-
14 sonnel serving infants, toddlers, preschoolers, or children
15 with disabilities.

16 “(c) PROGRAM AUTHORITY.—

17 “(1) COMPETITIVE GRANTS.—

18 “(A) IN GENERAL.—For any fiscal year
19 for which the amount appropriated under sec-
20 tion 655 is less than \$100,000,000, the Sec-
21 retary is authorized to award grants, on a com-
22 petitive basis, to State educational agencies to
23 carry out the activities described in the State
24 plan submitted under section 654.

1 “(B) PRIORITY.—The Secretary may give
2 priority to awarding grants under subparagraph
3 (A) to State educational agencies that—

4 “(i) have the greatest personnel short-
5 ages; or

6 “(ii) demonstrate the greatest dif-
7 ficulty meeting the requirements of section
8 615(a)(14).

9 “(C) MINIMUM.—The Secretary shall make
10 a grant to each State educational agency se-
11 lected under subparagraph (A) in an amount
12 for each fiscal year that is—

13 “(i) not less than \$500,000, nor more
14 than \$2,000,000, in the case of the 50
15 States, the District of Columbia, and the
16 Commonwealth of Puerto Rico; and

17 “(ii) not less than \$80,000 in the case
18 of an outlying area.

19 “(D) INCREASES.—The Secretary may in-
20 crease the amount described in subparagraph
21 (C) to account for inflation.

22 “(E) FACTORS.—The Secretary shall set
23 the amount of each grant under subparagraph
24 (A) after considering—

1 “(i) the amount of funds available for
2 making the grants;

3 “(ii) the relative population of the
4 State or outlying area;

5 “(iii) the types of activities proposed
6 by the State or outlying area;

7 “(iv) the alignment of proposed activi-
8 ties with section 612(a)(15);

9 “(v) the alignment of proposed activi-
10 ties with the plans and applications sub-
11 mitted under sections 1111 and 2112, re-
12 spectively, of the Elementary and Sec-
13 ondary Education Act of 1965; and

14 “(vi) the use, as appropriate, of sci-
15 entifically based activities.

16 “(2) FORMULA GRANTS.—

17 “(A) IN GENERAL.—For any fiscal year
18 for which the funds appropriated under section
19 655 are equal to or greater than \$100,000,000,
20 the Secretary shall—

21 “(i) reserve from such funds an
22 amount sufficient to continue to make pay-
23 ments for the fiscal year in accordance
24 with the terms of each multi-year grant

1 awarded under paragraph (1) for which
2 the grant period has not ended; and

3 “(ii) use the remainder of such funds
4 to award grants to State educational agen-
5 cies, from allotments under subparagraph
6 (B); to enable the State educational agen-
7 cies to award contracts and subgrants, on
8 a competitive basis, to carry out the au-
9 thorized activities described in section 654.

10 “(B) ALLOTMENT.—Except as provided in
11 subparagraph (C), from the remainder of funds
12 described in subparagraph (A)(ii) for a fiscal
13 year, the Secretary shall make an allotment to
14 each State educational agency in an amount
15 that bears the same relation to such remainder
16 as the amount of funds the State received
17 under section 611(d)(3) for the preceding fiscal
18 year bears to the amount of funds received by
19 all States under such section for the preceding
20 fiscal year.

21 “(C) MINIMUM ALLOTMENT.—The amount
22 of any State educational agency’s allotment
23 under this paragraph for any fiscal year shall
24 not be less than $\frac{1}{4}$ of 1 percent of the amount
25 made available under this part for such year.

1 **“SEC. 652. ELIGIBILITY AND COLLABORATIVE PROCESS.**

2 “(a) **ELIGIBLE APPLICANTS.**—A State educational
3 agency may apply for a grant under this subpart for a
4 grant period of not less than 1 year and not more than
5 5 years.

6 “(b) **PARTNERS.**—

7 “(1) **IN GENERAL.**—In order to be considered
8 for a grant under this subpart, a State educational
9 agency shall establish a partnership with local edu-
10 cational agencies and other State agencies involved
11 in, or concerned with, the education of children with
12 disabilities, including institutions of higher education
13 and the State agencies responsible for administering
14 part C, child care, and vocational rehabilitation.

15 “(2) **OTHER PARTNERS.**—In order to be consid-
16 ered for a grant under this subpart, a State edu-
17 cational agency shall work in partnership with other
18 persons and organizations involved in, and concerned
19 with, the education of children with disabilities,
20 which may include—

21 “(A) the Governor;

22 “(B) parents of children with disabilities
23 ages birth through 26;

24 “(C) parents of nondisabled children ages
25 birth through 26;

26 “(D) individuals with disabilities;

1 “(E) parent training and information cen-
2 ters or community parent resource centers;

3 “(F) community based and other nonprofit
4 organizations involved in the education and em-
5 ployment of individuals with disabilities;

6 “(G) general and special education teach-
7 ers, paraprofessionals, related services per-
8 sonnel, and early intervention personnel;

9 “(H) the State advisory panel established
10 under part B;

11 “(I) the State interagency coordinating
12 council established under part C;

13 “(J) institutions of higher education within
14 the State;

15 “(K) individuals knowledgeable about voca-
16 tional education;

17 “(L) the State agency for higher edu-
18 cation;

19 “(M) the State vocational rehabilitation
20 agency;

21 “(N) public agencies with jurisdiction in
22 the areas of health, mental health, social serv-
23 ices, and juvenile justice;

1 ~~“(O) other providers of professional devel-~~
 2 ~~opment that work with infants, toddlers, pre-~~
 3 ~~schoolers, and children with disabilities; and~~

4 ~~“(P) other individuals.~~

5 **~~“SEC. 653. APPLICATIONS.~~**

6 ~~“(a) IN GENERAL.—~~

7 ~~“(1) SUBMISSION.—A State educational agency~~
 8 ~~that desires to receive a grant under this subpart~~
 9 ~~shall submit to the Secretary an application at such~~
 10 ~~time, in such manner, and including such informa-~~
 11 ~~tion as the Secretary may require.~~

12 ~~“(2) STATE PLAN.—The application shall in-~~
 13 ~~clude a plan that identifies and addresses the State~~
 14 ~~and local needs for the professional development of~~
 15 ~~administrators, principals, and teachers, as well as~~
 16 ~~individuals who provide direct supplementary aids~~
 17 ~~and services to children with disabilities, and that—~~

18 ~~“(A) is designed to enable the State to~~
 19 ~~meet the requirements of section 612(a)(14);~~

20 ~~“(B) is based on an assessment of State~~
 21 ~~and local needs that identifies critical aspects~~
 22 ~~and areas in need of improvement related to the~~
 23 ~~preparation, ongoing training, and professional~~
 24 ~~development of personnel that serve infants,~~

1 toddlers, preschoolers, and children with disabili-
 2 ties within the State, including—

3 “(i) current and anticipated personnel
 4 vacancies and shortages; and

5 “(ii) the number of preservice pro-
 6 grams; and

7 “(C) is integrated and aligned, to the max-
 8 imum extent possible, with State plans and ac-
 9 tivities under the Elementary and Secondary
 10 Education Act of 1965, the Rehabilitation Act
 11 of 1973, and the Higher Education Act of
 12 1965, as appropriate.

13 “(3) REQUIREMENT.—The State application
 14 shall contain an assurance that the State edu-
 15 cational agency shall carry out each of the strategies
 16 described in subsection (b)(4).

17 “(b) ELEMENTS OF STATE PERSONNEL PREPARA-
 18 TION AND PROFESSIONAL DEVELOPMENT PLAN.—Each
 19 professional development plan shall—

20 “(1) describe a partnership agreement that is in
 21 effect for the period of the grant, which agreement
 22 shall specify—

23 “(A) the nature and extent of the partner-
 24 ship described in section 652(b) and the respec-

1 tive roles of each member of the partnership;
2 and

3 “(B) how the State will work in partner-
4 ship with other persons and organizations in-
5 volved in, and concerned with, the education of
6 children with disabilities, including the respec-
7 tive roles of each of the persons and organiza-
8 tions;

9 “(2) describe how the strategies and activities
10 described in paragraph (4) will be coordinated with
11 other public resources (including part B and part C
12 funds retained for use at the State level for per-
13 sonnel and professional development purposes) and
14 private resources;

15 “(3) describe how the State will align its profes-
16 sional development plan under this subpart with the
17 plan and application submitted under sections 1111
18 and 2112, respectively, of the Elementary and Sec-
19 ondary Education Act of 1965;

20 “(4) describe what strategies the State will use
21 to address the professional development and per-
22 sonnel needs identified under subsection (a)(2) and
23 how those strategies will be implemented, includ-
24 ing—

1 “(A) a description of the preservice and in-
2 service programs and activities to be supported
3 under this subpart that will provide personnel
4 with the knowledge and skills to meet the needs
5 of, and improve the performance and achieve-
6 ment of, infants, toddlers, preschoolers, and
7 children with disabilities; and

8 “(B) how such strategies shall be inte-
9 grated, to the maximum extent possible, with
10 other activities supported by grants funded
11 under this part, including those under section
12 664;

13 “(5) provide an assurance that the State will
14 provide technical assistance to local educational
15 agencies to improve the quality of professional devel-
16 opment available to meet the needs of personnel who
17 serve children with disabilities;

18 “(6) provide an assurance that the State will
19 provide technical assistance to entities that provide
20 services to infants and toddlers with disabilities to
21 improve the quality of professional development
22 available to meet the needs of personnel serving such
23 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(e)(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 ease
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 Elemen-
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 disabili-
6 ties;
- 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 intendants;

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 “(e) 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 postsee-
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 disabili-
16 ties 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 “(e) 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 “(e) 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 652(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 disabili-
6 ties.

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-

tion 7113(d)(1)(A)(ii) of the Elementary and Secondary Education Act of 1965, and schools that serve high numbers or percentages of limited English proficient children.

“(L) Developing, evaluating, and disseminating innovative models for the recruitment, induction, retention, and assessment of new, qualified teachers, especially from groups that are underrepresented in the teaching profession, including individuals with disabilities.

“(e) LOW INCIDENCE DISABILITIES; AUTHORIZED ACTIVITIES.—

“(1) IN GENERAL.—In carrying out this section, the Secretary shall support activities, consistent with the objectives described in subsection (a), that benefit children with low incidence disabilities.

“(2) AUTHORIZED ACTIVITIES.—Activities that may be carried out under this subsection include activities such as the following:

“(A) Preparing persons who—

“(i) have prior training in educational and other related service fields; and

“(ii) are studying to obtain degrees, certificates, or licensure that will enable the persons to assist children with low inci-

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-

1 tion activities that are consistent with the objectives
2 described in subsection (a).

3 “(2) AUTHORIZED ACTIVITIES.—Activities that
4 may be carried out under this subsection include—

5 “(A) enhancing and restructuring an exist-
6 ing program or developing a preservice teacher
7 education program; to prepare special education
8 teachers, at colleges or departments of edu-
9 cation within the institution of higher edu-
10 cation; by incorporating an additional 5th year
11 clinical learning opportunity, field experience, or
12 supervised practicum into a program of prepa-
13 ration and coursework for special education
14 teachers; or

15 “(B) Creating or supporting professional
16 development schools that provide—

17 “(i) high quality mentoring and indu-
18 tion opportunities with ongoing support for
19 beginning special education teachers; or

20 “(ii) inservice professional develop-
21 ment to veteran special education teachers
22 through the ongoing exchange of informa-
23 tion 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 “(e) 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 (e).

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 ½
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 proe-
24 cesses 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 disabili-
2 ties 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 “(e) 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, DEMONSTRATION,
4 AND USE.—

5 “(1) IN GENERAL.—In carrying out this section,
6 the Secretary shall support activities to promote
7 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 promoting
12 the demonstration and use of innovative,
13 emerging, and universally designed technologies
14 for children with disabilities, by improving
15 the transfer of technology from research
16 and development to practice.

17 “(B) Supporting research, development,
18 and dissemination of technology with universal
19 design features, so that the technology is
20 accessible to the broadest range of individuals
21 with disabilities without further modification
22 or adaptation.

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 “(e) 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 (e) 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.”.

10 **SECTION 1. SHORT TITLE.**

11 *This Act may be cited as the “Individuals with Dis-*
12 *abilities Education Improvement Act of 2003”.*

13 **SEC. 2. ORGANIZATION OF THE ACT.**

14 *This Act is organized into the following titles:*

*TITLE I—AMENDMENTS TO THE INDIVIDUALS WITH DISABILITIES
EDUCATION ACT*

TITLE II—AMENDMENTS TO THE REHABILITATION ACT OF 1973

*TITLE III—NATIONAL CENTER FOR SPECIAL EDUCATION
RESEARCH*

*TITLE IV—COMMISSION ON UNIVERSAL DESIGN AND THE
ACCESSIBILITY OF CURRICULUM AND INSTRUCTIONAL MATERIALS*

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 Disabilities*
7 *Education Act (20 U.S.C. 1400 et seq.) are amended to read*
8 *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 ‘In-*
13 *dividuals with Disabilities Education Act’.*

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

“PART A—GENERAL PROVISIONS

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

“Sec. 602. Definitions.

“Sec. 603. Office of Special Education Programs.

“Sec. 604. Abrogation of State sovereign immunity.

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

“Sec. 606. Employment of individuals with disabilities.

“Sec. 607. Requirements for prescribing regulations.

“Sec. 608. State administration.

“Sec. 609. Report to Congress.

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

- “Sec. 611. Authorization; allotment; use of funds; authorization of appropriations.
- “Sec. 612. State eligibility.
- “Sec. 613. Local educational agency eligibility.
- “Sec. 614. Evaluations, eligibility determinations, individualized education programs, and educational placements.
- “Sec. 615. Procedural safeguards.
- “Sec. 616. Monitoring, technical assistance, and enforcement.
- “Sec. 617. Administration.
- “Sec. 618. Program information.
- “Sec. 619. Preschool grants.

“PART C—INFANTS AND TODDLERS WITH DISABILITIES

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

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

- “Sec. 650. Findings.

“SUBPART 1—STATE PERSONNEL PREPARATION AND PROFESSIONAL
DEVELOPMENT GRANTS

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

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

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

“Sec. 665. *Studies and evaluations.*

“SUBPART 3—SUPPORTS TO IMPROVE RESULTS FOR CHILDREN WITH
DISABILITIES

“Sec. 670. *Purposes.*

“Sec. 671. *Parent training and information centers.*

“Sec. 672. *Community parent resource centers.*

“Sec. 673. *Technical assistance for parent training and information centers.*

“Sec. 674. *Technology development, demonstration, and utilization; and
media services.*

“Sec. 675. *Accessibility of instructional materials.*

“Sec. 676. *Authorization of appropriations.*

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

“Sec. 681. *Purpose.*

“Sec. 682. *Definition of eligible entity.*

“Sec. 683. *Program authorized.*

“Sec. 684. *Program evaluations.*

“Sec. 685. *Authorization of appropriations.*

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-sufficiency*
9 *for individuals with disabilities.*

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

1 “(A) the children did not receive appro-
2 priate educational services;

3 “(B) the children were excluded entirely
4 from the public school system and from being
5 educated with their peers;

6 “(C) undiagnosed disabilities prevented the
7 children from having a successful educational ex-
8 perience; or

9 “(D) a lack of adequate resources within the
10 public school system forced families to find serv-
11 ices outside the public school system.

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

19 “(4) However, the implementation of this Act
20 has been impeded by low expectations, and an insuffi-
21 cient focus on applying replicable research on proven
22 methods of teaching and learning for children with
23 disabilities.

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

4 “(A) having high expectations for such chil-
5 dren and ensuring their access to the general
6 education curriculum in the regular classroom to
7 the maximum extent possible in order to—

8 “(i) meet developmental goals and, to
9 the maximum extent possible, the chal-
10 lenging expectations that have been estab-
11 lished for all children; and

12 “(ii) be prepared to lead productive
13 and independent adult lives, to the max-
14 imum extent possible;

15 “(B) strengthening the role and responsi-
16 bility of parents and ensuring that families of
17 such children have meaningful opportunities to
18 participate in the education of their children at
19 school and at home;

20 “(C) coordinating this Act with other local,
21 educational service agency, State, and Federal
22 school improvement efforts, including improve-
23 ment efforts under the Elementary and Sec-
24 ondary Education Act of 1965, in order to en-
25 sure that such children benefit from such efforts

1 *and that special education can become a service*
2 *for such children rather than a place where they*
3 *are sent;*

4 “(D) *providing appropriate special edu-*
5 *cation and related services, and aids and sup-*
6 *ports in the regular classroom, to such children,*
7 *whenever appropriate;*

8 “(E) *supporting high-quality, intensive*
9 *preservice preparation and professional develop-*
10 *ment for all personnel who work with children*
11 *with disabilities in order to ensure that such per-*
12 *sonnel have the skills and knowledge necessary to*
13 *improve the academic achievement and func-*
14 *tional performance of children with disabilities,*
15 *including the use of scientifically based instruc-*
16 *tional practices, to the maximum extent possible;*

17 “(F) *providing incentives for whole-school*
18 *approaches, scientifically based early reading*
19 *programs, positive behavioral interventions and*
20 *supports, and prereferral interventions to reduce*
21 *the need to label children as disabled in order to*
22 *address their learning and behavioral needs;*

23 “(G) *focusing resources on teaching and*
24 *learning while reducing paperwork and require-*

1 *ments that do not assist in improving edu-*
2 *cational results; and*

3 *“(H) supporting the development and use of*
4 *technology, including assistive technology devices*
5 *and assistive technology services, to maximize*
6 *accessibility for children with disabilities.*

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

15 *“(7) A more equitable allocation of resources is*
16 *essential for the Federal Government to meet its re-*
17 *sponsibility to provide an equal educational oppor-*
18 *tunity for all individuals.*

19 *“(8) Parents and schools should be given ex-*
20 *panded opportunities to resolve their disagreements in*
21 *positive and constructive ways.*

22 *“(9) Teachers, schools, local educational agencies,*
23 *and States should be relieved of irrelevant and unnec-*
24 *essary paperwork burdens that do not lead to im-*
25 *proved educational outcomes.*

1 “(10)(A) *The Federal Government must be re-*
2 *sponsive to the growing needs of an increasingly more*
3 *diverse society.*

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

8 “(C) *Minority children comprise an increasing*
9 *percentage of public school students.*

10 “(D) *With such changing demographics, recruit-*
11 *ment efforts for special education personnel should*
12 *focus on increasing the participation of minorities in*
13 *the teaching profession.*

14 “(11)(A) *The limited English proficient popu-*
15 *lation is the fastest growing in our Nation, and the*
16 *growth is occurring in many parts of our Nation.*

17 “(B) *Studies have documented apparent discrep-*
18 *ancies in the levels of referral and placement of lim-*
19 *ited English proficient children in special education.*

20 “(C) *This poses a special challenge for special*
21 *education in the referral of, assessment of, and serv-*
22 *ices for, our Nation’s students from non-English lan-*
23 *guage backgrounds.*

24 “(12)(A) *Greater efforts are needed to prevent the*
25 *intensification of problems connected with mislabeling*

1 *and high dropout rates among minority children with*
2 *disabilities.*

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

7 “(C) *African-American children are identified as*
8 *having mental retardation and emotional disturbance*
9 *at rates greater than their white counterparts.*

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

14 “(E) *Studies have found that schools with pre-*
15 *dominately Caucasian students and teachers have*
16 *placed disproportionately high numbers of their mi-*
17 *nority students into special education.*

18 “(13)(A) *As the number of minority students in*
19 *special education increases, the number of minority*
20 *teachers and related services personnel produced in*
21 *colleges and universities continues to decrease.*

22 “(B) *The opportunity for minority individuals,*
23 *organizations, and Historically Black Colleges and*
24 *Universities to participate fully in awards for grants*
25 *and contracts, boards of organizations receiving funds*

1 *under this Act, and peer review panels, and in the*
2 *training of professionals in the area of special edu-*
3 *cation is essential if we are to obtain greater success*
4 *in the education of minority children with disabili-*
5 *ties.*

6 *“(14) As the graduation rates for children with*
7 *disabilities continue to climb, providing effective*
8 *transition services to promote successful post-school*
9 *employment or education is an important measure of*
10 *accountability for children with disabilities.*

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

12 *“(1)(A) to ensure that all children with disabili-*
13 *ties have available to them a free appropriate public*
14 *education that emphasizes special education and re-*
15 *lated services designed to meet their unique needs and*
16 *prepare them for employment, further education, and*
17 *independent living;*

18 *“(B) to ensure that the rights of children with*
19 *disabilities and parents of such children are protected;*
20 *and*

21 *“(C) to assist States, localities, educational serv-*
22 *ice agencies, and Federal agencies to provide for the*
23 *education of all children with disabilities;*

24 *“(2) to assist States in the implementation of a*
25 *Statewide, coordinated, multidisciplinary, inter-*

1 *agency system of early intervention services for in-*
2 *fants and toddlers with disabilities and their families;*

3 *“(3) to ensure that educators and parents have*
4 *the necessary tools to improve educational results for*
5 *children with disabilities by supporting systemic-*
6 *change activities; coordinated research and personnel*
7 *preparation; coordinated technical assistance, dis-*
8 *semination, and support; and technology development*
9 *and media services; and*

10 *“(4) to assess, and ensure the effectiveness of, ef-*
11 *forts to educate children with disabilities.*

12 **“SEC. 602. DEFINITIONS.**

13 *“Except as otherwise provided, as used in this Act:*

14 *“(1) ASSISTIVE TECHNOLOGY DEVICE.—The term*
15 *‘assistive technology device’ means any item, piece of*
16 *equipment, or product system, whether acquired com-*
17 *mercially off the shelf, modified, or customized, that*
18 *is used to increase, maintain, or improve functional*
19 *capabilities of a child with a disability. The term*
20 *does not include a medical device that is surgically*
21 *implanted, or the post-surgical maintenance, pro-*
22 *gramming, or replacement of such device, or an exter-*
23 *nal device connected with the use of a surgically im-*
24 *planted medical device (other than the costs of per-*
25 *forming routine maintenance and monitoring of such*

1 *external device at the same time the child is receiving*
2 *other services under this Act).*

3 “(2) *ASSISTIVE TECHNOLOGY SERVICE.*—*The*
4 *term ‘assistive technology service’ means any service*
5 *that directly assists a child with a disability in the*
6 *selection, acquisition, or use of an assistive technology*
7 *device. Such term includes—*

8 “(A) *the evaluation of the needs of such*
9 *child, including a functional evaluation of the*
10 *child in the child’s customary environment;*

11 “(B) *purchasing, leasing, or otherwise pro-*
12 *viding for the acquisition of assistive technology*
13 *devices by such child;*

14 “(C) *selecting, designing, fitting, custom-*
15 *izing, adapting, applying, maintaining, repair-*
16 *ing, or replacing of assistive technology devices;*

17 “(D) *coordinating and using other thera-*
18 *pies, interventions, or services with assistive*
19 *technology devices, such as those associated with*
20 *existing education and rehabilitation plans and*
21 *programs;*

22 “(E) *training or technical assistance for*
23 *such child, or, where appropriate, the family of*
24 *such child; and*

1 “(F) training or technical assistance for
2 professionals (including individuals providing
3 education and rehabilitation services), employ-
4 ers, or other individuals who provide services to,
5 employ, or are otherwise substantially involved
6 in the major life functions of such child.

7 “(3) CHILD WITH A DISABILITY.—

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

10 “(i) with mental retardation, hearing
11 impairments (including deafness), speech or
12 language impairments, visual impairments
13 (including blindness), serious emotional dis-
14 turbance (hereinafter referred to as ‘emo-
15 tional disturbance’), orthopedic impair-
16 ments, autism, traumatic brain injury,
17 other health impairments, or specific learn-
18 ing disabilities; and

19 “(ii) who, by reason thereof, needs spe-
20 cial education and related services.

21 “(B) CHILD AGED 3 THROUGH 9.—The term
22 ‘child with a disability’ for a child aged 3
23 through 9 (or any subset of that age range, in-
24 cluding ages 3 through 5), may, at the discretion

1 *of the State and the local educational agency, in-*
2 *clude a child—*

3 “(i) *experiencing developmental delays,*
4 *as defined by the State and as measured by*
5 *appropriate diagnostic instruments and*
6 *procedures, in 1 or more of the following*
7 *areas: physical development, cognitive devel-*
8 *opment, communication development, social*
9 *or emotional development, or adaptive de-*
10 *velopment; and*

11 “(ii) *who, by reason thereof, needs spe-*
12 *cial education and related services.*

13 “(4) *CORE ACADEMIC SUBJECT.—The term ‘core*
14 *academic subject’ has the meaning given the term in*
15 *section 9101(11) of the Elementary and Secondary*
16 *Education Act of 1965.*

17 “(5) *EDUCATIONAL SERVICE AGENCY.—The term*
18 *‘educational service agency’—*

19 “(A) *means a regional public multiservice*
20 *agency—*

21 “(i) *authorized by State law to de-*
22 *velop, manage, and provide services or pro-*
23 *grams to local educational agencies; and*

24 “(ii) *recognized as an administrative*
25 *agency for purposes of the provision of spe-*

1 *cial education and related services provided*
2 *within public elementary schools and sec-*
3 *ondary schools of the State; and*

4 *“(B) includes any other public institution*
5 *or agency having administrative control and di-*
6 *rection over a public elementary school or sec-*
7 *ondary school.*

8 *“(6) ELEMENTARY SCHOOL.—The term ‘elemen-*
9 *tary school’ means a nonprofit institutional day or*
10 *residential school that provides elementary education,*
11 *as determined under State law.*

12 *“(7) EQUIPMENT.—The term ‘equipment’ in-*
13 *cludes—*

14 *“(A) machinery, utilities, and built-in*
15 *equipment, and any necessary enclosures or*
16 *structures to house such machinery, utilities, or*
17 *equipment; and*

18 *“(B) all other items necessary for the func-*
19 *tioning of a particular facility as a facility for*
20 *the provision of educational services, including*
21 *items such as instructional equipment and nec-*
22 *essary furniture; printed, published, and audio-*
23 *visual instructional materials; telecommuni-*
24 *cations, sensory, and other technological aids*

1 *and devices; and books, periodicals, documents,*
2 *and other related materials.*

3 “(8) *EXCESS COSTS.*—*The term ‘excess costs’*
4 *means those costs that are in excess of the average an-*
5 *nual per-student expenditure in a local educational*
6 *agency during the preceding school year for an ele-*
7 *mentary school or secondary school student, as may*
8 *be appropriate, and which shall be computed after de-*
9 *ducting—*

10 “(A) *amounts received—*

11 “(i) *under part B of this title;*

12 “(ii) *under part A of title I of the Ele-*
13 *mentary and Secondary Education Act of*
14 *1965; and*

15 “(iii) *under parts A and B of title III*
16 *of that Act; and*

17 “(B) *any State or local funds expended for*
18 *programs that would qualify for assistance under*
19 *any of those parts.*

20 “(9) *FREE APPROPRIATE PUBLIC EDUCATION.*—
21 *The term ‘free appropriate public education’ means*
22 *special education and related services that—*

23 “(A) *have been provided at public expense,*
24 *under public supervision and direction, and*
25 *without charge;*

1 “(B) meet the standards of the State edu-
2 cational agency;

3 “(C) include an appropriate preschool, ele-
4 mentary school, or secondary school education in
5 the State involved; and

6 “(D) are provided in conformity with the
7 individualized education program required
8 under section 614(d).

9 “(10) *HIGHLY QUALIFIED*.—The term ‘highly
10 qualified’ means the following:

11 “(A) *ALL SPECIAL EDUCATION TEACH-*
12 *ERS*.—When used with respect to any public ele-
13 mentary school or secondary school special edu-
14 cation teacher teaching in a State, means that
15 the teacher holds at least a bachelor’s degree and
16 that—

17 “(i) the teacher has obtained full State
18 certification as a special education teacher
19 through a State-approved special education
20 teacher preparation program (including
21 certification obtained through alternative
22 routes to certification) or other comparably
23 rigorous methods, or passed the State teach-
24 er special education licensing examination,
25 and holds a license to teach in the State as

1 *a special education teacher, except that*
2 *when used with respect to any teacher*
3 *teaching in a public charter school, the term*
4 *means that the teacher meets the require-*
5 *ments set forth in the State’s public charter*
6 *school law;*

7 “(ii) *the teacher has not had certifi-*
8 *cation or licensure requirements waived on*
9 *an emergency, temporary, or provisional*
10 *basis; and*

11 “(iii) *the teacher demonstrates knowl-*
12 *edge of special education and the teaching*
13 *skills necessary to teach children with dis-*
14 *abilities.*

15 “(B) *NEW ELEMENTARY SCHOOL SPECIAL*
16 *EDUCATION TEACHERS.—When used with respect*
17 *to a special education elementary school teacher*
18 *who is new to the profession, means that the*
19 *teacher demonstrated, by passing a rigorous*
20 *State test, subject knowledge and teaching skills*
21 *in reading, writing, mathematics, and other*
22 *areas of the basic elementary school curriculum*
23 *(which may consist of passing a State-required*
24 *certification or licensing test or tests in reading,*

1 *writing, mathematics, and other areas of the*
2 *basic elementary school curriculum).*

3 “(C) *NEW MIDDLE SCHOOL AND SECONDARY*
4 *SCHOOL SPECIAL EDUCATION TEACHERS.*—*When*
5 *used with respect to a special education middle*
6 *school or secondary school teacher who is new to*
7 *the profession, means that the teacher has dem-*
8 *onstrated a high level of competency in each of*
9 *the academic subjects in which the teacher teach-*
10 *es by—*

11 “(i) *passing a rigorous State academic*
12 *subject test in each of the academic subjects*
13 *in which the teacher teaches (which may*
14 *consist of a passing level of performance on*
15 *a State-required certification or licensing*
16 *test or tests in each of the academic subjects*
17 *in which the teacher teaches); or*

18 “(ii) *successful completion, in each of*
19 *the academic subjects in which the teacher*
20 *teaches, of an academic major, graduate de-*
21 *gree, coursework equivalent to an under-*
22 *graduate academic major, or advanced cer-*
23 *tification or credentialing.*

24 “(D) *VETERAN SPECIAL EDUCATION TEACH-*
25 *ERS.*—*When used with respect to an elementary*

1 *school, middle school, or secondary school special*
2 *education teacher who is not new to the profes-*
3 *sion, means that the teacher has—*

4 “(i) *met the applicable standard in*
5 *subparagraph (B) or (C), which includes an*
6 *option for a test; or*

7 “(ii) *has demonstrated competence in*
8 *all the academic subjects in which the teach-*
9 *er teaches based on a high objective uniform*
10 *State standard of evaluation for special*
11 *education teachers that—*

12 “(I) *is set by the State for both*
13 *grade-appropriate academic subject*
14 *matter knowledge and special edu-*
15 *cation teaching skills;*

16 “(II) *is aligned with challenging*
17 *State academic content and student*
18 *academic achievement standards and*
19 *developed in consultation with special*
20 *education teachers, core content spe-*
21 *cialists, teachers, principals, and*
22 *school administrators;*

23 “(III) *provides objective, coherent*
24 *information about the teachers’ attain-*
25 *ment of knowledge of core content*

1 *knowledge in the academic subjects in*
2 *which a teacher teaches;*

3 *“(IV) is applied uniformly to all*
4 *special education teachers who teach in*
5 *the same academic subject and the*
6 *same grade level throughout the State;*

7 *“(V) takes into consideration, but*
8 *is not based primarily on, the time the*
9 *teacher has been teaching in the aca-*
10 *demically subject;*

11 *“(VI) is made available to the*
12 *public on request; and*

13 *“(VII) may involve multiple objec-*
14 *tive measures of teacher competency.*

15 *“(E) TEACHERS PROVIDING CONSULTATIVE*
16 *SERVICES.—*

17 *“(i) IN GENERAL.—Notwithstanding*
18 *subparagraphs (B) through (D), when used*
19 *with respect to a special education teacher*
20 *who provides only consultative services to a*
21 *highly qualified regular education teacher*
22 *(as the term highly qualified is defined in*
23 *section 9101(23) of the Elementary and*
24 *Secondary Education Act of 1965), means*

1 that the teacher meets the requirements of
2 subparagraph (A).

3 “(ii) *CONSULTATIVE SERVICES.*—As
4 used in clause (i), the term ‘consultative
5 services’ means services that adjust the
6 learning environment, modify instructional
7 methods, adapt curricula, use positive be-
8 havior supports and interventions, and se-
9 lect and implement appropriate accom-
10 modations to meet the needs of individual
11 children.

12 “(F) *EXCEPTION.*—Notwithstanding sub-
13 paragraphs (B) through (D), when used with re-
14 spect to a special education teacher who teaches
15 more than 1 subject, primarily to middle school
16 and secondary school-aged children with signifi-
17 cant cognitive disabilities, means that the teach-
18 er has demonstrated subject knowledge and teach-
19 ing skills in reading, mathematics, and other
20 areas of the basic elementary school curriculum
21 by—

22 “(i) passing a rigorous State test
23 (which may consist of passing a State-re-
24 quired certification or licensing test or tests
25 in those areas); or

1 “(ii) demonstrating competency in all
2 the academic subjects in which the teacher
3 teaches, based on a high objective uniform
4 State standard as described in subpara-
5 graph (D)(ii).

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

8 “(12) INDIAN TRIBE.—The term ‘Indian tribe’
9 means any Federal or State Indian tribe, band,
10 rancheria, pueblo, colony, or community, including
11 any Alaska Native village or regional village corpora-
12 tion (as defined in or established under the Alaska
13 Native Claims Settlement Act).

14 “(13) INDIVIDUALIZED EDUCATION PROGRAM.—
15 The term ‘individualized education program’ or ‘IEP’
16 means a written statement for each child with a dis-
17 ability that is developed, reviewed, and revised in ac-
18 cordance with section 614(d).

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

22 “(15) INFANT OR TODDLER WITH A DIS-
23 ABILITY.—The term ‘infant or toddler with a dis-
24 ability’ has the meaning given such term in section
25 632.

1 “(16) *INSTITUTION OF HIGHER EDUCATION.*—

2 *The term ‘institution of higher education’—*

3 “(A) *has the meaning given such term in*
4 *section 101 (a) and (b) of the Higher Education*
5 *Act of 1965; and*

6 “(B) *also includes any community college*
7 *receiving funding from the Secretary of the Inte-*
8 *rior under the Tribally Controlled College or*
9 *University Assistance Act of 1978.*

10 “(17) *LIMITED ENGLISH PROFICIENT.*—*The term*
11 *‘limited English proficient’ has the meaning given the*
12 *term in section 9101(25) of the Elementary and Sec-*
13 *ondary Education Act of 1965.*

14 “(18) *LOCAL EDUCATIONAL AGENCY.*—

15 “(A) *The term ‘local educational agency’*
16 *means a public board of education or other pub-*
17 *lic authority legally constituted within a State*
18 *for either administrative control or direction of,*
19 *or to perform a service function for, public ele-*
20 *mentary schools or secondary schools in a city,*
21 *county, township, school district, or other polit-*
22 *ical subdivision of a State, or for such combina-*
23 *tion of school districts or counties as are recog-*
24 *nized in a State as an administrative agency for*

1 *its public elementary schools or secondary*
2 *schools.*

3 “(B) *The term includes—*

4 “(i) *an educational service agency, as*
5 *defined in paragraph (5); and*

6 “(ii) *any other public institution or*
7 *agency having administrative control and*
8 *direction of a public elementary school or*
9 *secondary school.*

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

24 “(19) *NATIVE LANGUAGE.—The term ‘native lan-*
25 *guage’, when used with respect to an individual of*

1 *limited English proficiency, means the language nor-*
2 *mally used by the individual, or in the case of a*
3 *child, the language normally used by the parents of*
4 *the child.*

5 “(20) *NONPROFIT.*—*The term ‘nonprofit’, as ap-*
6 *plied to a school, agency, organization, or institution,*
7 *means a school, agency, organization, or institution*
8 *owned and operated by 1 or more nonprofit corpora-*
9 *tions or associations no part of the net earnings of*
10 *which inures, or may lawfully inure, to the benefit of*
11 *any private shareholder or individual.*

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

16 “(22) *PARENT.*—*The term ‘parent’—*

17 “(A) *includes a legal guardian; and*

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

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

1 “(24) *PARENT TRAINING AND INFORMATION CEN-*
2 *TER.—The term ‘parent training and information*
3 *center’ means a center assisted under section 671 or*
4 *672.*

5 “(25) *RELATED SERVICES.—The term ‘related*
6 *services’ means transportation, and such develop-*
7 *mental, corrective, and other supportive services (in-*
8 *cluding speech-language pathology and audiology*
9 *services, interpreting services, psychological services,*
10 *physical and occupational therapy, recreation, in-*
11 *cluding therapeutic recreation, social work services,*
12 *school health services, counseling services, including*
13 *rehabilitation counseling, orientation and mobility*
14 *services, travel training instruction, and medical*
15 *services, except that such medical services shall be for*
16 *diagnostic and evaluation purposes only) as may be*
17 *required to assist a child with a disability to benefit*
18 *from special education, and includes the early identi-*
19 *fication and assessment of disabling conditions in*
20 *children. The term does not include a medical device*
21 *that is surgically implanted, or the post-surgical*
22 *maintenance, programming, or replacement of such*
23 *device, or an external device connected with the use*
24 *of a surgically implanted medical device (other than*
25 *the costs of performing routine maintenance and*

1 *monitoring of such external device at the same time*
2 *the child is receiving other services under this Act).*

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

8 “(27) *SECRETARY.*—*The term ‘Secretary’ means*
9 *the Secretary of Education.*

10 “(28) *SPECIAL EDUCATION.*—*The term ‘special*
11 *education’ means specially designed instruction, at no*
12 *cost to parents, to meet the unique needs of a child*
13 *with a disability, including—*

14 “(A) *instruction conducted in the classroom,*
15 *in the home, in hospitals and institutions, and*
16 *in other settings; and*

17 “(B) *instruction in physical education.*

18 “(29) *SPECIFIC LEARNING DISABILITY.*—

19 “(A) *IN GENERAL.*—*The term ‘specific*
20 *learning disability’ means a disorder in 1 or*
21 *more of the basic psychological processes involved*
22 *in understanding or in using language, spoken*
23 *or written, which disorder may manifest itself in*
24 *the imperfect ability to listen, think, speak, read,*
25 *write, spell, or do mathematical calculations.*

1 “(B) *DISORDERS INCLUDED.*—Such term
2 includes such conditions as perceptual disabili-
3 ties, brain injury, minimal brain dysfunction,
4 dyslexia, and developmental aphasia.

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

11 “(30) *STATE.*—The term ‘State’ means each of
12 the 50 States, the District of Columbia, the Common-
13 wealth of Puerto Rico, and each of the outlying areas.

14 “(31) *STATE EDUCATIONAL AGENCY.*—The term
15 ‘State educational agency’ means the State board of
16 education or other agency or officer primarily respon-
17 sible for the State supervision of public elementary
18 schools and secondary schools, or, if there is no such
19 officer or agency, an officer or agency designated by
20 the Governor or by State law.

21 “(32) *SUPPLEMENTARY AIDS AND SERVICES.*—
22 The term ‘supplementary aids and services’ means
23 aids, services, and other supports that are provided in
24 regular education classes or other education-related
25 settings to enable children with disabilities to be edu-

1 *cated with nondisabled children to the maximum ex-*
2 *tent appropriate in accordance with section*
3 *612(a)(5).*

4 “(33) *TRANSITION SERVICES.*—*The term ‘transi-*
5 *tion services’ means a coordinated set of activities for*
6 *a child with a disability (as defined in paragraph*
7 *(3)(A)) that—*

8 “(A) *is designed to be within a results-ori-*
9 *ented process, that is focused on improving the*
10 *academic and functional achievement of the child*
11 *with a disability to facilitate the child’s move-*
12 *ment from school to post-school activities, includ-*
13 *ing post-secondary education, vocational train-*
14 *ing, integrated employment (including supported*
15 *employment), continuing and adult education,*
16 *adult services, independent living, or community*
17 *participation;*

18 “(B) *is based on the individual child’s*
19 *needs, taking into account the child’s strengths,*
20 *preferences, and interests; and*

21 “(C) *includes instruction, related services,*
22 *community experiences, the development of em-*
23 *ployment and other post-school adult living ob-*
24 *jectives, and, when appropriate, acquisition of*

1 *daily living skills and functional vocational*
2 *evaluation.*

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

4 “(a) *ESTABLISHMENT.*—*There shall be, within the Of-*
5 *fice of Special Education and Rehabilitative Services in the*
6 *Department of Education, an Office of Special Education*
7 *Programs, which shall be the principal agency in such De-*
8 *partment for administering and carrying out this Act and*
9 *other programs and activities concerning the education of*
10 *children with disabilities.*

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

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

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

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

1 “(b) *REMEDIES.*—*In a suit against a State for a viola-*
 2 *tion of this Act, remedies (including remedies both at law*
 3 *and in equity) are available for such a violation to the same*
 4 *extent as those remedies are available for such a violation*
 5 *in the suit against any public entity other than a State.*

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

10 **“SEC. 605. ACQUISITION OF EQUIPMENT; CONSTRUCTION**
 11 **OR ALTERATION OF FACILITIES.**

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

18 “(b) *COMPLIANCE WITH CERTAIN REGULATIONS.*—
 19 *Any construction of new facilities or alteration of existing*
 20 *facilities under subsection (a) shall comply with the require-*
 21 *ments of—*

22 “(1) *appendix A of part 36 of title 28, Code of*
 23 *Federal Regulations (commonly known as the ‘Ameri-*
 24 *cans with Disabilities Accessibility Guidelines for*
 25 *Buildings and Facilities’); or*

1 *lated to parental consent to initial evaluation or ini-*
2 *tial placement in special education, least restrictive*
3 *environment, related services, timelines, attendance of*
4 *evaluation personnel at individualized education pro-*
5 *gram meetings, or qualifications of personnel), except*
6 *to the extent that such regulation reflects the clear*
7 *and unequivocal intent of the Congress in legislation.*

8 *“(c) PUBLIC COMMENT PERIOD.—The Secretary shall*
9 *provide a public comment period of not more than 90 days*
10 *on any regulation proposed under part B or part C of this*
11 *Act on which an opportunity for public comment is other-*
12 *wise required by law.*

13 *“(d) POLICY LETTERS AND STATEMENTS.—The Sec-*
14 *retary may not issue policy letters or other statements (in-*
15 *cluding letters or statements regarding issues of national*
16 *significance) that—*

17 *“(1) violate or contradict any provision of this*
18 *Act; or*

19 *“(2) establish a rule that is required for compli-*
20 *ance with, and eligibility under, this Act without fol-*
21 *lowing the requirements of section 553 of title 5,*
22 *United States Code.*

23 *“(e) EXPLANATION AND ASSURANCES.—Any written*
24 *response by the Secretary under subsection (d) regarding*
25 *a policy, question, or interpretation under part B of this*

1 *Act shall include an explanation in the written response*
2 *that—*

3 “(1) *such response is provided as informal guid-*
4 *ance and is not legally binding;*

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

8 “(3) *such response represents the interpretation*
9 *by the Department of Education of the applicable*
10 *statutory or regulatory requirements in the context of*
11 *the specific facts presented.*

12 “(f) *CORRESPONDENCE FROM DEPARTMENT OF EDU-*
13 *CATION DESCRIBING INTERPRETATIONS OF THIS ACT.—*

14 “(1) *IN GENERAL.—The Secretary shall, on a*
15 *quarterly basis, publish in the Federal Register, and*
16 *widely disseminate to interested entities through var-*
17 *ious additional forms of communication, a list of cor-*
18 *respondence from the Department of Education re-*
19 *ceived by individuals during the previous quarter*
20 *that describes the interpretations of the Department of*
21 *Education of this Act or the regulations implemented*
22 *pursuant to this Act.*

23 “(2) *ADDITIONAL INFORMATION.—For each item*
24 *of correspondence published in a list under paragraph*
25 *(1), the Secretary shall—*

1 “(A) identify the topic addressed by the cor-
2 respondence and shall include such other sum-
3 mary information as the Secretary determines to
4 be appropriate; and

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

9 **“SEC. 608. STATE ADMINISTRATION.**

10 “(a) *RULEMAKING.*—Each State that receives funds
11 under this Act shall—

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

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

19 “(b) *SUPPORT AND FACILITATION.*—State rules, regu-
20 lations, and policies under this Act shall support and facili-
21 tate local educational agency and school-level systemic re-
22 form designed to enable children with disabilities to meet
23 the challenging State student academic achievement stand-
24 ards.

1 **“SEC. 609. REPORT TO CONGRESS.**

2 *“The Comptroller General shall conduct a review of*
 3 *Federal, State, and local requirements relating to the edu-*
 4 *cation of children with disabilities to determine which re-*
 5 *quirements result in excessive paperwork completion bur-*
 6 *dens for teachers, related services providers, and school ad-*
 7 *ministrators, and shall report to Congress not later than*
 8 *18 months after the date of enactment of the Individuals*
 9 *with Disabilities Education Improvement Act of 2003 re-*
 10 *garding such review along with strategic proposals for re-*
 11 *ducing the paperwork burdens on teachers.*

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

14 **“SEC. 611. AUTHORIZATION; ALLOTMENT; USE OF FUNDS;**
 15 **AUTHORIZATION OF APPROPRIATIONS.**

16 *“(a) GRANTS TO STATES.—*

17 *“(1) PURPOSE OF GRANTS.—The Secretary shall*
 18 *make grants to States and the outlying areas, and*
 19 *provide funds to the Secretary of the Interior, to as-*
 20 *sist them to provide special education and related*
 21 *services to children with disabilities in accordance*
 22 *with this part.*

23 *“(2) MAXIMUM AMOUNT.—The maximum*
 24 *amount available for awarding grants under this sec-*
 25 *tion for any fiscal year is—*

1 “(A) *the total number of children with dis-*
 2 *abilities in the 2002–2003 school year in the*
 3 *States who received special education and related*
 4 *services and who were—*

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

7 “(ii) *aged 6 through 21; multiplied by*

8 “(B) *40 percent of the average per-pupil ex-*
 9 *penditure in public elementary schools and sec-*
 10 *ondary schools in the United States; adjusted by;*

11 “(C) *the rate of change in the sum of—*

12 “(i) *85 percent of the change in the na-*
 13 *tionwide total of the population described in*
 14 *subsection (d)(3)(A)(i)(II); and*

15 “(ii) *15 percent of the change in the*
 16 *nationwide total of the population described*
 17 *in subsection (d)(3)(A)(i)(III).*

18 “(b) *OUTLYING AREAS AND FREELY ASSOCIATED*
 19 *STATES.—*

20 “(1) *FUNDS RESERVED.—From the amount ap-*
 21 *propriated for any fiscal year under subsection (i),*
 22 *the Secretary shall reserve not more than 1 percent,*
 23 *which shall be used—*

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

4 “(B) to provide each freely associated State
5 a grant in the amount that such freely associated
6 State received for fiscal year 2003 under this
7 part, but only if the freely associated State meets
8 the applicable requirements of this part, as well
9 as the requirements of section 611(b)(2)(C) as
10 such section was in effect on the day before the
11 date of enactment of the Individuals with Dis-
12 abilities Education Improvement Act of 2003.

13 “(2) *SPECIAL RULE.*—The provisions of Public
14 Law 95–134, permitting the consolidation of grants
15 by the outlying areas, shall not apply to funds pro-
16 vided to the outlying areas or the freely associated
17 States under this section.

18 “(3) *DEFINITION.*—As used in this subsection,
19 the term ‘freely associated States’ means the Republic
20 of the Marshall Islands, the Federated States of Mi-
21 cronesia, and the Republic of Palau.

22 “(c) *SECRETARY OF THE INTERIOR.*—From the
23 amount appropriated for any fiscal year under subsection
24 (i), the Secretary shall reserve 1.226 percent to provide as-

1 *sistance to the Secretary of the Interior in accordance with*
2 *subsection (i).*

3 “(d) *ALLOCATIONS TO STATES.*—

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

11 “(2) *SPECIAL RULE FOR USE OF FISCAL YEAR*
12 *1999 AMOUNT.*—*If a State received any funds under*
13 *this section for fiscal year 1999 on the basis of chil-*
14 *dren aged 3 through 5, but does not make a free ap-*
15 *propriate public education available to all children*
16 *with disabilities aged 3 through 5 in the State in any*
17 *subsequent fiscal year, the Secretary shall compute the*
18 *State’s amount for fiscal year 1999, solely for the*
19 *purpose of calculating the State’s allocation in that*
20 *subsequent year under paragraph (3) or (4), by sub-*
21 *tracting the amount allocated to the State for fiscal*
22 *year 1999 on the basis of those children.*

23 “(3) *INCREASE IN FUNDS.*—*If the amount avail-*
24 *able for allocations to States under paragraph (1) for*
25 *a fiscal year is equal to or greater than the amount*

1 *allocated to the States under this paragraph for the*
2 *preceding fiscal year, those allocations shall be cal-*
3 *culated as follows:*

4 “(A) *ALLOCATION OF INCREASE.—*

5 “(i) *IN GENERAL.—Except as provided*
6 *in subparagraph (B), the Secretary shall al-*
7 *locate for the fiscal year—*

8 “(I) *to each State the amount the*
9 *State received under this section for*
10 *fiscal year 1999;*

11 “(II) *85 percent of any remaining*
12 *funds to States on the basis of the*
13 *States’ relative populations of children*
14 *aged 3 through 21 who are of the same*
15 *age as children with disabilities for*
16 *whom the State ensures the avail-*
17 *ability of a free appropriate public*
18 *education under this part; and*

19 “(III) *15 percent of those remain-*
20 *ing funds to States on the basis of the*
21 *States’ relative populations of children*
22 *described in subclause (II) who are liv-*
23 *ing in poverty.*

24 “(ii) *DATA.—For the purpose of mak-*
25 *ing grants under this paragraph, the Sec-*

1 retary shall use the most recent population
 2 data, including data on children living in
 3 poverty, that are available and satisfactory
 4 to the Secretary.

5 “(B) *LIMITATIONS.*—Notwithstanding sub-
 6 paragraph (A), allocations under this paragraph
 7 shall be subject to the following:

8 “(i) *PRECEDING YEAR ALLOCATION.*—
 9 No State’s allocation shall be less than its
 10 allocation under this section for the pre-
 11 ceding fiscal year.

12 “(ii) *MINIMUM.*—No State’s allocation
 13 shall be less than the greatest of—

14 “(I) the sum of—

15 “(aa) the amount the State
 16 received under this section for fis-
 17 cal year 1999; and

18 “(bb) $\frac{1}{3}$ of 1 percent of the
 19 amount by which the amount ap-
 20 propriated under subsection (i)
 21 for the fiscal year exceeds the
 22 amount appropriated for this sec-
 23 tion for fiscal year 1999;

24 “(II) the sum of—

1 “(aa) the amount the State
2 received under this section for the
3 preceding fiscal year; and

4 “(bb) that amount multiplied
5 by the percentage by which the in-
6 crease in the funds appropriated
7 for this section from the preceding
8 fiscal year exceeds 1.5 percent; or
9 “(III) the sum of—

10 “(aa) the amount the State
11 received under this section for the
12 preceding fiscal year; and

13 “(bb) that amount multiplied
14 by 90 percent of the percentage
15 increase in the amount appro-
16 priated for this section from the
17 preceding fiscal year.

18 “(iii) **MAXIMUM.**—Notwithstanding
19 clause (ii), no State’s allocation under this
20 paragraph shall exceed the sum of—

21 “(I) the amount the State received
22 under this section for the preceding fis-
23 cal year; and

24 “(II) that amount multiplied by
25 the sum of 1.5 percent and the percent-

1 *age increase in the amount appro-*
2 *priated under this section from the*
3 *preceding fiscal year.*

4 *“(C) RATABLE REDUCTION.—If the amount*
5 *available for allocations under this paragraph is*
6 *insufficient to pay those allocations in full, those*
7 *allocations shall be ratably reduced, subject to*
8 *subparagraph (B)(i).*

9 *“(4) DECREASE IN FUNDS.—If the amount avail-*
10 *able for allocations to States under paragraph (1) for*
11 *a fiscal year is less than the amount allocated to the*
12 *States under this section for the preceding fiscal year,*
13 *those allocations shall be calculated as follows:*

14 *“(A) AMOUNTS GREATER THAN FISCAL*
15 *YEAR 1999 ALLOCATIONS.—If the amount avail-*
16 *able for allocations is greater than the amount*
17 *allocated to the States for fiscal year 1999, each*
18 *State shall be allocated the sum of—*

19 *“(i) the amount the State received*
20 *under this section for fiscal year 1999; and*

21 *“(ii) an amount that bears the same*
22 *relation to any remaining funds as the in-*
23 *crease the State received under this section*
24 *for the preceding fiscal year over fiscal year*

1 1999 bears to the total of all such increases
2 for all States.

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

5 “(i) IN GENERAL.—If the amount
6 available for allocations under this para-
7 graph is equal to or less than the amount
8 allocated to the States for fiscal year 1999,
9 each State shall be allocated the amount the
10 State received for fiscal year 1999.

11 “(ii) RATABLE REDUCTION.—If the
12 amount available for allocations under this
13 paragraph is insufficient to make the allo-
14 cations described in clause (i), those alloca-
15 tions shall be ratably reduced.

16 “(e) STATE-LEVEL ACTIVITIES.—

17 “(1) STATE ADMINISTRATION.—

18 “(A) IN GENERAL.—For the purpose of ad-
19 ministering this part, including paragraph (3),
20 section 619, and the coordination of activities
21 under this part with, and providing technical
22 assistance to, other programs that provide serv-
23 ices to children with disabilities—

24 “(i) each State may reserve not more
25 than the maximum amount the State was

1 *eligible to reserve for State administration*
2 *for fiscal year 2003 or \$800,000 (adjusted*
3 *by the cumulative rate of inflation since fis-*
4 *cal year 2003 as measured by the percent-*
5 *age increase, if any, in the Consumer Price*
6 *Index For All Urban Consumers, published*
7 *by the Bureau of Labor Statistics of the De-*
8 *partment of Labor), whichever is greater;*
9 *and*

10 “(ii) *each outlying area may reserve*
11 *not more than 5 percent of the amount the*
12 *outlying area receives under subsection (b)*
13 *for any fiscal year or \$35,000, whichever is*
14 *greater.*

15 “(B) *PART C.—Funds reserved under sub-*
16 *paragraph (A) may be used for the administra-*
17 *tion of part C, if the State educational agency*
18 *is the lead agency for the State under that part.*

19 “(C) *CERTIFICATION.—Prior to expenditure*
20 *of funds under this paragraph, the State shall*
21 *certify to the Secretary that the arrangements to*
22 *establish responsibility for services pursuant to*
23 *section 612(a)(12)(A) are current as of the date*
24 *of submission of the certification.*

25 “(2) *OTHER STATE-LEVEL ACTIVITIES.—*

1 “(A) *STATE-LEVEL ACTIVITIES.*—

2 “(i) *IN GENERAL.*—*For the purpose of*
3 *carrying out State-level activities, each*
4 *State may reserve for each of the fiscal*
5 *years 2004 and 2005, not more than 10 per-*
6 *cent of the amount that remains after sub-*
7 *tracting the amount reserved under para-*
8 *graph (1) from the amount of the State’s al-*
9 *location under subsection (d) for fiscal years*
10 *2004 and 2005, respectively. For fiscal*
11 *years 2006, 2007, 2008, and 2009, the State*
12 *may reserve the maximum amount the*
13 *State was eligible to reserve under the pre-*
14 *ceding sentence for fiscal year 2005 (ad-*
15 *justed by the cumulative rate of inflation*
16 *since fiscal year 2005 as measured by the*
17 *percentage increase, if any, in the Con-*
18 *sumer Price Index for All Urban Con-*
19 *sumers, published by the Bureau of Labor*
20 *Statistics of the Department of Labor).*

21 “(ii) *SMALL STATE ADJUSTMENT.*—
22 *Notwithstanding clause (i), in the case of a*
23 *State for which the maximum amount re-*
24 *served for State administration under para-*
25 *graph (1) is not greater than \$800,000 (as*

1 *adjusted pursuant to paragraph (1)(A)(i)),*
2 *the State may reserve for the purpose of*
3 *carrying out State-level activities for each*
4 *of the fiscal years 2004 and 2005, not more*
5 *than 12 percent of the amount that remains*
6 *after subtracting the amount reserved under*
7 *paragraph (1) from the amount of the*
8 *State's allocation under subsection (d) for*
9 *fiscal years 2004 and 2005, respectively.*
10 *For each of the fiscal years 2006, 2007,*
11 *2008, and 2009, each such State may re-*
12 *serve for such purpose the maximum*
13 *amount the State was eligible to reserve*
14 *under the preceding sentence for fiscal year*
15 *2005 (adjusted by the cumulative rate of in-*
16 *flation since fiscal year 2005 as measured*
17 *by the percentage increase, if any, in the*
18 *Consumer Price Index For All Urban Con-*
19 *sumers, published by the Bureau of Labor*
20 *Statistics of the Department of Labor).*

21 “(B) *REQUIRED ACTIVITIES.*—*Funds re-*
22 *served under subparagraph (A) shall be used to*
23 *carry out the following activities:*

24 “(i) *For monitoring, enforcement and*
25 *complaint investigation.*

1 “(ii) *To establish and implement the*
2 *mediation, processes required by section*
3 *615(e)(1), including providing for the costs*
4 *of mediators and support personnel;*

5 “(iii) *To support the State protection*
6 *and advocacy system to advise and assist*
7 *parents in the areas of—*

8 “(I) *dispute resolution and due*
9 *process;*

10 “(II) *voluntary mediation; and*

11 “(III) *the opportunity to resolve*
12 *complaints.*

13 “(C) *AUTHORIZED ACTIVITIES.—Funds re-*
14 *served under subparagraph (A) may be used to*
15 *carry out the following activities:*

16 “(i) *For support and direct services,*
17 *including technical assistance, personnel*
18 *preparation, and professional development*
19 *and training.*

20 “(ii) *To support paperwork reduction*
21 *activities, including expanding the use of*
22 *technology in the IEP process.*

23 “(iii) *To assist local educational agen-*
24 *cies in providing positive behavioral inter-*

1 *ventions and supports and mental health*
2 *services for children with disabilities.*

3 *“(iv) To improve the use of technology*
4 *in the classroom by children with disabil-*
5 *ities to enhance learning.*

6 *“(v) To support the development and*
7 *use of technology, including universally de-*
8 *signed technologies and assistive technology*
9 *devices, to maximize accessibility to the gen-*
10 *eral curriculum for children with disabil-*
11 *ities.*

12 *“(vi) Development and implementation*
13 *of transition programs, including coordina-*
14 *tion of services with agencies involved in*
15 *supporting the transition of students with*
16 *disabilities to post-secondary activities.*

17 *“(vii) To assist local educational agen-*
18 *cies in meeting personnel shortages.*

19 *“(viii) To support capacity building*
20 *activities and improve the delivery of serv-*
21 *ices by local educational agencies to im-*
22 *prove results for children with disabilities.*

23 *“(ix) Alternative programming for*
24 *children who have been expelled from school,*
25 *and services for children in correctional fa-*

1 *cilities, children enrolled in State-operated*
2 *or State-supported schools, and children in*
3 *charter schools.*

4 *“(x) To support the development and*
5 *provision of appropriate accommodations*
6 *for children with disabilities, or the develop-*
7 *ment and provision of alternate assessments*
8 *that are valid and reliable for assessing the*
9 *performance of children with disabilities, in*
10 *accordance with sections 1111(b) and 6111*
11 *of the Elementary and Secondary Edu-*
12 *cation Act of 1965.*

13 *“(3) LOCAL EDUCATIONAL AGENCY RISK POOL.—*

14 *“(A) IN GENERAL.—For the purpose of as-*
15 *sisting local educational agencies (and charter*
16 *schools that are local educational agencies) in*
17 *addressing the needs of high-need children and*
18 *the unanticipated enrollment of other children el-*
19 *igible for services under this part, each State*
20 *shall reserve for each of the fiscal years 2004*
21 *through 2009, 2 percent of the amount that re-*
22 *mains after subtracting the amount reserved*
23 *under paragraph (1) from the amount of the*
24 *State’s allocation under subsection (d) for each of*

1 *the fiscal years 2004 through 2009, respectively,*
2 *to—*

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

4 “(ii) *make disbursements from the*
5 *high-cost fund to local educational agencies*
6 *in accordance with this paragraph.*

7 “(B) *REQUIRED DISBURSEMENTS FROM*
8 *THE FUND.—*

9 “(i) *IN GENERAL.—Each State edu-*
10 *cational agency shall make disbursements*
11 *from the fund established under subpara-*
12 *graph (A) to local educational agencies to*
13 *pay the percentage, described in subpara-*
14 *graph (D), of the costs of providing a free*
15 *appropriate public education to high-need*
16 *children.*

17 “(ii) *SPECIAL RULE.—If funds re-*
18 *served for a fiscal year under subparagraph*
19 *(A) are insufficient to pay the percentage*
20 *described in subparagraph (D) to assist all*
21 *the local educational agencies having appli-*
22 *cations approved under subparagraph (C),*
23 *then the State educational agency shall rat-*
24 *ably reduce the amount paid to each local*

1 *educational agency that receives a disburse-*
2 *ment for that fiscal year.*

3 “(C) *APPLICATION.*—*A local educational*
4 *agency that desires a disbursement under this*
5 *subsection shall submit an application to the*
6 *State educational agency at such time, in such*
7 *manner, and containing such information as the*
8 *State educational agency may require. Such ap-*
9 *plication shall include assurances that funds*
10 *provided under this paragraph shall not be used*
11 *to pay costs that otherwise would be reimburs-*
12 *able as medical assistance for a child with a dis-*
13 *ability under the State medicaid program under*
14 *title XIX of the Social Security Act.*

15 “(D) *DISBURSEMENTS.*—

16 “(i) *IN GENERAL.*—*A State edu-*
17 *cational agency shall make a disbursement*
18 *to a local educational agency that submits*
19 *an application under subparagraph (C) in*
20 *an amount that is equal to 75 percent of the*
21 *costs that are in excess of 4 times the aver-*
22 *age per-pupil expenditure in the United*
23 *States or in the State where the child re-*
24 *sides (whichever average per-pupil expendi-*
25 *ture is lower) associated with educating*

1 each high need child served by such local
2 educational agency in a fiscal year for
3 whom such agency desires a disbursement.

4 “(i) *APPROPRIATE COSTS.*—The costs
5 associated with educating a high need child
6 under clause (i) are only those costs associ-
7 ated with providing direct special education
8 and related services to such child that are
9 identified in such child’s appropriately de-
10 veloped IEP.

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

17 “(F) *PERMISSIBLE DISBURSEMENTS FROM*
18 *REMAINING FUNDS.*—A State educational agency
19 may make disbursements to local educational
20 agencies from any funds that are remaining in
21 the high cost fund after making the required dis-
22 bursements under subparagraph (D) for a fiscal
23 year for the following purposes:

24 “(i) To pay the costs associated with
25 serving children with disabilities who

1 *moved into the areas served by such local*
2 *agencies after the budget for the following*
3 *school year had been finalized to assist the*
4 *local educational agencies in providing a*
5 *free appropriate public education for such*
6 *children in such year.*

7 “(ii) *To compensate local educational*
8 *agencies for extraordinary costs, as deter-*
9 *mined by the State, of any children eligible*
10 *for services under this part due to—*

11 “(I) *unexpected enrollment or*
12 *placement of children eligible for serv-*
13 *ices under this part; or*

14 “(II) *a significant underestimate*
15 *of the average cost of providing services*
16 *to children eligible for services under*
17 *this part.*

18 “(G) *REMAINING FUNDS.—Funds reserved*
19 *under subparagraph (A) in any fiscal year but*
20 *not expended in that fiscal year pursuant to sub-*
21 *paragraph (D) or subparagraph (F) shall—*

22 “(i) *be allocated to local educational*
23 *agencies pursuant to subparagraphs (D) or*
24 “(F) *for the next fiscal year; or*

1 “(ii) be allocated to local educational
2 agencies in the same manner as funds are
3 allocated to local educational agencies under
4 subsection (f).

5 “(H) ASSURANCE OF A FREE APPROPRIATE
6 PUBLIC EDUCATION.—Nothing in this section
7 shall be construed—

8 “(i) to limit or condition the right of
9 a child with a disability who is assisted
10 under this part to receive a free appropriate
11 public education pursuant to section
12 612(a)(1) in a least restrictive environment
13 pursuant to section 612(a)(5); or

14 “(ii) to authorize a State educational
15 agency or local educational agency to indi-
16 cate a limit on what is expected to be spent
17 on the education of a child with a dis-
18 ability.

19 “(I) MEDICAID SERVICES NOT AFFECTED.—
20 Disbursements provided under this subsection
21 shall not be used to pay costs that otherwise
22 would be reimbursable as medical assistance for
23 a child with a disability under the State med-
24 icaid program under title XIX of the Social Se-
25 curity Act.

1 “(J) *DEFINITIONS.*—*In this paragraph:*

2 “(i) *AVERAGE PER-PUPIL EXPENDI-*
3 *TURE.*—*The term ‘average per-pupil ex-*
4 *penditure’ has the meaning given the term*
5 *in section 9101 of the Elementary and Sec-*
6 *ondary Education Act of 1965.*

7 “(ii) *HIGH-NEED CHILD.*—*The term*
8 *‘high-need’, when used with respect to a*
9 *child with a disability, means a child with*
10 *a disability for whom a free appropriate*
11 *public education in a fiscal year costs more*
12 *than 4 times the average per-pupil expendi-*
13 *ture for such fiscal year.*

14 “(K) *SPECIAL RULE FOR RISK POOL AND*
15 *HIGH-NEED ASSISTANCE PROGRAMS IN EFFECT*
16 *AS OF JANUARY 1, 2003.*—*Notwithstanding the*
17 *provisions of subparagraphs (A) through (J), a*
18 *State may use funds reserved pursuant to this*
19 *paragraph for administering and implementing*
20 *a placement-neutral cost-sharing and reimburse-*
21 *ment program of high-need, low-incidence, emer-*
22 *gency, catastrophic, or extraordinary aid to local*
23 *educational agencies that provides services to*
24 *students eligible under this part based on eligi-*

1 *bility criteria for such programs that were oper-*
2 *ative on January 1, 2003.*

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

7 “(A) *the prohibition on commingling of*
8 *funds in section 612(a)(17)(B); and*

9 “(B) *the prohibition on supplanting other*
10 *funds in section 612(a)(17)(C).*

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

15 “(A) *will be used to meet the requirements*
16 *of this Act; and*

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

20 “(6) *FLEXIBILITY IN USING FUNDS FOR PART*
21 *C.—Any State eligible to receive a grant under sec-*
22 *tion 619 may use funds made available under para-*
23 *graph (1)(A), subsection (f)(3), or section 619(f)(5) to*
24 *develop and implement a State policy jointly with the*
25 *lead agency under part C and the State educational*

1 *agency to provide early intervention services (which*
2 *shall include an educational component that promotes*
3 *school readiness and incorporates pre-literacy, lan-*
4 *guage, and numeracy skills) in accordance with part*
5 *C to children with disabilities who are eligible for*
6 *services under section 619 and who previously re-*
7 *ceived services under part C until such children enter,*
8 *or are eligible under State law to enter, kindergarten.*

9 “(f) *SUBGRANTS TO LOCAL EDUCATIONAL AGEN-*
10 *CIES.—*

11 “(1) *SUBGRANTS REQUIRED.—Each State that*
12 *receives a grant under this section for any fiscal year*
13 *shall distribute any funds the State does not reserve*
14 *under subsection (e) to local educational agencies (in-*
15 *cluding public charter schools that operate as local*
16 *educational agencies) in the State that have estab-*
17 *lished their eligibility under section 613 for use in ac-*
18 *cordance with this part.*

19 “(2) *PROCEDURE FOR ALLOCATIONS TO LOCAL*
20 *EDUCATIONAL AGENCIES.—*

21 “(A) *PROCEDURE.—For each fiscal year for*
22 *which funds are allocated to States under sub-*
23 *section (d), each State shall allocate funds under*
24 *paragraph (1) as follows:*

1 “(i) *BASE PAYMENTS.*—*The State shall*
2 *first award each local educational agency*
3 *described in paragraph (1) the amount the*
4 *local educational agency would have re-*
5 *ceived under this section for fiscal year*
6 *1999, if the State had distributed 75 per-*
7 *cent of its grant for that year under section*
8 *611(d) as section 611(d) was then in effect.*

9 “(ii) *ALLOCATION OF REMAINING*
10 *FUNDS.*—*After making allocations under*
11 *clause (i), the State shall—*

12 “(I) *allocate 85 percent of any re-*
13 *maining funds to those local edu-*
14 *cational agencies on the basis of the*
15 *relative numbers of children enrolled in*
16 *public and private elementary schools*
17 *and secondary schools within the local*
18 *educational agency’s jurisdiction; and*

19 “(II) *allocate 15 percent of those*
20 *remaining funds to those local edu-*
21 *cational agencies in accordance with*
22 *their relative numbers of children liv-*
23 *ing in poverty, as determined by the*
24 *State educational agency.*

1 “(3) *REALLOCATION OF FUNDS.*—If a State edu-
2 *cational agency determines that a local educational*
3 *agency is adequately providing a free appropriate*
4 *public education to all children with disabilities re-*
5 *siding in the area served by that local educational*
6 *agency with State and local funds, the State edu-*
7 *cational agency may reallocate any portion of the*
8 *funds under this part that are not needed by that*
9 *local educational agency to provide a free appropriate*
10 *public education to other local educational agencies in*
11 *the State that are not adequately providing special*
12 *education and related services to all children with*
13 *disabilities residing in the areas served by those other*
14 *local educational agencies.*

15 “(g) *DEFINITIONS.*—For the purpose of this section—

16 “(1) the term ‘average per-pupil expenditure in
17 *public elementary schools and secondary schools in*
18 *the United States’ means—*

19 “(A) *without regard to the source of*
20 *funds—*

21 “(i) *the aggregate current expenditures,*
22 *during the second fiscal year preceding the*
23 *fiscal year for which the determination is*
24 *made (or, if satisfactory data for that year*
25 *are not available, during the most recent*

1 preceding fiscal year for which satisfactory
 2 data are available) of all local educational
 3 agencies in the 50 States and the District of
 4 Columbia; plus

5 “(ii) any direct expenditures by the
 6 State for the operation of those local edu-
 7 cational agencies; divided by

8 “(B) the aggregate number of children in
 9 average daily attendance to whom those local
 10 educational agencies provided free public edu-
 11 cation during that preceding year; and

12 “(2) the term ‘State’ means each of the 50 States,
 13 the District of Columbia, and the Commonwealth of
 14 Puerto Rico.

15 “(h) *USE OF AMOUNTS BY SECRETARY OF THE INTE-*
 16 *RIOR.*—

17 “(1) *PROVISION OF AMOUNTS FOR ASSIST-*
 18 *ANCE.*—

19 “(A) *IN GENERAL.*—*The Secretary of Edu-*
 20 *cation shall provide amounts to the Secretary of*
 21 *the Interior to meet the need for assistance for*
 22 *the education of children with disabilities on res-*
 23 *ervations aged 5 through 21 who are enrolled in*
 24 *elementary schools and secondary schools for In-*
 25 *Indian children operated or funded by the Sec-*

1 *retary of the Interior. The amount of such pay-*
2 *ment for any fiscal year shall be equal to 80 per-*
3 *cent of the amount allotted under subsection (c)*
4 *for that fiscal year.*

5 “(B) *CALCULATION OF NUMBER OF CHIL-*
6 *DREN.—In the case of Indian students aged 3*
7 *through 5 who are enrolled in programs affili-*
8 *ated with the Bureau of Indian Affairs (hereafter*
9 *in this subsection referred to as ‘BIA’) schools,*
10 *and that are required by the States in which*
11 *such schools are located to attain or maintain*
12 *State accreditation, and which schools had such*
13 *accreditation prior to the date of enactment of*
14 *the Individuals with Disabilities Education Act*
15 *Amendments of 1991, the school shall be allowed*
16 *to count those children for the purpose of dis-*
17 *tribution of the funds provided under this para-*
18 *graph to the Secretary of the Interior. The Sec-*
19 *retary of the Interior shall be responsible for*
20 *meeting all of the requirements of this part for*
21 *these children, in accordance with paragraph*
22 *(2).*

23 “(C) *ADDITIONAL REQUIREMENT.—With re-*
24 *spect to all other children aged 3 through 21 on*
25 *reservations, the State educational agency shall*

1 *be responsible for ensuring that all of the re-*
2 *quirements of this part are implemented.*

3 “(2) *SUBMISSION OF INFORMATION.*—*The Sec-*
4 *retary of Education may provide the Secretary of the*
5 *Interior amounts under paragraph (1) for a fiscal*
6 *year only if the Secretary of the Interior submits to*
7 *the Secretary of Education information that—*

8 “(A) *demonstrates that the Department of*
9 *the Interior meets the appropriate requirements,*
10 *as determined by the Secretary of Education, of*
11 *sections 612 (including monitoring and evalua-*
12 *tion activities) and 613;*

13 “(B) *includes a description of how the Sec-*
14 *retary of the Interior will coordinate the provi-*
15 *sion of services under this part with local edu-*
16 *cational agencies, tribes and tribal organiza-*
17 *tions, and other private and Federal service pro-*
18 *viders;*

19 “(C) *includes an assurance that there are*
20 *public hearings, adequate notice of such hear-*
21 *ings, and an opportunity for comment afforded*
22 *to members of tribes, tribal governing bodies, and*
23 *affected local school boards before the adoption of*
24 *the policies, programs, and procedures described*
25 *in subparagraph (A);*

1 “(D) includes an assurance that the Sec-
2 retary of the Interior will provide such informa-
3 tion as the Secretary of Education may require
4 to comply with section 618;

5 “(E) includes an assurance that the Sec-
6 retary of the Interior and the Secretary of
7 Health and Human Services have entered into a
8 memorandum of agreement, to be provided to the
9 Secretary of Education, for the coordination of
10 services, resources, and personnel between their
11 respective Federal, State, and local offices and
12 with State and local educational agencies and
13 other entities to facilitate the provision of serv-
14 ices to Indian children with disabilities residing
15 on or near reservations (such agreement shall
16 provide for the apportionment of responsibilities
17 and costs including, but not limited to, child
18 find, evaluation, diagnosis, remediation or thera-
19 peutic measures, and (where appropriate) equip-
20 ment and medical or personal supplies as needed
21 for a child to remain in school or a program);
22 and

23 “(F) includes an assurance that the Depart-
24 ment of the Interior will cooperate with the De-
25 partment of Education in its exercise of moni-

1 *toring and oversight of this application, and any*
2 *agreements entered into between the Secretary of*
3 *the Interior and other entities under this part,*
4 *and will fulfill its duties under this part.*

5 “(3) *APPLICABILITY.*—Section 616(a) shall
6 *apply to the information described in this paragraph.*

7 “(4) *PAYMENTS FOR EDUCATION AND SERVICES*
8 *FOR INDIAN CHILDREN WITH DISABILITIES AGED 3*
9 *THROUGH 5.*—

10 “(A) *IN GENERAL.*—With funds appro-
11 *priated under subsection (i), the Secretary of*
12 *Education shall make payments to the Secretary*
13 *of the Interior to be distributed to tribes or tribal*
14 *organizations (as defined under section 4 of the*
15 *Indian Self-Determination and Education As-*
16 *sistance Act) or consortia of the above to provide*
17 *for the coordination of assistance for special edu-*
18 *cation and related services for children with dis-*
19 *abilities aged 3 through 5 on reservations served*
20 *by elementary schools and secondary schools for*
21 *Indian children operated or funded by the De-*
22 *partment of the Interior. The amount of such*
23 *payments under subparagraph (B) for any fiscal*
24 *year shall be equal to 20 percent of the amount*
25 *allotted under subsection (c).*

1 “(B) *DISTRIBUTION OF FUNDS.*—*The Sec-*
2 *retary of the Interior shall distribute the total*
3 *amount of the payment under subparagraph (A)*
4 *by allocating to each tribe or tribal organization*
5 *an amount based on the number of children with*
6 *disabilities ages 3 through 5 residing on reserva-*
7 *tions as reported annually, divided by the total*
8 *of those children served by all tribes or tribal or-*
9 *ganizations.*

10 “(C) *SUBMISSION OF INFORMATION.*—*To re-*
11 *ceive a payment under this paragraph, the tribe*
12 *or tribal organization shall submit such figures*
13 *to the Secretary of the Interior as required to de-*
14 *termine the amounts to be allocated under sub-*
15 *paragraph (B). This information shall be com-*
16 *plied and submitted to the Secretary of Edu-*
17 *cation.*

18 “(D) *USE OF FUNDS.*—*The funds received*
19 *by a tribe or tribal organization shall be used to*
20 *assist in child find, screening, and other proce-*
21 *dures for the early identification of children aged*
22 *3 through 5, parent training, and the provision*
23 *of direct services. These activities may be carried*
24 *out directly or through contracts or cooperative*
25 *agreements with the BIA, local educational agen-*

1 *cies, and other public or private nonprofit orga-*
2 *nizations. The tribe or tribal organization is en-*
3 *couraged to involve Indian parents in the devel-*
4 *opment and implementation of these activities.*
5 *The above entities shall, as appropriate, make re-*
6 *ferrals to local, State, or Federal entities for the*
7 *provision of services or further diagnosis.*

8 *“(E) BIENNIAL REPORT.—To be eligible to*
9 *receive a grant pursuant to subparagraph (A),*
10 *the tribe or tribal organization shall provide to*
11 *the Secretary of the Interior a biennial report of*
12 *activities undertaken under this paragraph, in-*
13 *cluding the number of contracts and cooperative*
14 *agreements entered into, the number of children*
15 *contacted and receiving services for each year,*
16 *and the estimated number of children needing*
17 *services during the 2 years following the year in*
18 *which the report is made. The Secretary of the*
19 *Interior shall include a summary of this infor-*
20 *mation on a biennial basis in the report to the*
21 *Secretary of Education required under this sub-*
22 *section. The Secretary of Education may require*
23 *any additional information from the Secretary*
24 *of the Interior.*

1 “(F) *PROHIBITIONS.*—None of the funds al-
2 located under this paragraph may be used by the
3 Secretary of the Interior for administrative pur-
4 poses, including child count and the provision of
5 technical assistance.

6 “(5) *PLAN FOR COORDINATION OF SERVICES.*—
7 The Secretary of the Interior shall develop and imple-
8 ment a plan for the coordination of services for all
9 Indian children with disabilities residing on reserva-
10 tions covered under this Act. Such plan shall provide
11 for the coordination of services benefiting these chil-
12 dren from whatever source, including tribes, the In-
13 dian Health Service, other BIA divisions, and other
14 Federal agencies. In developing the plan, the Sec-
15 retary of the Interior shall consult with all interested
16 and involved parties. The plan shall be based on the
17 needs of the children and the system best suited for
18 meeting those needs, and may involve the establish-
19 ment of cooperative agreements between the BIA,
20 other Federal agencies, and other entities. The plan
21 shall also be distributed upon request to States, State
22 and local educational agencies, and other agencies
23 providing services to infants, toddlers, and children
24 with disabilities, to tribes, and to other interested
25 parties.

1 “(6) *ESTABLISHMENT OF ADVISORY BOARD.*—*To*
2 *meet the requirements of section 612(a)(20), the Sec-*
3 *retary of the Interior shall establish, under the BIA,*
4 *an advisory board composed of individuals involved*
5 *in or concerned with the education and provision of*
6 *services to Indian infants, toddlers, children, and*
7 *youth with disabilities, including Indians with dis-*
8 *abilities, Indian parents or guardians of such chil-*
9 *dren, teachers, service providers, State and local edu-*
10 *cational officials, representatives of tribes or tribal or-*
11 *ganizations, representatives from State Interagency*
12 *Coordinating Councils under section 641 in States*
13 *having reservations, and other members representing*
14 *the various divisions and entities of the BIA. The*
15 *chairperson shall be selected by the Secretary of the*
16 *Interior. The advisory board shall—*

17 “(A) *assist in the coordination of services*
18 *within the BIA and with other local, State, and*
19 *Federal agencies in the provision of education*
20 *for infants, toddlers, and children with disabil-*
21 *ities;*

22 “(B) *advise and assist the Secretary of the*
23 *Interior in the performance of the Secretary’s re-*
24 *sponsibilities described in this subsection;*

1 “(C) develop and recommend policies con-
2 cerning effective inter- and intra-agency collabo-
3 ration, including modifications to regulations,
4 and the elimination of barriers to inter- and
5 intra-agency programs and activities;

6 “(D) provide assistance and disseminate in-
7 formation on best practices, effective program co-
8 ordination strategies, and recommendations for
9 improved educational programming for Indian
10 infants, toddlers, and children with disabilities;
11 and

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

14 “(7) ANNUAL REPORTS.—

15 “(A) IN GENERAL.—The advisory board es-
16 tablished under paragraph (6) shall prepare and
17 submit to the Secretary of the Interior and to
18 Congress an annual report containing a descrip-
19 tion of the activities of the advisory board for the
20 preceding year.

21 “(B) AVAILABILITY.—The Secretary of the
22 Interior shall make available to the Secretary of
23 Education the report described in subparagraph
24 (A).

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

5 “**SEC. 612. STATE ELIGIBILITY.**

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

11 “(1) *FREE APPROPRIATE PUBLIC EDUCATION.*—

12 “(A) *IN GENERAL.*—A free appropriate pub-
13 *lic education is available to all children with*
14 *disabilities residing in the State between the ages*
15 *of 3 and 21, inclusive, including children with*
16 *disabilities who have been suspended or expelled*
17 *from school.*

18 “(B) *LIMITATION.*—The obligation to make
19 *a free appropriate public education available to*
20 *all children with disabilities does not apply with*
21 *respect to children—*

22 “(i) *aged 3 through 5 and 18 through*
23 *21 in a State to the extent that its applica-*
24 *tion to those children would be inconsistent*
25 *with State law or practice, or the order of*

1 *any court, respecting the provision of public*
2 *education to children in those age ranges;*
3 *and*

4 *“(ii) aged 18 through 21 to the extent*
5 *that State law does not require that special*
6 *education and related services under this*
7 *part be provided to children with disabil-*
8 *ities who, in the educational placement*
9 *prior to their incarceration in an adult cor-*
10 *rectional facility—*

11 *“(I) were not actually identified*
12 *as being a child with a disability*
13 *under section 602(3); or*

14 *“(II) did not have an individual-*
15 *ized education program under this*
16 *part.*

17 *“(C) STATE FLEXIBILITY.—A State that*
18 *provides early intervention services in accord-*
19 *ance with part C to a child who is eligible for*
20 *services under section 619, is not required to*
21 *provide such child with a free appropriate public*
22 *education.*

23 *“(2) FULL EDUCATIONAL OPPORTUNITY GOAL.—*

24 *The State has established a goal of providing full edu-*

1 *cational opportunity to all children with disabilities*
2 *and a detailed timetable for accomplishing that goal.*

3 “(3) *CHILD FIND.*—

4 “(A) *IN GENERAL.*—*All children with dis-*
5 *abilities residing in the State, including children*
6 *with disabilities attending private schools, re-*
7 *gardless of the severity of their disabilities, and*
8 *who are in need of special education and related*
9 *services, are identified, located, and evaluated*
10 *and a practical method is developed and imple-*
11 *mented to determine which children with disabil-*
12 *ities are currently receiving needed special edu-*
13 *cation and related services.*

14 “(B) *CONSTRUCTION.*—*Nothing in this Act*
15 *requires that children be classified by their dis-*
16 *ability so long as each child who has a disability*
17 *listed in section 602 and who, by reason of that*
18 *disability, needs special education and related*
19 *services is regarded as a child with a disability*
20 *under this part.*

21 “(4) *INDIVIDUALIZED EDUCATION PROGRAM.*—

22 *An individualized education program, or an individ-*
23 *ualized family service plan that meets the require-*
24 *ments of section 636(d), is developed, reviewed, and*

1 *revised for each child with a disability in accordance*
2 *with section 614(d).*

3 “(5) *LEAST RESTRICTIVE ENVIRONMENT.*—

4 “(A) *IN GENERAL.*—*To the maximum ex-*
5 *tent appropriate, children with disabilities, in-*
6 *cluding children in public or private institutions*
7 *or other care facilities, are educated with chil-*
8 *dren who are not disabled, and special classes,*
9 *separate schooling, or other removal of children*
10 *with disabilities from the regular educational en-*
11 *vironment occurs only when the nature or sever-*
12 *ity of the disability of a child is such that edu-*
13 *cation in regular classes with the use of supple-*
14 *mentary aids and services cannot be achieved*
15 *satisfactorily.*

16 “(B) *ADDITIONAL REQUIREMENT.*—

17 “(i) *IN GENERAL.*—*A State funding*
18 *mechanism shall not result in placements*
19 *that violate the requirements of subpara-*
20 *graph (A), and a State shall not use a*
21 *funding mechanism by which the State dis-*
22 *tributes funds on the basis of the type of set-*
23 *ting in which a child is served that will re-*
24 *sult in the failure to provide a child with*
25 *a disability a free appropriate public edu-*

1 *cation according to the unique needs of the*
2 *child as described in the child's IEP.*

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

10 *“(6) PROCEDURAL SAFEGUARDS.—*

11 *“(A) IN GENERAL.—Children with disabil-*
12 *ities and their parents are afforded the proce-*
13 *dural safeguards required by section 615.*

14 *“(B) ADDITIONAL PROCEDURAL SAFE-*
15 *GUARDS.—Procedures to ensure that testing and*
16 *evaluation materials and procedures utilized for*
17 *the purposes of evaluation and placement of chil-*
18 *dren with disabilities will be selected and admin-*
19 *istered so as not to be racially or culturally dis-*
20 *criminatory. Such materials or procedures shall*
21 *be provided and administered in the child's na-*
22 *tive language or mode of communication, unless*
23 *it clearly is not feasible to do so, and no single*
24 *procedure shall be the sole criterion for deter-*

1 *mining an appropriate educational program for*
2 *a child.*

3 “(7) *EVALUATION.*—*Children with disabilities*
4 *are evaluated in accordance with subsections (a) and*
5 *(b) of section 614.*

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

9 “(9) *TRANSITION FROM PART C TO PRESCHOOL*
10 *PROGRAMS.*—*Children participating in early-inter-*
11 *vention programs assisted under part C, and who will*
12 *participate in preschool programs assisted under this*
13 *part, experience a smooth and effective transition to*
14 *those preschool programs in a manner consistent with*
15 *section 637(a)(8). By the third birthday of such a*
16 *child, an individualized education program or, if con-*
17 *sistent with sections 614(d)(2)(B) and 636(d), an in-*
18 *dividualized family service plan, has been developed*
19 *and is being implemented for the child. The local edu-*
20 *cational agency will participate in transition plan-*
21 *ning conferences arranged by the designated lead*
22 *agency under section 635(a)(10).*

23 “(10) *CHILDREN IN PRIVATE SCHOOLS.*—

24 “(A) *CHILDREN ENROLLED IN PRIVATE*
25 *SCHOOLS BY THEIR PARENTS.*—

1 “(i) *IN GENERAL.*—*To the extent con-*
2 *sistent with the number and location of*
3 *children with disabilities in the State who*
4 *are enrolled by their parents in private ele-*
5 *mentary schools and secondary schools in*
6 *the school district served by a local edu-*
7 *cational agency, provision is made for the*
8 *participation of those children in the pro-*
9 *gram assisted or carried out under this part*
10 *by providing for such children special edu-*
11 *cation and related services in accordance*
12 *with the following requirements, unless the*
13 *Secretary has arranged for services to those*
14 *children under subsection (f):*

15 “(I) *Amounts to be expended for*
16 *the provision of those services (includ-*
17 *ing direct services to parentally placed*
18 *children) by the local educational agen-*
19 *cy shall be equal to a proportionate*
20 *amount of Federal funds made avail-*
21 *able under this part.*

22 “(II) *Such services may be pro-*
23 *vided to children with disabilities on*
24 *the premises of private, including reli-*

1 *gious, schools, to the extent consistent*
2 *with law.*

3 *“(III) Each local educational*
4 *agency shall maintain in its records*
5 *and provide to the State educational*
6 *agency the number of children evalu-*
7 *ated under this paragraph, the number*
8 *of children determined to be children*
9 *with disabilities, and the number of*
10 *children served under this subsection.*

11 *“(ii) CHILD-FIND REQUIREMENT.—*

12 *“(I) IN GENERAL.—The require-*
13 *ments of paragraph (3) of this sub-*
14 *section (relating to child find) shall*
15 *apply with respect to children with*
16 *disabilities in the State who are en-*
17 *rolled in private, including religious,*
18 *elementary schools and secondary*
19 *schools. Such child find process shall be*
20 *conducted in a comparable time period*
21 *as for other students attending public*
22 *schools in the local educational agency.*

23 *“(II) EQUITABLE PARTICIPA-*
24 *TION.—The child find process shall be*
25 *designed to ensure the equitable par-*

1 *ticipation of parentally placed private*
2 *school children and an accurate count*
3 *of such children.*

4 “(III) *ACTIVITIES.*—*In carrying*
5 *out this clause, the local educational*
6 *agency, or where applicable, the State*
7 *educational agency, shall undertake ac-*
8 *tivities similar to those activities un-*
9 *dertaken for its public school children.*

10 “(IV) *COST.*—*The cost of carrying*
11 *out this clause, including individual*
12 *evaluations, may not be considered in*
13 *determining whether a local education*
14 *agency has met its obligations under*
15 *clause (i).*

16 “(iii) *CONSULTATION.*—*To ensure*
17 *timely and meaningful consultation, a local*
18 *educational agency, or where appropriate, a*
19 *State educational agency, shall consult,*
20 *with representatives of children with dis-*
21 *abilities who are parentally placed in pri-*
22 *vate schools, during the design and develop-*
23 *ment of special education and related serv-*
24 *ices for these children, including consulta-*
25 *tion regarding—*

1 “(I) the child find process and
2 how parentally placed private school
3 children suspected of having a dis-
4 ability can participate equitably, in-
5 cluding how parents, teachers, and pri-
6 vate school officials will be informed of
7 the process;

8 “(II) the determination of the pro-
9 portionate share of Federal funds
10 available to serve parentally placed
11 private school children with disabilities
12 under this paragraph, including the
13 determination of how the proportionate
14 share of those funds were calculated;

15 “(III) the consultation process
16 among the school district, private
17 school officials, and parents of paren-
18 tally placed private school children
19 with disabilities, including how such
20 process will operate throughout the
21 school year to ensure that parentally
22 placed children with disabilities identi-
23 fied through the child find process can
24 meaningfully participate in special
25 education and related services;

1 “(IV) *how, where, and by whom*
2 *special education and related services*
3 *will be provided for parentally placed*
4 *private school children, including a*
5 *discussion of alternate service delivery*
6 *mechanisms, how such services will be*
7 *apportioned if funds are insufficient to*
8 *serve all children, and how and when*
9 *these decisions will be made; and*

10 “(V) *how, if the local educational*
11 *agency disagrees with the views of the*
12 *private school officials on the provision*
13 *of services through a contract, the local*
14 *educational agency shall provide to the*
15 *private school officials a written expla-*
16 *nation of the reasons why the local*
17 *educational agency chose not to pro-*
18 *vide services through a contract.*

19 “(iv) *WRITTEN AFFIRMATION.—When*
20 *timely and meaningful consultation as re-*
21 *quired by this section has occurred, the local*
22 *educational agency shall obtain a written*
23 *affirmation signed by the representatives of*
24 *participating private schools, and if such*
25 *officials do not provide such affirmations*

1 *within a reasonable period of time, the local*
2 *educational agency shall forward the docu-*
3 *mentation of the consultation process to the*
4 *State educational agency.*

5 “(v) COMPLIANCE.—

6 “(I) IN GENERAL.—A private
7 *school official shall have the right to*
8 *complain to the State educational*
9 *agency that the local educational agen-*
10 *cy did not engage in consultation that*
11 *was meaningful and timely, or did not*
12 *give due consideration to the views of*
13 *the private school official.*

14 “(II) PROCEDURE.—If the private
15 *school official wishes to complain, the*
16 *official shall provide the basis of the*
17 *noncompliance with this section by the*
18 *local educational agency to the State*
19 *educational agency, and the local edu-*
20 *cational agency shall forward the ap-*
21 *propriate documentation to the State*
22 *educational agency. If the private*
23 *school official is dissatisfied with the*
24 *decision of the State educational agen-*
25 *cy, such official may complain to the*

1 *Secretary by providing the basis of the*
2 *noncompliance with this section by the*
3 *local educational agency to the Sec-*
4 *retary, and the State educational agen-*
5 *cy shall forward the appropriate docu-*
6 *mentation to the Secretary.*

7 *“(vi) PROVISION OF EQUITABLE SERV-*
8 *ICES.—*

9 *“(I) DIRECT SERVICES.—To the*
10 *extent practicable, the local educational*
11 *agency shall provide direct services to*
12 *children with disabilities parentally*
13 *placed in private schools.*

14 *“(II) DIRECTLY OR THROUGH*
15 *CONTRACTS.—A public agency may*
16 *provide special education and related*
17 *services directly or through contracts*
18 *with public and private agencies, orga-*
19 *nizations, and institutions.*

20 *“(III) SECULAR, NEUTRAL, NON-*
21 *IDEOLOGICAL.—Special education and*
22 *related services provided to children*
23 *with disabilities attending private*
24 *schools, including materials and equip-*

1 *ment, shall be secular, neutral, and*
2 *nonideological.*

3 “(vii) *PUBLIC CONTROL OF FUNDS.—*
4 *The control of funds used to provide special*
5 *education and related services under this*
6 *section, and title to materials, equipment,*
7 *and property purchased with those funds,*
8 *shall be in a public agency for the uses and*
9 *purposes provided in this Act, and a public*
10 *agency shall administer the funds and*
11 *property.*

12 “(B) *CHILDREN PLACED IN, OR REFERRED*
13 *TO, PRIVATE SCHOOLS BY PUBLIC AGENCIES.—*

14 “(i) *IN GENERAL.—Children with dis-*
15 *abilities in private schools and facilities are*
16 *provided special education and related serv-*
17 *ices, in accordance with an individualized*
18 *education program, at no cost to their par-*
19 *ents, if such children are placed in, or re-*
20 *ferred to, such schools or facilities by the*
21 *State or appropriate local educational agen-*
22 *cy as the means of carrying out the require-*
23 *ments of this part or any other applicable*
24 *law requiring the provision of special edu-*

1 *cation and related services to all children*
2 *with disabilities within such State.*

3 “(ii) *STANDARDS.—In all cases de-*
4 *scribed in clause (i), the State educational*
5 *agency shall determine whether such schools*
6 *and facilities meet standards that apply to*
7 *State and local educational agencies and*
8 *that children so served have all the rights*
9 *the children would have if served by such*
10 *agencies.*

11 “(C) *PAYMENT FOR EDUCATION OF CHIL-*
12 *DREN ENROLLED IN PRIVATE SCHOOLS WITHOUT*
13 *CONSENT OF OR REFERRAL BY THE PUBLIC*
14 *AGENCY.—*

15 “(i) *IN GENERAL.—Subject to subpara-*
16 *graph (A), this part does not require a local*
17 *educational agency to pay for the cost of*
18 *education, including special education and*
19 *related services, of a child with a disability*
20 *at a private school or facility if that agency*
21 *made a free appropriate public education*
22 *available to the child and the parents elect-*
23 *ed to place the child in such private school*
24 *or facility.*

1 “(ii) *REIMBURSEMENT FOR PRIVATE*
2 *SCHOOL PLACEMENT.*—*If the parents of a*
3 *child with a disability, who previously re-*
4 *ceived special education and related services*
5 *under the authority of a public agency, en-*
6 *roll the child in a private elementary school*
7 *or secondary school without the consent of*
8 *or referral by the public agency, a court or*
9 *a hearing officer may require the agency to*
10 *reimburse the parents for the cost of that en-*
11 *rollment if the court or hearing officer finds*
12 *that the agency had not made a free appro-*
13 *priate public education available to the*
14 *child in a timely manner prior to that en-*
15 *rollment.*

16 “(iii) *LIMITATION ON REIMBURSE-*
17 *MENT.*—*The cost of reimbursement described*
18 *in clause (ii) may be reduced or denied—*

19 “(I) *if—*

20 “(aa) *at the most recent IEP*
21 *meeting that the parents attended*
22 *prior to removal of the child from*
23 *the public school, the parents did*
24 *not inform the IEP Team that*
25 *they were rejecting the placement*

1 *proposed by the public agency to*
2 *provide a free appropriate public*
3 *education to their child, including*
4 *stating their concerns and their*
5 *intent to enroll their child in a*
6 *private school at public expense;*
7 *or*

8 *“(bb) 10 business days (in-*
9 *cluding any holidays that occur*
10 *on a business day) prior to the re-*
11 *moval of the child from the public*
12 *school, the parents did not give*
13 *written notice to the public agen-*
14 *cy of the information described in*
15 *division (aa);*

16 *“(II) if, prior to the parents’ re-*
17 *moval of the child from the public*
18 *school, the public agency informed the*
19 *parents, through the notice require-*
20 *ments described in section 615(b)(3), of*
21 *its intent to evaluate the child (includ-*
22 *ing a statement of the purpose of the*
23 *evaluation that was appropriate and*
24 *reasonable), but the parents did not*

1 *make the child available for such eval-*
2 *uation; or*

3 “(III) *upon a judicial finding of*
4 *unreasonableness with respect to ac-*
5 *tions taken by the parents.*

6 “(iv) *EXCEPTION.—Notwithstanding*
7 *the notice requirement in clause (iii)(I), the*
8 *cost of reimbursement—*

9 “(I) *shall not be reduced or denied*
10 *for failure to provide such notice if—*

11 “(aa) *the school prevented the*
12 *parent from providing such no-*
13 *tice; or*

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

18 “(II) *may, in the discretion of a*
19 *court or a hearing officer, not be re-*
20 *duced or denied for failure to provide*
21 *such notice if—*

22 “(aa) *the parent is illiterate*
23 *and cannot write in English; or*

24 “(bb) *compliance with clause*
25 *(iii)(I) would likely have resulted*

1 *in physical or serious emotional*
2 *harm to the child.*

3 “(11) *STATE EDUCATIONAL AGENCY RESPON-*
4 *SIBLE FOR GENERAL SUPERVISION.—*

5 “(A) *IN GENERAL.—The State educational*
6 *agency is responsible for ensuring that—*

7 “(i) *the requirements of this part are*
8 *met; and*

9 “(ii) *all educational programs for chil-*
10 *dren with disabilities in the State, includ-*
11 *ing all such programs administered by any*
12 *other State or local agency—*

13 “(I) *are under the general super-*
14 *vision of individuals in the State who*
15 *are responsible for educational pro-*
16 *grams for children with disabilities;*
17 *and*

18 “(II) *meet the educational stand-*
19 *ards of the State educational agency.*

20 “(B) *LIMITATION.—Subparagraph (A) shall*
21 *not limit the responsibility of agencies in the*
22 *State other than the State educational agency to*
23 *provide, or pay for some or all of the costs of, a*
24 *free appropriate public education for any child*
25 *with a disability in the State.*

1 “(C) *EXCEPTION.*—*Notwithstanding sub-*
2 *paragraphs (A) and (B), the Governor (or an-*
3 *other individual pursuant to State law), con-*
4 *sistent with State law, may assign to any public*
5 *agency in the State the responsibility of ensuring*
6 *that the requirements of this part are met with*
7 *respect to children with disabilities who are con-*
8 *victed as adults under State law and incarcerated*
9 *in adult prisons.*

10 “(12) *OBLIGATIONS RELATED TO AND METHODS*
11 *OF ENSURING SERVICES.*—

12 “(A) *ESTABLISHING RESPONSIBILITY FOR*
13 *SERVICES.*—*The Chief Executive Officer of a*
14 *State or designee of the officer shall ensure that*
15 *an interagency agreement or other mechanism*
16 *for interagency coordination is in effect between*
17 *each public agency described in subparagraph*
18 *(B) and the State educational agency, in order*
19 *to ensure that all services described in subpara-*
20 *graph (B)(i) that are needed to ensure a free ap-*
21 *propriate public education are provided, includ-*
22 *ing the provision of such services during the*
23 *pendency of any dispute under clause (iii). Such*
24 *agreement or mechanism shall include the fol-*
25 *lowing:*

1 “(i) *AGENCY FINANCIAL RESPONSIB-*
2 *LITY.—An identification of, or a method*
3 *for defining, the financial responsibility of*
4 *each agency for providing services described*
5 *in subparagraph (B)(i) to ensure a free ap-*
6 *propriate public education to children with*
7 *disabilities, provided that the financial re-*
8 *responsibility of each public agency described*
9 *in subparagraph (B), including the State*
10 *Medicaid agency and other public insurers*
11 *of children with disabilities, shall precede*
12 *the financial responsibility of the local edu-*
13 *cational agency (or the State agency re-*
14 *sponsible for developing the child’s IEP).*

15 “(ii) *CONDITIONS AND TERMS OF RE-*
16 *IMBURSEMENT.—The conditions, terms, and*
17 *procedures under which a local educational*
18 *agency shall be reimbursed by other agen-*
19 *cies.*

20 “(iii) *INTERAGENCY DISPUTES.—Pro-*
21 *cedures for resolving interagency disputes*
22 *(including procedures under which local*
23 *educational agencies may initiate pro-*
24 *ceedings) under the agreement or other*
25 *mechanism to secure reimbursement from*

1 *other agencies or otherwise implement the*
2 *provisions of the agreement or mechanism.*

3 “(iv) *COORDINATION OF SERVICES*
4 *PROCEDURES.—Policies and procedures for*
5 *agencies to determine and identify the*
6 *interagency coordination responsibilities of*
7 *each agency to promote the coordination*
8 *and timely and appropriate delivery of*
9 *services described in subparagraph (B)(i).*

10 “(B) *OBLIGATION OF PUBLIC AGENCY.—*

11 “(i) *IN GENERAL.—If any public agen-*
12 *cy other than an educational agency is oth-*
13 *erwise obligated under Federal or State law,*
14 *or assigned responsibility under State pol-*
15 *icy pursuant to subparagraph (A), to pro-*
16 *vide or pay for any services that are also*
17 *considered special education or related serv-*
18 *ices (such as, but not limited to, services de-*
19 *scribed in section 602(1) relating to assist-*
20 *ive technology devices, 602(2) relating to as-*
21 *istive technology services, 602(25) relating*
22 *to related services, 602(32) relating to sup-*
23 *plementary aids and services, and 602(33)*
24 *relating to transition services) that are nec-*
25 *essary for ensuring a free appropriate pub-*

1 *lic education to children with disabilities*
2 *within the State, such public agency shall*
3 *fulfill that obligation or responsibility, ei-*
4 *ther directly or through contract or other*
5 *arrangement pursuant to subparagraph (A)*
6 *or an agreement pursuant to subparagraph*
7 *(C).*

8 *“(ii) REIMBURSEMENT FOR SERVICES*
9 *BY PUBLIC AGENCY.—If a public agency*
10 *other than an educational agency fails to*
11 *provide or pay for the special education and*
12 *related services described in clause (i), the*
13 *local educational agency (or State agency*
14 *responsible for developing the child’s IEP)*
15 *shall provide or pay for such services to the*
16 *child. Such local educational agency or*
17 *State agency is authorized to claim reim-*
18 *bursement for the services from the public*
19 *agency that failed to provide or pay for*
20 *such services and such public agency shall*
21 *reimburse the local educational agency or*
22 *State agency pursuant to the terms of the*
23 *interagency agreement or other mechanism*
24 *described in subparagraph (A)(i) according*

1 to the procedures established in such agree-
2 ment pursuant to subparagraph (A)(ii).

3 “(C) *SPECIAL RULE.*—*The requirements of*
4 *subparagraph (A) may be met through—*

5 “(i) *State statute or regulation;*

6 “(ii) *signed agreements between respec-*
7 *tive agency officials that clearly identify the*
8 *responsibilities of each agency relating to*
9 *the provision of services; or*

10 “(iii) *other appropriate written meth-*
11 *ods as determined by the Chief Executive*
12 *Officer of the State or designee of the officer*
13 *and approved by the Secretary.*

14 “(13) *PROCEDURAL REQUIREMENTS RELATING*
15 *TO LOCAL EDUCATIONAL AGENCY ELIGIBILITY.*—*The*
16 *State educational agency will not make a final deter-*
17 *mination that a local educational agency is not eligi-*
18 *ble for assistance under this part without first afford-*
19 *ing that agency reasonable notice and an opportunity*
20 *for a hearing.*

21 “(14) *PERSONNEL STANDARDS.*—

22 “(A) *IN GENERAL.*—*The State educational*
23 *agency has established and maintains standards*
24 *to ensure that personnel necessary to carry out*
25 *this part are appropriately and adequately pre-*

1 *pared and trained, including that those per-*
2 *sonnel have the content knowledge and skills to*
3 *serve children with disabilities.*

4 “(B) *RELATED SERVICES PERSONNEL AND*
5 *PARAPROFESSIONALS.—The standards under*
6 *subparagraph (A) include standards for related*
7 *services personnel and paraprofessionals that—*

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

14 “(ii) *ensure that related services per-*
15 *sonnel who deliver services in their dis-*
16 *cipline or profession meet the requirements*
17 *of clause (i) and have not had certification*
18 *or licensure requirements waived on an*
19 *emergency, temporary, or provisional basis;*
20 *and*

21 “(iii) *allow paraprofessionals and as-*
22 *stants who are appropriately trained and*
23 *supervised, in accordance with State law,*
24 *regulation, or written policy, in meeting the*
25 *requirements of this part to be used to assist*

1 *in the provision of special education and re-*
 2 *lated services under this part to children*
 3 *with disabilities.*

4 “(C) *STANDARDS FOR SPECIAL EDUCATION*
 5 *TEACHERS.—*

6 “(i) *IN GENERAL.—The standards de-*
 7 *scribed in subparagraph (A) shall ensure*
 8 *that each person employed as a special edu-*
 9 *cation teacher in the State who teaches in*
 10 *an elementary, middle, or secondary school*
 11 *is highly qualified not later than the end of*
 12 *the 2006–2007 school year.*

13 “(ii) *COMPLIANCE.—Notwithstanding*
 14 *paragraphs (2) and (3) of section 1119(a) of*
 15 *the Elementary and Secondary Education*
 16 *Act of 1965, for purposes of determining*
 17 *compliance with such paragraphs—*

18 “(I) *the Secretary, the State edu-*
 19 *cational agency, and local educational*
 20 *agencies shall apply the definition of*
 21 *highly qualified in section 602(10) to*
 22 *special education teachers; and*

23 “(II) *the State shall ensure that*
 24 *all special education teachers teaching*
 25 *in core academic subjects within the*

1 *State are highly qualified (as defined*
2 *in section 602(10)) not later than the*
3 *end of the 2006–2007 school year.*

4 “(iii) *PARENTS’ RIGHT TO KNOW.—In*
5 *carrying out section 1111(h)(6) of the Ele-*
6 *mentary and Secondary Education Act of*
7 *1965 with respect to special education*
8 *teachers, a local educational agency shall—*

9 “(I) *include in a response to a re-*
10 *quest under such section any addi-*
11 *tional information needed to dem-*
12 *onstrate that the teacher meets the ap-*
13 *plicable requirements of section*
14 *602(10) relating to certification or li-*
15 *cence as a special education teacher;*
16 *and*

17 “(II) *apply the definition of high-*
18 *ly qualified in section 602(10) in car-*
19 *rying out section 1111(h)(6)(B)(ii).*

20 “(D) *POLICY.—In implementing this sec-*
21 *tion, a State shall adopt a policy that includes*
22 *a requirement that local educational agencies in*
23 *the State take measurable steps to recruit, hire,*
24 *train, and retain highly qualified personnel to*

1 *provide special education and related services*
2 *under this part to children with disabilities.*

3 “(E) *RULE OF CONSTRUCTION.*—*Notwith-*
4 *standing any other individual right of action*
5 *that a parent or student may maintain under*
6 *this part, nothing in this subsection shall be con-*
7 *strued to create a right of action on behalf of an*
8 *individual student for the failure of a particular*
9 *State educational agency or local educational*
10 *agency staff person to be highly qualified, or to*
11 *prevent a parent from filing a complaint about*
12 *staff qualifications with the State educational*
13 *agency as provided for under this part.*

14 “(15) *PERFORMANCE GOALS AND INDICATORS.*—
15 *The State—*

16 “(A) *has established goals for the perform-*
17 *ance of children with disabilities in the State*
18 *that—*

19 “(i) *promote the purposes of this Act,*
20 *as stated in section 601(d);*

21 “(ii) *are the same as the State’s defini-*
22 *tion of adequate yearly progress, including*
23 *the State’s objectives for progress by chil-*
24 *dren with disabilities, under section*

1 *1111(b)(2)(C) of the Elementary and Sec-*
2 *ondary Education Act of 1965;*

3 *“(iii) address graduation rates and*
4 *drop out rates, as well as such other factors*
5 *as the State may determine; and*

6 *“(iv) are consistent, to the extent ap-*
7 *propriate, with any other goals and stand-*
8 *ards for children established by the State;*

9 *“(B) has established performance indicators*
10 *the State will use to assess progress toward*
11 *achieving the goals described in subparagraph*
12 *(A), including measurable annual objectives for*
13 *progress by children with disabilities under sec-*
14 *tion 1111(b)(2)(C)(v)(II)(cc) of the Elementary*
15 *and Secondary Education Act of 1965; and*

16 *“(C) will annually report to the Secretary*
17 *and the public on the progress of the State, and*
18 *of children with disabilities in the State, toward*
19 *meeting the goals established under subpara-*
20 *graph (A).*

21 *“(16) PARTICIPATION IN ASSESSMENTS.—*

22 *“(A) IN GENERAL.— All children with dis-*
23 *abilities are included in all general State and*
24 *districtwide assessment programs and account-*
25 *ability systems, including assessments and ac-*

1 *countability systems described under section*
2 *1111 of the Elementary and Secondary Edu-*
3 *cation Act of 1965, with appropriate accom-*
4 *modations, alternate assessments where nec-*
5 *essary, and as indicated in their respective indi-*
6 *vidualized education programs.*

7 “(B) *ACCOMMODATION GUIDELINES.*—*The*
8 *State (or, in the case of a districtwide assess-*
9 *ment, the local educational agency) has devel-*
10 *oped guidelines for the provision of appropriate*
11 *accommodations.*

12 “(C) *ALTERNATE ASSESSMENTS.*—

13 “(i) *IN GENERAL.*—*The State (or, in*
14 *the case of a districtwide assessment, the*
15 *local educational agency) has developed and*
16 *implemented guidelines for the participa-*
17 *tion of children with disabilities in alter-*
18 *nate assessments for those children who can-*
19 *not participate in regular assessments*
20 *under subparagraph (B) as indicated in*
21 *their respective individualized education*
22 *programs.*

23 “(ii) *REQUIREMENTS FOR ALTERNATE*
24 *ASSESSMENTS.*—*The guidelines under*

1 *clause (i) shall provide for alternate assess-*
2 *ments that—*

3 *“(I) are aligned with the State’s*
4 *challenging academic content and aca-*
5 *ademic achievement standards; and*

6 *“(II) if the State has adopted al-*
7 *ternate academic achievement stand-*
8 *ards permitted under section*
9 *1111(b)(1) of the Elementary and Sec-*
10 *ondary Education Act of 1965, meas-*
11 *ure the achievement of children with*
12 *disabilities against those standards.*

13 *“(iii) CONDUCT OF ALTERNATIVE AS-*
14 *SESSMENTS.—The State conducts the alter-*
15 *nate assessments described in this subpara-*
16 *graph.*

17 *“(D) REPORTS.—The State educational*
18 *agency (or, in the case of a districtwide assess-*
19 *ment, the local educational agency) makes avail-*
20 *able to the public, and reports to the public with*
21 *the same frequency and in the same detail as it*
22 *reports on the assessment of nondisabled chil-*
23 *dren, the following:*

24 *“(i) The number of children with dis-*
25 *abilities participating in regular assess-*

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

4 “(ii) The number of children with dis-
5 abilities participating in alternate assess-
6 ments described in subparagraph (C)(ii)(I).

7 “(iii) The number of children with dis-
8 abilities participating in alternate assess-
9 ments described in subparagraph
10 (C)(ii)(II).

11 “(iv) The performance of children with
12 disabilities on regular assessments and on
13 alternate assessments (if the number of chil-
14 dren with disabilities participating in those
15 assessments is sufficient to yield statis-
16 tically reliable information and reporting
17 that information will not reveal personally
18 identifiable information about an indi-
19 vidual student), compared with the achieve-
20 ment of all children, including children
21 with disabilities, on those assessments.

22 “(E) UNIVERSAL DESIGN.—The State edu-
23 cational agency (or, in the case of a districtwide
24 assessment, the local educational agency) shall,
25 to the extent feasible, use universal design prin-

1 *principles in developing and administering any as-*
2 *sessments under this paragraph.*

3 *“(17) SUPPLEMENTATION OF STATE, LOCAL, AND*
4 *OTHER FEDERAL FUNDS.—*

5 *“(A) EXPENDITURES.—Funds paid to a*
6 *State under this part will be expended in accord-*
7 *ance with all the provisions of this part.*

8 *“(B) PROHIBITION AGAINST COMMING-*
9 *GLING.—Funds paid to a State under this part*
10 *will not be commingled with State funds.*

11 *“(C) PROHIBITION AGAINST SUPPLANTATION*
12 *AND CONDITIONS FOR WAIVER BY SECRETARY.—*
13 *Except as provided in section 613, funds paid to*
14 *a State under this part will be used to supple-*
15 *ment the level of Federal, State, and local funds*
16 *(including funds that are not under the direct*
17 *control of State or local educational agencies) ex-*
18 *pended for special education and related services*
19 *provided to children with disabilities under this*
20 *part and in no case to supplant such Federal,*
21 *State, and local funds, except that, where the*
22 *State provides clear and convincing evidence*
23 *that all children with disabilities have available*
24 *to them a free appropriate public education, the*
25 *Secretary may waive, in whole or in part, the*

1 *requirements of this subparagraph if the Sec-*
2 *retary concurs with the evidence provided by the*
3 *State.*

4 “(18) *MAINTENANCE OF STATE FINANCIAL SUP-*
5 *PORT.—*

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

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

20 “(C) *WAIVERS FOR EXCEPTIONAL OR UN-*
21 *CONTROLLABLE CIRCUMSTANCES.—The Secretary*
22 *may waive the requirement of subparagraph (A)*
23 *for a State, for 1 fiscal year at a time, if the*
24 *Secretary determines that—*

1 “(i) granting a waiver would be equi-
2 table due to exceptional or uncontrollable
3 circumstances such as a natural disaster or
4 a precipitous and unforeseen decline in the
5 financial resources of the State; or

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

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

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

1 *to the general public, including individuals with dis-*
2 *abilities and parents of children with disabilities.*

3 *“(20) STATE ADVISORY PANEL.—*

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

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

17 *“(i) parents of children with disabil-*
18 *ities ages birth through 26;*

19 *“(ii) individuals with disabilities;*

20 *“(iii) teachers;*

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

24 *“(v) State and local education officials;*

1 “(vi) administrators of programs for
2 children with disabilities;

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

7 “(viii) representatives of private
8 schools and public charter schools;

9 “(ix) at least 1 representative of a vo-
10 cational, community, or business organiza-
11 tion concerned with the provision of transi-
12 tion services to children with disabilities;
13 and

14 “(x) representatives from the State ju-
15 venile and adult corrections agencies.

16 “(C) *SPECIAL RULE.*—A majority of the
17 members of the panel shall be individuals with
18 disabilities ages birth through 26 or parents of
19 such individuals.

20 “(D) *DUTIES.*—The advisory panel shall—

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

1 “(ii) comment publicly on any rules or
2 regulations proposed by the State regarding
3 the education of children with disabilities;

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

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

12 “(v) advise the State educational agen-
13 cy in developing and implementing policies
14 relating to the coordination of services for
15 children with disabilities.

16 “(21) *SUSPENSION AND EXPULSION RATES.*—

17 “(A) *IN GENERAL.*—*The State educational*
18 *agency examines data to determine if significant*
19 *discrepancies are occurring in the rate of long-*
20 *term suspensions and expulsions of children with*
21 *disabilities—*

22 “(i) among local educational agencies
23 in the State; or

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

1 “(B) *REVIEW AND REVISION OF POLICIES.*—
2 *If such discrepancies are occurring, the State*
3 *educational agency reviews and, if appropriate,*
4 *revises (or requires the affected State or local*
5 *educational agency to revise) its policies, proce-*
6 *dures, and practices relating to the development*
7 *and implementation of IEPs, the use of behav-*
8 *ioral interventions, and procedural safeguards,*
9 *to ensure that such policies, procedures, and*
10 *practices comply with this Act.*

11 “(22) *ACCESS TO INSTRUCTIONAL MATERIALS.*—

12 “(A) *IN GENERAL.*—*The State adopts the*
13 *national Instructional Materials Accessibility*
14 *Standard described in section 675(a) for the pur-*
15 *poses of providing instructional materials to*
16 *blind persons or other persons with print disabili-*
17 *ties in a timely manner after the publication of*
18 *the standard in the Federal Register.*

19 “(B) *PREPARATION AND DELIVERY OF*
20 *FILES.*—*Not later than 2 years after the date of*
21 *enactment of the Individuals with Disabilities*
22 *Education Improvement Act of 2003, a State*
23 *educational agency, as part of any print instruc-*
24 *tional materials adoption process, procurement*
25 *contract, or other practice or instrument used for*

1 purchase of print instructional materials, enters
2 into a written contract with the publisher of the
3 print instructional materials to—

4 “(i) prepare, and on or before delivery
5 of the print instructional materials, provide
6 to the National Instructional Materials Ac-
7 cess Center, established pursuant to section
8 675(b), electronic files containing the con-
9 tents of the print instructional materials
10 using the Instructional Materials Accessi-
11 bility Standard; or

12 “(ii) purchase instructional materials
13 from a publisher that are produced in or
14 may be rendered in the specialized formats
15 described in section 675(a)(4)(C).

16 “(C) ASSISTIVE TECHNOLOGY.—In carrying
17 out subparagraph (B), the State educational
18 agency, to the maximum extent possible, shall
19 work collaboratively with the State agency re-
20 sponsible for assistive technology programs.

21 “(b) STATE EDUCATIONAL AGENCY AS PROVIDER OF
22 FREE APPROPRIATE PUBLIC EDUCATION OR DIRECT SERV-
23 ICES.—If the State educational agency provides free appro-
24 priate public education to children with disabilities, or pro-
25 vides direct services to such children, such agency—

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

4 “(2) may use amounts that are otherwise avail-
5 able to such agency under this part to serve those chil-
6 dren without regard to section 613(a)(2)(A)(i) (relat-
7 ing to excess costs).

8 “(c) *EXCEPTION FOR PRIOR STATE PLANS.*—

9 “(1) *IN GENERAL.*—If a State has on file with
10 the Secretary policies and procedures that dem-
11 onstrate that such State meets any requirement of
12 subsection (a), including any policies and procedures
13 filed under this part as in effect before the effective
14 date of the Individuals with Disabilities Education
15 Improvement Act of 2003, the Secretary shall consider
16 such State to have met such requirement for purposes
17 of receiving a grant under this part.

18 “(2) *MODIFICATIONS MADE BY STATE.*—Subject
19 to paragraph (3), an application submitted by a
20 State in accordance with this section shall remain in
21 effect until the State submits to the Secretary such
22 modifications as the State determines necessary. This
23 section shall apply to a modification to an applica-
24 tion to the same extent and in the same manner as
25 this section applies to the original plan.

1 “(3) *MODIFICATIONS REQUIRED BY THE SEC-*
2 *RETARY.—If, after the effective date of the Individuals*
3 *with Disabilities Education Improvement Act of*
4 *2003, the provisions of this Act are amended (or the*
5 *regulations developed to carry out this Act are*
6 *amended), there is a new interpretation of this Act by*
7 *a Federal court or a State’s highest court, or there is*
8 *an official finding of noncompliance with Federal law*
9 *or regulations, then the Secretary may require a*
10 *State to modify its application only to the extent nec-*
11 *essary to ensure the State’s compliance with this part.*

12 “(d) *APPROVAL BY THE SECRETARY.—*

13 “(1) *IN GENERAL.—If the Secretary determines*
14 *that a State is eligible to receive a grant under this*
15 *part, the Secretary shall notify the State of that deter-*
16 *mination.*

17 “(2) *NOTICE AND HEARING.—The Secretary shall*
18 *not make a final determination that a State is not*
19 *eligible to receive a grant under this part until after*
20 *providing the State—*

21 “(A) *with reasonable notice; and*

22 “(B) *with an opportunity for a hearing.*

23 “(e) *ASSISTANCE UNDER OTHER FEDERAL PRO-*
24 *GRAMS.—Nothing in this title permits a State to reduce*
25 *medical and other assistance available, or to alter eligi-*

1 *bility, under titles V and XIX of the Social Security Act*
2 *with respect to the provision of a free appropriate public*
3 *education for children with disabilities in the State.*

4 “(f) *BY-PASS FOR CHILDREN IN PRIVATE SCHOOLS.—*

5 “(1) *IN GENERAL.—If, on the date of enactment*
6 *of the Education of the Handicapped Act Amend-*
7 *ments of 1983, a State educational agency was pro-*
8 *hibited by law from providing for the equitable par-*
9 *ticipation in special programs of children with dis-*
10 *abilities enrolled in private elementary schools and*
11 *secondary schools as required by subsection*
12 *(a)(10)(A), or if the Secretary determines that a State*
13 *educational agency, local educational agency, or other*
14 *entity has substantially failed or is unwilling to pro-*
15 *vide for such equitable participation, then the Sec-*
16 *retary shall, notwithstanding such provision of law,*
17 *arrange for the provision of services to such children*
18 *through arrangements which shall be subject to the re-*
19 *quirements of such subsection.*

20 “(2) *PAYMENTS.—*

21 “(A) *DETERMINATION OF AMOUNTS.—If the*
22 *Secretary arranges for services pursuant to this*
23 *subsection, the Secretary, after consultation with*
24 *the appropriate public and private school offi-*
25 *cials, shall pay to the provider of such services*

1 *for a fiscal year an amount per child that does*
2 *not exceed the amount determined by dividing—*

3 “(i) *the total amount received by the*
4 *State under this part for such fiscal year;*
5 *by*

6 “(ii) *the number of children with dis-*
7 *abilities served in the prior year, as re-*
8 *ported to the Secretary by the State under*
9 *section 618.*

10 “(B) *WITHHOLDING OF CERTAIN*
11 *AMOUNTS.—Pending final resolution of any in-*
12 *vestigation or complaint that may result in a de-*
13 *termination under this subsection, the Secretary*
14 *may withhold from the allocation of the affected*
15 *State educational agency the amount the Sec-*
16 *retary estimates will be necessary to pay the cost*
17 *of services described in subparagraph (A).*

18 “(C) *PERIOD OF PAYMENTS.—The period*
19 *under which payments are made under subpara-*
20 *graph (A) shall continue until the Secretary de-*
21 *termines that there will no longer be any failure*
22 *or inability on the part of the State educational*
23 *agency to meet the requirements of subsection*
24 *(a)(10)(A).*

25 “(3) *NOTICE AND HEARING.—*

1 “(A) *IN GENERAL.*—*The Secretary shall not*
2 *take any final action under this subsection until*
3 *the State educational agency affected by such ac-*
4 *tion has had an opportunity, for at least 45 days*
5 *after receiving written notice thereof, to submit*
6 *written objections and to appear before the Sec-*
7 *retary or the Secretary’s designee to show cause*
8 *why such action should not be taken.*

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

23 “(C) *REVIEW OF FINDINGS OF FACT.*—*The*
24 *findings of fact by the Secretary, if supported by*
25 *substantial evidence, shall be conclusive, but the*

1 court, for good cause shown, may remand the
2 case to the Secretary to take further evidence,
3 and the Secretary may thereupon make new or
4 modified findings of fact and may modify the
5 Secretary's previous action, and shall file in the
6 court the record of the further proceedings. Such
7 new or modified findings of fact shall likewise be
8 conclusive if supported by substantial evidence.

9 “(D) JURISDICTION OF COURT OF APPEALS;
10 REVIEW BY UNITED STATES SUPREME COURT.—
11 Upon the filing of a petition under subpara-
12 graph (B), the United States court of appeals
13 shall have jurisdiction to affirm the action of the
14 Secretary or to set it aside, in whole or in part.
15 The judgment of the court shall be subject to re-
16 view by the Supreme Court of the United States
17 upon certiorari or certification as provided in
18 section 1254 of title 28, United States Code.

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

20 “(a) IN GENERAL.—A local educational agency is eli-
21 gible for assistance under this part for a fiscal year if such
22 agency submits a plan that provides assurances to the State
23 educational agency that the local educational agency meets
24 each of the following conditions:

1 “(1) *CONSISTENCY WITH STATE POLICIES.*—*The*
2 *local educational agency, in providing for the edu-*
3 *cation of children with disabilities within its jurisdic-*
4 *tion, has in effect policies, procedures, and programs*
5 *that are consistent with the State policies and proce-*
6 *dures established under section 612.*

7 “(2) *USE OF AMOUNTS.*—

8 “(A) *IN GENERAL.*—*Amounts provided to*
9 *the local educational agency under this part*
10 *shall be expended in accordance with the appli-*
11 *cable provisions of this part and—*

12 “(i) *shall be used only to pay the excess*
13 *costs of providing special education and re-*
14 *lated services to children with disabilities;*

15 “(ii) *shall be used to supplement State,*
16 *local, and other Federal funds and not to*
17 *supplant such funds; and*

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

1 “(B) *EXCEPTION.*—Notwithstanding the re-
2 striction in subparagraph (A)(iii), a local edu-
3 cational agency may reduce the level of expendi-
4 tures where such reduction is attributable to—

5 “(i) the voluntary departure, by retire-
6 ment or otherwise, or departure for just
7 cause, of special education personnel;

8 “(ii) a decrease in the enrollment of
9 children with disabilities;

10 “(iii) the termination of the obligation
11 of the agency, consistent with this part, to
12 provide a program of special education to a
13 particular child with a disability that is an
14 exceptionally costly program, as determined
15 by the State educational agency, because the
16 child—

17 “(I) has left the jurisdiction of the
18 agency;

19 “(II) has reached the age at which
20 the obligation of the agency to provide
21 a free appropriate public education to
22 the child has terminated; or

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

1 “(iv) the termination of costly expendi-
2 tures for long-term purchases, such as the
3 acquisition of equipment or the construction
4 of school facilities.

5 “(C) TREATMENT OF FEDERAL FUNDS IN
6 CERTAIN FISCAL YEARS.—

7 “(i) 8 PERCENT RULE.—Notwith-
8 standing clauses (ii) and (iii) of subpara-
9 graph (A), a local educational agency may
10 treat as local funds, for the purposes of such
11 clauses, not more than 8 percent of the
12 amount of funds the local educational agen-
13 cy receives under this part.

14 “(ii) 40 PERCENT RULE.—Notwith-
15 standing clauses (ii) and (iii) of subpara-
16 graph (A), for any fiscal year for which
17 States are allocated the maximum amount
18 of grants pursuant to section 611(a)(2), a
19 local educational agency may treat as local
20 funds, for the purposes of such clauses, not
21 more than 40 percent of the amount of
22 funds the local educational agency receives
23 under this part, subject to clause (iv).

24 “(iii) EARLY INTERVENING SERV-
25 ICES.—

1 “(I) 8 PERCENT RULE.—If a local
2 educational agency exercises authority
3 pursuant to clause (i), the 8 percent
4 funds shall be counted toward the per-
5 centage and amount of funds that may
6 be used to provide early intervening
7 educational services pursuant to sub-
8 section (f).

9 “(II) 40 PERCENT RULE.—If a
10 local educational agency exercises au-
11 thority pursuant to clause (ii), the
12 local educational agency shall use an
13 amount of the 40 percent funds from
14 clause (ii) that represents 15 percent of
15 the total amount of funds the local edu-
16 cational agency receives under this
17 part, to provide early intervening edu-
18 cational services pursuant to subsection
19 (f).

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

24 “(I) clauses (ii) and (iii) of sub-
25 paragraph (A); and

1 “(II) the provision of the local
2 share of costs for title XIX of the Social
3 Security Act.

4 “(v) REPORT.—For each fiscal year in
5 which a local educational agency exercises
6 its authority pursuant to this subparagraph
7 and treats Federal funds as local funds, the
8 local educational agency shall report to the
9 State educational agency the amount of
10 funds so treated and the activities that were
11 funded with such funds.

12 “(D) SCHOOLWIDE PROGRAMS UNDER TITLE
13 I OF THE ESEA.—Notwithstanding subparagraph
14 (A) or any other provision of this part, a local
15 educational agency may use funds received under
16 this part for any fiscal year to carry out a
17 schoolwide program under section 1114 of the
18 Elementary and Secondary Education Act of
19 1965, except that the amount so used in any
20 such program shall not exceed—

21 “(i) the number of children with dis-
22 abilities participating in the schoolwide
23 program; multiplied by

1 “(ii)(I) *the amount received by the*
2 *local educational agency under this part for*
3 *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 edu-*
7 *cational agency shall ensure that all personnel nec-*
8 *essary to carry out this part are appropriately and*
9 *adequately prepared, consistent with the requirements*
10 *of section 612(a)(14) of this Act and section 2122 of*
11 *the Elementary and Secondary Education Act of*
12 *1965.*

13 “(4) *PERMISSIVE USE OF FUNDS.—*

14 “(A) *USES.—Notwithstanding paragraph*
15 *(2)(A) or section 612(a)(17)(B) (relating to com-*
16 *mingled funds), funds provided to the local edu-*
17 *cational agency under this part may be used for*
18 *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 individ-*

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

4 *“(i) EARLY INTERVENING SERVICES.—*
5 *To develop and implement coordinated,*
6 *early intervening educational services in ac-*
7 *cordance with subsection (f).*

8 *“(B) ADMINISTRATIVE CASE MANAGE-*
9 *MENT.—A local educational agency may use*
10 *funds received under this part to purchase ap-*
11 *propriate technology for recordkeeping, data col-*
12 *lection, and related case management activities*
13 *of teachers and related services personnel pro-*
14 *viding services described in the individualized*
15 *education program of children with disabilities,*
16 *that is needed for the implementation of such*
17 *case management activities.*

18 *“(5) TREATMENT OF CHARTER SCHOOLS AND*
19 *THEIR STUDENTS.—In carrying out this part with re-*
20 *spect to charter schools that are public schools of the*
21 *local educational agency, the local educational agen-*
22 *cy—*

23 *“(A) serves children with disabilities at-*
24 *tending those charter schools in the same manner*
25 *as the local educational agency serves children*

1 *with disabilities in its other schools, including*
2 *providing supplementary and related services on*
3 *site at the charter school to the same extent to*
4 *which the local educational agency has a policy*
5 *or practice of providing such services on the site*
6 *to its other public schools; and*

7 “(B) *provides funds under this part to those*
8 *charter schools on the same basis, including pro-*
9 *portional distribution based on relative enroll-*
10 *ment of children with disabilities, and at the*
11 *same time, as the local educational agency dis-*
12 *tributes State, local, or a combination of State*
13 *and local, funds to those charter schools under*
14 *the State’s charter school law.*

15 “(6) *PURCHASE OF INSTRUCTIONAL MATE-*
16 *RIALS.—Not later than 2 years after the date of en-*
17 *actment of the Individuals with Disabilities Edu-*
18 *cation Improvement Act of 2003, a local educational*
19 *agency, when purchasing print instructional mate-*
20 *rials, acquires these instructional materials in the*
21 *same manner as a State educational agency described*
22 *in section 612(a)(22).*

23 “(7) *INFORMATION FOR STATE EDUCATIONAL*
24 *AGENCY.—The local educational agency shall provide*
25 *the State educational agency with information nec-*

1 *essary to enable the State educational agency to carry*
2 *out its duties under this part, including, with respect*
3 *to paragraphs (15) and (16) of section 612(a), infor-*
4 *mation relating to the performance of children with*
5 *disabilities participating in programs carried out*
6 *under this part.*

7 “(8) *PUBLIC INFORMATION.—The local edu-*
8 *cational agency shall make available to parents of*
9 *children with disabilities and to the general public all*
10 *documents relating to the eligibility of such agency*
11 *under this part.*

12 “(9) *RECORDS REGARDING MIGRATORY CHIL-*
13 *DREN WITH DISABILITIES.—The local educational*
14 *agency shall cooperate in the Secretary’s efforts under*
15 *section 1308 of the Elementary and Secondary Edu-*
16 *cation Act of 1965 (20 U.S.C. 6398) to ensure the*
17 *linkage of records pertaining to migratory children*
18 *with a disability for the purpose of electronically ex-*
19 *changing, among the States, health and educational*
20 *information regarding such children.*

21 “(b) *EXCEPTION FOR PRIOR LOCAL PLANS.—*

22 “(1) *IN GENERAL.—If a local educational agency*
23 *or State agency has on file with the State educational*
24 *agency policies and procedures that demonstrate that*
25 *such local educational agency, or such State agency,*

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

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

17 “(3) *MODIFICATIONS REQUIRED BY STATE EDU-*
18 *CATIONAL AGENCY.—If, after the effective date of the*
19 *Individuals with Disabilities Education Improvement*
20 *Act of 2003, the provisions of this Act are amended*
21 *(or the regulations developed to carry out this Act are*
22 *amended), there is a new interpretation of this Act by*
23 *Federal or State courts, or there is an official finding*
24 *of noncompliance with Federal or State law or regu-*
25 *lations, then the State educational agency may re-*

1 *quire a local educational agency to modify its appli-*
2 *cation only to the extent necessary to ensure the local*
3 *educational agency's compliance with this part or*
4 *State law.*

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

14 “(d) *LOCAL EDUCATIONAL AGENCY COMPLIANCE.—*

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

1 agency, as the case may be, is complying with that
2 requirement.

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

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

16 “(e) *JOINT ESTABLISHMENT OF ELIGIBILITY.*—

17 “(1) *JOINT ESTABLISHMENT.*—

18 “(A) *IN GENERAL.*—A State educational
19 agency may require a local educational agency
20 to establish its eligibility jointly with another
21 local educational agency if the State educational
22 agency determines that the local educational
23 agency will be ineligible under this section be-
24 cause the local educational agency will not be
25 able to establish and maintain programs of suffi-

1 *cient size and scope to effectively meet the needs*
2 *of children with disabilities.*

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

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

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

21 “(A) *adopt policies and procedures that are*
22 *consistent with the State’s policies and proce-*
23 *dures under section 612(a); and*

24 “(B) *be jointly responsible for implementing*
25 *programs that receive assistance under this part.*

1 “(4) *REQUIREMENTS FOR EDUCATIONAL SERVICE*
2 *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 received*
10 *by that educational service agency; and*

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

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

19 “(f) *EARLY INTERVENING SERVICES.*—

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

1 *than education funds), to develop and implement co-*
2 *ordinated, early intervening educational services,*
3 *which may include interagency financing structures,*
4 *for students in kindergarten through grade 12 (with*
5 *a particular emphasis on students in kindergarten*
6 *through grade 3) who do not meet the definition of a*
7 *child with a disability under section 602(3) but who*
8 *need additional academic and behavioral support to*
9 *succeed in a general education environment.*

10 “(2) *ACTIVITIES.—In implementing coordinated,*
11 *early intervening educational services under this sub-*
12 *section, a local educational agency may carry out ac-*
13 *tivities that include—*

14 “(A) *professional development (which may*
15 *be provided by entities other than local edu-*
16 *cational agencies) for teachers and other school*
17 *staff to enable such personnel to deliver scientif-*
18 *ically based academic and behavioral interven-*
19 *tions, including scientifically based literacy in-*
20 *struction, and, where appropriate, instruction on*
21 *the use of adaptive and instructional software;*

22 “(B) *providing educational and behavioral*
23 *evaluations, services, and supports, including*
24 *scientifically based literacy instruction; and*

1 “(C) *developing and implementing inter-*
2 *agency financing structures for the provision of*
3 *such services and supports.*

4 “(3) *CONSTRUCTION.—Nothing in this subsection*
5 *shall be construed to either limit or create a right to*
6 *a free appropriate public education under this part.*

7 “(4) *REPORTING.—Each local educational agen-*
8 *cy that develops and maintains coordinated, early in-*
9 *tervening educational services with funds made avail-*
10 *able for this subsection, shall annually report to the*
11 *State educational agency on—*

12 “(A) *the number of children served under*
13 *this subsection; and*

14 “(B) *the number of children served under*
15 *this subsection who are subsequently referred to*
16 *special education.*

17 “(5) *COORDINATION WITH CERTAIN PROJECTS*
18 *UNDER ELEMENTARY AND SECONDARY EDUCATION*
19 *ACT OF 1965.—Funds made available to carry out this*
20 *subsection may be used to carry out coordinated,*
21 *early intervening educational services aligned with*
22 *activities funded by, and carried out under, the Ele-*
23 *mentary and Secondary Education Act of 1965 if*
24 *such funds are used to supplement, and not supplant,*
25 *funds made available under the Elementary and Sec-*

1 *ondary Education Act of 1965 for the activities and*
2 *services assisted under this subsection.*

3 *“(6) REPORT TO CONGRESS.—Not later than 1*
4 *year after the date of enactment of the Individuals*
5 *with Disabilities Education Improvement Act of*
6 *2003, the Comptroller General shall conduct a study*
7 *on the types of services provided to children served*
8 *under this subsection, and shall submit a report to*
9 *Congress regarding the study.*

10 *“(g) DIRECT SERVICES BY THE STATE EDUCATIONAL*
11 *AGENCY.—*

12 *“(1) IN GENERAL.—A State educational agency*
13 *shall use the payments that would otherwise have been*
14 *available to a local educational agency or to a State*
15 *agency to provide special education and related serv-*
16 *ices directly to children with disabilities residing in*
17 *the area served by that local educational agency, or*
18 *for whom that State agency is responsible, if the State*
19 *educational agency determines that the local edu-*
20 *cational agency or State agency, as the case may be—*

21 *“(A) has not provided the information need-*
22 *ed to establish the eligibility of such agency*
23 *under this section;*

1 “(B) is unable to establish and maintain
2 programs of free appropriate public education
3 that meet the requirements of subsection (a);

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

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

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

20 “(h) *STATE AGENCY ELIGIBILITY.*—*Any State agency*
21 *that desires to receive a subgrant for any fiscal year under*
22 *section 611(f) shall demonstrate to the satisfaction of the*
23 *State educational agency that—*

24 “(1) *all children with disabilities who are par-*
25 *ticipating in programs and projects funded under this*

1 *part receive a free appropriate public education, and*
2 *that those children and their parents are provided all*
3 *the rights and procedural safeguards described in this*
4 *part; and*

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

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

1 “(j) *STATE AGENCY FLEXIBILITY.*—

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

15 “(2) *CONDITIONS.*—*A State educational agency*
16 *may use funds in accordance with paragraph (1) sub-*
17 *ject to the following conditions:*

18 “(A) *8 PERCENT RULE.*—*A State edu-*
19 *cational agency may treat not more than 8 per-*
20 *cent of the funds the State educational agency re-*
21 *ceives under this part as general funds to sup-*
22 *port any educational purpose described in the*
23 *Elementary and Secondary Education Act of*
24 *1965, needs-based student or teacher higher edu-*

1 *cation programs, or the non-Federal share of*
2 *costs of title XIX of the Social Security Act.*

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

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

1 “(2) *PROHIBITION.*—*Notwithstanding subsection*
 2 *(a), if the Secretary determines that a State edu-*
 3 *cational agency is unable to establish, maintain, or*
 4 *oversee programs of free appropriate public education*
 5 *that meet the requirements of this part, then the Sec-*
 6 *retary shall prohibit the State educational agency*
 7 *from treating funds allocated under this part as gen-*
 8 *eral funds pursuant to paragraph (1).*

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

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

18 “(a) *EVALUATIONS AND REEVALUATIONS.*—

19 “(1) *INITIAL EVALUATIONS.*—

20 “(A) *IN GENERAL.*—*A State educational*
 21 *agency, other State agency, or local educational*
 22 *agency shall conduct a full and individual ini-*
 23 *tial evaluation in accordance with this para-*
 24 *graph and subsection (b), before the initial pro-*

1 *vision of special education and related services to*
2 *a child with a disability under this part.*

3 “(B) *REQUEST FOR INITIAL EVALUATION.*—
4 *Consistent with subparagraph (D), either a par-*
5 *ent of a child, or a State educational agency,*
6 *other State agency, or local educational agency*
7 *may initiate a request for an initial evaluation*
8 *to determine if the child is a child with a dis-*
9 *ability.*

10 “(C) *PROCEDURES.*—*Such initial evalua-*
11 *tion shall consist of procedures—*

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

19 “(ii) *to determine the educational*
20 *needs of such child.*

21 “(D) *PARENTAL CONSENT.*—

22 “(i) *IN GENERAL.*—*The agency pro-*
23 *posing to conduct an initial evaluation to*
24 *determine if the child qualifies as a child*
25 *with a disability as defined in section*

1 602(3) (A) or (B) shall obtain an informed
2 consent from the parent of such child before
3 the evaluation is conducted. Parental con-
4 sent for evaluation shall not be construed as
5 consent for placement for receipt of special
6 education and related services.

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

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

1 *local educational agency requests such in-*
2 *formed consent.*

3 “(2) *REEVALUATIONS.*—

4 “(A) *IN GENERAL.*—*A local educational*
5 *agency shall ensure that a reevaluation of each*
6 *child with a disability is conducted in accord-*
7 *ance with subsections (b) and (c)—*

8 “(i) *if the local educational agency de-*
9 *termines that the educational or related*
10 *services needs, including improved academic*
11 *achievement and functional performance, of*
12 *the child warrant a reevaluation; or*

13 “(ii) *if the child’s parents or teacher*
14 *requests a reevaluation.*

15 “(B) *LIMITATION.*—*A reevaluation con-*
16 *ducted under subparagraph (A) shall occur—*

17 “(i) *not more than once a year, unless*
18 *the parent and the local educational agency*
19 *agree otherwise; and*

20 “(ii) *at least once every 3 years, unless*
21 *the parent and the local educational agency*
22 *agree that a reevaluation is unnecessary.*

23 “(b) *EVALUATION PROCEDURES.*—

24 “(1) *NOTICE.*—*The local educational agency*
25 *shall provide notice to the parents of a child with a*

1 *disability, in accordance with subsections (b)(3),*
2 *(b)(4), and (c) of section 615, that describes any eval-*
3 *uation procedures such agency proposes to conduct.*

4 “(2) *CONDUCT OF EVALUATION.—In conducting*
5 *the evaluation, the local educational agency 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 cur-*
17 *riculum, or for preschool children, to par-*
18 *ticipate in appropriate activities;*

19 “(B) *not use any single procedure, measure,*
20 *or assessment as the sole criterion for deter-*
21 *mining 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 that*
25 *may assess the relative contribution of cognitive*

1 *and behavioral factors, in addition to physical*
2 *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, to*
11 *the extent practicable, in the language and*
12 *form most likely to yield accurate informa-*
13 *tion on what the child knows and can do*
14 *academically, developmentally, and func-*
15 *tionally;*

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 sus-*
25 *pected disability; and*

1 “(C) assessment tools and strategies that
2 provide relevant information that directly assists
3 persons in determining the educational needs of
4 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 child
9 is a child with a disability as defined in section
10 602(3) shall be made by a team of qualified pro-
11 fessionals and the parent of the child in accord-
12 ance with paragraph (5); and

13 “(B) a copy of the evaluation report and the
14 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(b), when determining whether a child
3 has a specific learning disability as defined in
4 section 602(29), a local educational agency shall
5 not be required to take into consideration wheth-
6 er a child has a severe discrepancy between
7 achievement and intellectual ability in oral ex-
8 pression, listening comprehension, written ex-
9 pression, basic reading skill, reading comprehen-
10 sion, mathematical calculation, or mathematical
11 reasoning.

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 as a part
17 of the evaluation procedures described in para-
18 graphs (2) and (3).

19 “(c) *ADDITIONAL REQUIREMENTS FOR EVALUATION*
20 *AND REEVALUATIONS.*—

21 “(1) *REVIEW OF EXISTING EVALUATION DATA.*—
22 As part of an initial evaluation (if appropriate) and
23 as part of any reevaluation under this section, the
24 IEP Team described in subsection (d)(1)(B) and other
25 qualified professionals, as appropriate, 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 obser-
6 vations; 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 education
21 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 child
25 to meet the measurable annual goals set out

1 *in the individualized education program of*
2 *the child and to participate, as appropriate,*
3 *in the general curriculum.*

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

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

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

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

1 “(i) *that determination and the rea-*
2 *sons for the determination; and*

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

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

10 “(5) *EVALUATIONS BEFORE CHANGE IN ELIGI-*
11 *BILITY.—*

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

18 “(B) *EXCEPTION.—*

19 “(i) *IN GENERAL.—The evaluation de-*
20 *scribed in subparagraph (A) shall not be re-*
21 *quired before the termination of a child’s*
22 *eligibility under this part due to graduation*
23 *from secondary school with a regular di-*
24 *ploma, or to exceeding the age eligibility for*

1 *a free appropriate public education under*
 2 *State law.*

3 “(ii) *SUMMARY OF PERFORMANCE.—*
 4 *For a child whose eligibility under this part*
 5 *terminates under circumstances described in*
 6 *clause (i), a local educational agency shall*
 7 *provide the child with a summary of the*
 8 *child’s academic achievement and func-*
 9 *tional performance, which shall include rec-*
 10 *ommendations on how to assist the child in*
 11 *meeting the child’s postsecondary goals.*

12 “(d) *INDIVIDUALIZED EDUCATION PROGRAMS.—*

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

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

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

22 “(I) *a statement of the child’s*
 23 *present levels of academic achievement*
 24 *and functional performance, includ-*
 25 *ing—*

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 child’s
18 other educational needs that result
19 from the child’s disability;

20 “(III) a description of how the
21 child’s progress toward meeting the an-
22 nual goals described in subclause (II)
23 will be measured and when periodic re-
24 ports on the progress the child is mak-
25 ing toward meeting the annual goals

1 *(such as through the use of quarterly or*
2 *other periodic reports, concurrent with*
3 *the issuance of report cards) will be*
4 *provided;*

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 *nuual 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 par-*
23 *ticipate with other children with*
24 *disabilities and nondisabled chil-*

1 dren in the activities described in
2 this paragraph;

3 “(V) an explanation of the extent,
4 if any, to which the child will not par-
5 ticipate with nondisabled children in
6 the regular class and in the activities
7 described in subclause (IV)(cc);

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

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

20 “(AA) the child cannot par-
21 ticipate in the regular assessment;
22 and

23 “(BB) the particular alter-
24 nate assessment selected is appro-
25 priate for the child;

1 “(VII) the projected date for the
2 beginning of the services and modifica-
3 tions described in subclause (IV), and
4 the anticipated frequency, location,
5 and duration of those services and
6 modifications; and

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

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

18 “(bb) the transition services
19 (including courses of study) need-
20 ed by the child to reach those
21 goals, including services to be pro-
22 vided by other agencies when
23 needed; and

24 “(cc) beginning at least 1
25 year before the child reaches the

1 *age of majority under State law,*
 2 *a statement that the child has*
 3 *been informed of the child's rights*
 4 *under this title, if any, that will*
 5 *transfer to the child on reaching*
 6 *the age of majority under section*
 7 *615(m).*

8 “(ii) *RULE OF CONSTRUCTION.*—*Noth-*
 9 *ing in this section shall be construed to re-*
 10 *quire—*

11 “(I) *that additional information*
 12 *be included in a child's IEP beyond*
 13 *what is explicitly required in this sec-*
 14 *tion; and*

15 “(II) *the IEP Team to include in-*
 16 *formation under 1 component of a*
 17 *child's IEP that is already contained*
 18 *under another component of such IEP.*

19 “(B) *INDIVIDUALIZED EDUCATION PROGRAM*
 20 *TEAM.*—*The term ‘individualized education pro-*
 21 *gram team’ or ‘IEP Team’ means a group of in-*
 22 *dividuals composed of—*

23 “(i) *the parents of a child with a dis-*
 24 *ability;*

1 “(ii) at least 1 regular education
2 teacher of such child (if the child is, or may
3 be, participating in the regular education
4 environment);

5 “(iii) at least 1 special education
6 teacher, or where appropriate, at least 1
7 special education provider of such child;

8 “(iv) a representative of the local edu-
9 cational agency who—

10 “(I) is qualified to provide, or su-
11 pervise the provision of, specially de-
12 signed instruction to meet the unique
13 needs of children with disabilities;

14 “(II) is knowledgeable about the
15 general curriculum; and

16 “(III) is knowledgeable about the
17 availability of resources of the local
18 educational agency;

19 “(v) an individual who can interpret
20 the instructional implications of evaluation
21 results, who may be a member of the team
22 described in clauses (ii) through (vi);

23 “(vi) at the discretion of the parent or
24 the agency, other individuals who have
25 knowledge or special expertise regarding the

1 *child, including related services personnel as*
2 *appropriate; and*

3 *“(vii) whenever appropriate, the child*
4 *with a disability.*

5 *“(C) IEP TEAM ATTENDANCE.—*

6 *“(i) ATTENDANCE NOT NECESSARY.—A*
7 *member of the IEP Team shall not be re-*
8 *quired to attend an IEP meeting, in whole*
9 *or in part, if that member, the parent of a*
10 *child with a disability, and the local edu-*
11 *cational agency agree that the attendance of*
12 *such member is not necessary because no*
13 *modification to the member’s area of the*
14 *curriculum or related services is being*
15 *modified or discussed in the meeting.*

16 *“(ii) EXCUSAL.—A member of the IEP*
17 *Team may be excused from attending an*
18 *IEP meeting, in whole or in part, when the*
19 *meeting involves a modification to or dis-*
20 *cussion of the member’s area of the cur-*
21 *riculum or related services, if—*

22 *“(I) that member, the parent, and*
23 *the local educational agency consent to*
24 *the excusal; and*

1 “(II) the member submits input
2 into the development of the IEP prior
3 to the meeting.

4 “(iii) WRITTEN AGREEMENT AND CON-
5 SENT REQUIRED.—A parent’s agreement
6 under clause (i) and consent under clause
7 (ii) shall be in writing.

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

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

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

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

3 “(i) *consistent with State policy; and*

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

6 “(3) *DEVELOPMENT OF IEP.—*

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

10 “(i) *the strengths of the child;*

11 “(ii) *the concerns of the parents for en-*
12 *hancing the education of their child;*

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

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

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

20 “(i) *in the case of a child whose behav-*
21 *ior impedes the child’s learning or that of*
22 *others, provide for positive behavioral inter-*
23 *ventions and supports, and other strategies*
24 *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 the*
4 *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) consider the communication
25 *needs of the child, and in the case of a child*

1 *who is deaf or hard of hearing, consider the*
2 *child's language and communication needs,*
3 *opportunities for direct communications*
4 *with peers and professional personnel in the*
5 *child's language and communication mode,*
6 *academic level, and full range of needs, in-*
7 *cluding opportunities for direct instruction*
8 *in the child's language and communication*
9 *mode; and*

10 “(v) *consider whether the child requires*
11 *assistive technology devices and services.*

12 “(C) *REQUIREMENT WITH RESPECT TO*
13 *REGULAR EDUCATION TEACHER.—A regular edu-*
14 *cation teacher of the child, as a member of the*
15 *IEP Team shall, to the extent appropriate, par-*
16 *ticipate in the development of the IEP of the*
17 *child, including the determination of appro-*
18 *priate positive behavioral interventions and sup-*
19 *ports, and other strategies, and the determina-*
20 *tion of supplementary aids and services, pro-*
21 *gram modifications, and support for school per-*
22 *sonnel consistent with paragraph (1)(A)(i)(IV).*

23 “(D) *AGREEMENT.—In making changes to*
24 *a child's IEP after the annual IEP meeting for*
25 *a school year, the parent of a child with a dis-*

1 *ability and the local educational agency may*
2 *agree not to convene an IEP meeting for the pur-*
3 *poses of making such changes, and instead may*
4 *develop a written document to amend or modify*
5 *the child's current IEP.*

6 “(E) CONSOLIDATION OF IEP TEAM MEET-
7 INGS.—*To the extent possible, the local edu-*
8 *cational agency shall encourage the consolidation*
9 *of reevaluations of a child with IEP Team meet-*
10 *ings for the child.*

11 “(4) REVIEW AND REVISION OF IEP.—

12 “(A) IN GENERAL.—*The local educational*
13 *agency shall ensure that, subject to subparagraph*
14 *(B), the IEP Team—*

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

19 “(ii) *revise the IEP as appropriate to*
20 *address—*

21 “(I) *any lack of expected progress*
22 *toward the annual goals and in the*
23 *general curriculum, where appropriate;*

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

1 “(III) information about the child
2 provided to, or by, the parents, as de-
3 scribed 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 edu-
9 cation teacher of the child, as a member of the
10 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 result*
4 *from the child's disability; and*

5 “(i) *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 child's*
15 *current levels of progress and deter-*
16 *mine whether the annual goals for the*
17 *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 goals*
21 *set out in the IEP.*

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

1 (A), the local educational agency shall en-
2 sure that the IEP Team provides a review,
3 within 30 calendar days, of the IEP under
4 paragraph (4).

5 “(iii) PREFERENCE.—At the request of
6 the child, or when appropriate, the parent,
7 the IEP Team shall conduct a review of the
8 child’s 3-year IEP under paragraph (4)
9 rather than an annual review under sub-
10 paragraph (B)(i).

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

19 “(7) CHILDREN WITH DISABILITIES IN ADULT
20 PRISONS.—

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

1 “(i) *The requirements contained in sec-*
2 *tion 612(a)(16) and paragraph (1)(A)(i)(V)*
3 *(relating to participation of children with*
4 *disabilities in general assessments).*

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

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

21 “(e) *EDUCATIONAL PLACEMENTS.—Each local edu-*
22 *cational agency or State educational agency shall ensure*
23 *that the parents of each child with a disability are members*
24 *of any group that makes decisions on the educational place-*
25 *ment of their child.*

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

7 “**SEC. 615. PROCEDURAL SAFEGUARDS.**

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

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

18 “(1) *an opportunity for the parents of a child*
19 *with a disability to examine all records relating to*
20 *such child and to participate in meetings with respect*
21 *to the identification, evaluation, and educational*
22 *placement of the child, and the provision of a free ap-*
23 *propriate public education to such child, and to ob-*
24 *tain an independent educational evaluation of the*
25 *child;*

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

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

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

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

18 “(4) procedures designed to ensure that the notice
19 required by paragraph (3) is in the native language
20 of the parents, unless it clearly is not feasible to do
21 so;

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

24 “(6) an opportunity for either party to present
25 complaints with respect to any matter relating to the

1 *identification, evaluation, or educational placement of*
2 *the child, or the provision of a free appropriate public*
3 *education to such child;*

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

8 “(i) *to the other party, in the complaint*
9 *filed under paragraph (6), and forward a copy*
10 *of such notice to the State educational agency;*
11 *and*

12 “(ii) *that shall include—*

13 “(I) *the name of the child, the address*
14 *of the residence of the child, and the name*
15 *of the school the child is attending;*

16 “(II) *in the case of a homeless child or*
17 *youth (within the meaning of section 725(2)*
18 *of the McKinney-Vento Homeless Assistance*
19 *Act (42 U.S.C. 11434a(2)), available con-*
20 *tact information for the child and the name*
21 *of the school the child is attending;*

22 “(III) *a description of the nature of the*
23 *problem of the child relating to such pro-*
24 *posed initiation or change, including facts*
25 *relating to such problem; and*

1 “(IV) 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 attorney
6 representing the party, files a notice that meets the
7 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 process
11 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 con-
14 tained in the parent’s due process complaint notice;
15 and

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

21 “(c) NOTIFICATION REQUIREMENTS.—

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

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

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

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

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

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

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

19 “(G) sources for parents to contact to obtain
20 assistance in understanding the provisions of
21 this part.

22 “(2) DUE PROCESS COMPLAINT NOTICE.—

23 “(A) IN GENERAL.—The due process com-
24 plaint notice required under subsection (b)(7)(A)
25 shall be deemed to be sufficient unless the party

1 *receiving the notice notifies the hearing officer*
2 *and the other party in writing that the receiving*
3 *party believes the notice has not met the require-*
4 *ments of that subsection.*

5 “(B) *TIMING.*—*The party sending a hearing*
6 *officer notification under subparagraph (A) shall*
7 *send the notification within 20 days of receiving*
8 *the complaint.*

9 “(C) *DETERMINATION.*—*Within 5 days of*
10 *receipt of the notification provided under sub-*
11 *paragraph (B), the hearing officer shall make a*
12 *determination on the face of the notice of whether*
13 *the notification meets the requirements of sub-*
14 *section (b)(7)(A), and shall immediately notify*
15 *both parties in writing of such determination.*

16 “(D) *PARENT’S AMENDED NOTICE OF COM-*
17 *PLAINT.*—

18 “(i) *IN GENERAL.*—*A parent may*
19 *amend the parent’s due process complaint*
20 *notice only if—*

21 “(I) *the public agency consents in*
22 *writing to such amendment and is*
23 *given the opportunity to resolve the*
24 *complaint through a meeting held pur-*
25 *suant to subsection (f)(1)(B); or*

1 “(II) *the hearing officer grants*
2 *permission, but may do so only before*
3 *a due process hearing occurs.*

4 “(i) *APPLICABLE TIMELINE.—The ap-*
5 *plicable timeline for a due process hearing*
6 *under this part shall recommence at the*
7 *time the party files an amended notice.*

8 “(d) *PROCEDURAL SAFEGUARDS NOTICE.—*

9 “(1) *IN GENERAL.—A copy of the procedural*
10 *safeguards available to the parents of a child with a*
11 *disability shall be given to the parents only 1 time a*
12 *year, except that a copy also shall be given to the par-*
13 *ents—*

14 “(A) *upon initial referral or parental re-*
15 *quest for evaluation;*

16 “(B) *upon registration of a complaint*
17 *under subsection (b)(6); and*

18 “(C) *upon request by a parent.*

19 “(2) *CONTENTS.—The procedural safeguards no-*
20 *tice shall include a full explanation of the procedural*
21 *safeguards, written in the native language of the par-*
22 *ents, unless it clearly is not feasible to do so, and*
23 *written in an easily understandable manner, avail-*
24 *able under this section and under regulations promul-*
25 *gated by the Secretary relating to—*

- 1 “(A) independent educational evaluation;
- 2 “(B) prior written notice;
- 3 “(C) parental consent;
- 4 “(D) access to educational records;
- 5 “(E) the opportunity to present and resolve
- 6 complaints, including—
- 7 “(i) the time period in which to make
- 8 a complaint;
- 9 “(ii) the opportunity for the agency to
- 10 resolve the complaint; and
- 11 “(iii) the availability of mediation;
- 12 “(F) the child’s placement during pendency
- 13 of due process proceedings;
- 14 “(G) procedures for students who are subject
- 15 to placement in an interim alternative edu-
- 16 cational setting;
- 17 “(H) requirements for unilateral placement
- 18 by parents of children in private schools at pub-
- 19 lic expense;
- 20 “(I) due process hearings, including re-
- 21 quirements for disclosure of evaluation results
- 22 and recommendations;
- 23 “(J) State-level appeals (if applicable in
- 24 that State);

1 “(K) *civil actions, including the time period*
2 *in which to file such actions; and*

3 “(L) *attorney’s fees.*

4 “(e) *MEDIATION.—*

5 “(1) *IN GENERAL.—Any State educational agen-*
6 *cy or local educational agency that receives assistance*
7 *under this part shall ensure that procedures are estab-*
8 *lished and implemented to allow parties to disputes*
9 *involving any matter, including matters arising prior*
10 *to the filing of a complaint pursuant to subsection*
11 *(b)(6), to resolve such disputes through a mediation*
12 *process.*

13 “(2) *REQUIREMENTS.—Such procedures shall*
14 *meet the following requirements:*

15 “(A) *The procedures shall ensure that the*
16 *mediation process—*

17 “(i) *is voluntary on the part of the*
18 *parties;*

19 “(ii) *is not used to deny or delay a*
20 *parent’s right to a due process hearing*
21 *under subsection (f), or to deny any other*
22 *rights afforded under this part; and*

23 “(iii) *is conducted by a qualified and*
24 *impartial mediator who is trained in effec-*
25 *tive mediation techniques.*

1 “(B) *OPPORTUNITY TO MEET WITH A DISIN-*
2 *TERESTED PARTY.*—*A local educational agency*
3 *or a State agency may establish procedures to*
4 *offer to parents and schools who choose not to use*
5 *the mediation process, an opportunity to meet,*
6 *at a time and location convenient to the parents,*
7 *with a disinterested party who is under contract*
8 *with—*

9 “(i) *a parent training and informa-*
10 *tion center or community parent resource*
11 *center in the State established under section*
12 *671 or 672; or*

13 “(ii) *an appropriate alternative dis-*
14 *pute resolution entity,*
15 *to encourage the use, and explain the benefits, of*
16 *the mediation process to the parents.*

17 “(C) *LIST OF QUALIFIED MEDIATORS.*—*The*
18 *State shall maintain a list of individuals who*
19 *are qualified mediators and knowledgeable in*
20 *laws and regulations relating to the provision of*
21 *special education and related services.*

22 “(D) *COSTS.*—*The State shall bear the cost*
23 *of the mediation process, including the costs of*
24 *meetings described in subparagraph (B).*

1 “(E) *SCHEDULING AND LOCATION.*—*Each*
2 *session in the mediation process shall be sched-*
3 *uled in a timely manner and shall be held in a*
4 *location that is convenient to the parties to the*
5 *dispute.*

6 “(F) *WRITTEN MEDIATION AGREEMENT.*—
7 *An agreement reached by the parties to the dis-*
8 *pute in the mediation process shall be set forth*
9 *in a written mediation agreement that is en-*
10 *forceable in any State court of competent juris-*
11 *isdiction or in a district court of the United*
12 *States.*

13 “(G) *MEDIATION DISCUSSIONS.*—*Discus-*
14 *sions that occur during the mediation process*
15 *shall be confidential and may not be used as evi-*
16 *dence in any subsequent due process hearings or*
17 *civil proceedings, and the parties to the medi-*
18 *ation process may be required to sign a confiden-*
19 *tiality pledge prior to the commencement of such*
20 *process.*

21 “(f) *IMPARTIAL DUE PROCESS HEARING.*—

22 “(1) *IN GENERAL.*—

23 “(A) *HEARING.*—*Whenever a complaint has*
24 *been received under subsection (b)(6) or (k), the*
25 *parents or the local educational agency involved*

1 *in such complaint shall have an opportunity for*
 2 *an impartial due process hearing, which shall be*
 3 *conducted by the State educational agency or by*
 4 *the local educational agency, as determined by*
 5 *State law or by the State educational agency.*

6 “(B) *OPPORTUNITY TO RESOLVE COM-*
 7 *PLAINT.—*

8 “(i) *PRELIMINARY MEETING.—Prior to*
 9 *the opportunity for an impartial due proc-*
 10 *ess hearing under subparagraph (A), the*
 11 *local educational agency shall convene a*
 12 *meeting with the parents and the IEP*
 13 *Team—*

14 “(I) *within 15 days of receiving*
 15 *notice of the parents’ complaint;*

16 “(II) *which shall include a rep-*
 17 *resentative of the public agency who*
 18 *has decisionmaking authority on behalf*
 19 *of such agency;*

20 “(III) *which may not include an*
 21 *attorney of the local educational agen-*
 22 *cy unless the parent is accompanied by*
 23 *an attorney; and*

24 “(IV) *where the parents of the*
 25 *child discuss their complaint, and the*

1 *specific issues that form the basis of the*
2 *complaint, and the local educational*
3 *agency is provided the opportunity to*
4 *resolve the complaint,*

5 *unless the parents and the local educational*
6 *agency agree in writing to waive such meet-*
7 *ing, or agree to use the mediation process*
8 *described in subsection (e).*

9 “(ii) *HEARING.*—*If the local edu-*
10 *cational agency has not resolved the com-*
11 *plaint to the satisfaction of the parents*
12 *within 15 days of the receipt of the com-*
13 *plaint, the due process hearing may occur,*
14 *and all of the applicable timelines for a due*
15 *process hearing under this part shall com-*
16 *mence.*

17 “(iii) *WRITTEN SETTLEMENT AGREE-*
18 *MENT.*—*In the case that an agreement is*
19 *reached to resolve the complaint at such*
20 *meeting, the agreement shall be set forth in*
21 *a written settlement agreement that is—*

22 “(I) *signed by both the parent and*
23 *a representative of the public agency*
24 *who has decisionmaking authority on*
25 *behalf of such agency; and*

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

4 “(2) DISCLOSURE OF EVALUATIONS AND REC-
5 COMMENDATIONS.—

6 “(A) IN GENERAL.—Not less than 5 business
7 days prior to a hearing conducted pursuant to
8 paragraph (1), each party shall disclose to all
9 other parties all evaluations completed by that
10 date, and recommendations based on the offering
11 party’s evaluations, that the party intends to use
12 at the hearing.

13 “(B) FAILURE TO DISCLOSE.—A hearing of-
14 ficer may bar any party that fails to comply
15 with subparagraph (A) from introducing the rel-
16 evant evaluation or recommendation at the hear-
17 ing without the consent of the other party.

18 “(3) LIMITATIONS ON HEARING.—

19 “(A) PERSON CONDUCTING HEARING.—A
20 hearing officer conducting a hearing pursuant to
21 paragraph (1)(A) shall, at a minimum—

22 “(i) not be—

23 “(I) an employee of the State edu-
24 cational agency or the local edu-

1 *educational agency involved in the edu-*
2 *cation or care of the child; or*

3 *“(II) a person having a personal*
4 *or professional interest that conflicts*
5 *with the person’s objectivity in the*
6 *hearing;*

7 *“(ii) possess a fundamental under-*
8 *standing of this Act, Federal and State reg-*
9 *ulations pertaining to this Act, and inter-*
10 *pretations of this Act by State and Federal*
11 *courts;*

12 *“(iii) possess the knowledge and ability*
13 *to conduct hearings in accordance with ap-*
14 *propriate, standard legal practice; and*

15 *“(iv) possess the knowledge and ability*
16 *to render and write decisions in accordance*
17 *with appropriate, standard legal practice.*

18 *“(B) SUBJECT MATTER OF HEARING.—The*
19 *party requesting the due process hearing shall*
20 *not be allowed to raise issues at the due process*
21 *hearing that were not raised in the notice filed*
22 *under subsection (b)(7), unless the other party*
23 *agrees otherwise.*

24 *“(C) RULE OF CONSTRUCTION.—Nothing in*
25 *this section shall be construed to preclude a par-*

1 *ent from filing a separate due process complaint*
2 *on an issue separate from a due process com-*
3 *plaint already filed.*

4 “(D) *TIMELINE FOR REQUESTING HEAR-*
5 *ING.—A parent or public agency shall request an*
6 *impartial due process hearing within 2 years of*
7 *the date the parent or public agency knew or*
8 *should have known about the alleged action that*
9 *forms the basis of the complaint, or, if the State*
10 *has an explicit time limitation for requesting*
11 *such a hearing under this part, in such time as*
12 *the State law allows.*

13 “(E) *EXCEPTION TO THE STATUTE OF LIM-*
14 *TATIONS.—The statute of limitations described*
15 *in subparagraph (D) shall not apply if the par-*
16 *ent was prevented from requesting the hearing*
17 *due to—*

18 “(i) *failure of the local educational*
19 *agency to provide prior written or proce-*
20 *dural safeguards notices;*

21 “(ii) *false representations that the local*
22 *educational agency was attempting to re-*
23 *solve the problem forming the basis of the*
24 *complaint; or*

1 “(iii) *the local educational agency’s*
2 *withholding of information from parents.*

3 “(F) *DECISION OF HEARING OFFICER.—*

4 “(i) *IN GENERAL.—Subject to clause*
5 *(ii), a decision made by a hearing officer*
6 *shall be made on substantive grounds based*
7 *on a determination of whether the child re-*
8 *ceived a free appropriate public education.*

9 “(ii) *PROCEDURAL ISSUES.—In mat-*
10 *ters alleging a procedural violation, a hear-*
11 *ing officer may find that a child did not re-*
12 *ceive a free appropriate public education*
13 *only if the procedural inadequacies—*

14 “(I) *compromised the child’s right*
15 *to an appropriate public education;*

16 “(II) *seriously hampered the par-*
17 *ents’ opportunity to participate in the*
18 *process; or*

19 “(III) *caused a deprivation of*
20 *educational benefits.*

21 “(iii) *RULE OF CONSTRUCTION.—Noth-*
22 *ing in this paragraph shall be construed to*
23 *preclude a hearing officer from ordering a*
24 *local educational agency to comply with*
25 *procedural requirements under this section.*

1 “(G) *RULE OF CONSTRUCTION.*—*Nothing in*
2 *this section shall be construed to affect the right*
3 *of a parent to file a complaint with the State*
4 *educational agency.*

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

13 “(h) *SAFEGUARDS.*—*Any party to a hearing conducted*
14 *pursuant to subsection (f) or (k), or an appeal conducted*
15 *pursuant to subsection (g), shall be accorded—*

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

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

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

1 “(4) the right to a written, or, at the option of
2 the parents, electronic findings of fact and decisions,
3 which findings and decisions—

4 “(A) shall be made available to the public
5 consistent with the requirements of section 617(b)
6 (relating to the confidentiality of data, informa-
7 tion, and records); and

8 “(B) shall be transmitted to the advisory
9 panel established pursuant to section 612(a)(20).

10 “(i) *ADMINISTRATIVE PROCEDURES.*—

11 “(1) *IN GENERAL.*—

12 “(A) *DECISION MADE IN HEARING.*—A deci-
13 sion made in a hearing conducted pursuant to
14 subsection (f) or (k) shall be final, except that
15 any party involved in such hearing may appeal
16 such decision under the provisions of subsection
17 (g) and paragraph (2).

18 “(B) *DECISION MADE AT APPEAL.*—A deci-
19 sion made under subsection (g) shall be final, ex-
20 cept that any party may bring an action under
21 paragraph (2).

22 “(2) *RIGHT TO BRING CIVIL ACTION.*—

23 “(A) *IN GENERAL.*—Any party aggrieved by
24 the findings and decision made under subsection
25 (f) or (k) who does not have the right to an ap-

1 *peal under subsection (g), and any party ag-*
2 *grieved by the findings and decision under this*
3 *subsection, shall have the right to bring a civil*
4 *action with respect to the complaint presented*
5 *pursuant to this section, which action may be*
6 *brought in any State court of competent jurisdic-*
7 *tion or in a district court of the United States,*
8 *without regard to the amount in controversy.*

9 *“(B) LIMITATION.—The party bringing the*
10 *action shall have 90 days from the date of the de-*
11 *cision of the hearing officer to bring such an ac-*
12 *tion, or, if the State has an explicit time limita-*
13 *tion for bringing such action under this part, in*
14 *such time as the State law allows.*

15 *“(C) ADDITIONAL REQUIREMENTS.—In any*
16 *action brought under this paragraph, the court—*

17 *“(i) shall receive the records of the ad-*
18 *ministrative proceedings;*

19 *“(ii) shall hear additional evidence at*
20 *the request of a party; and*

21 *“(iii) basing its decision on the pre-*
22 *ponderance of the evidence, shall grant such*
23 *relief as the court determines is appro-*
24 *priate.*

1 “(3) *JURISDICTION OF DISTRICT COURTS; ATTOR-*
2 *NEYS’ FEES.*—

3 “(A) *IN GENERAL.*—*The district courts of*
4 *the United States shall have jurisdiction of ac-*
5 *tions brought under this section without regard*
6 *to the amount in controversy.*

7 “(B) *AWARD OF ATTORNEYS’ FEES.*—*In*
8 *any action or proceeding brought under this sec-*
9 *tion, the court, in its discretion, may award rea-*
10 *sonable attorneys’ fees as part of the costs to the*
11 *parents of a child with a disability who is the*
12 *prevailing party.*

13 “(C) *DETERMINATION OF AMOUNT OF AT-*
14 *TORNEYS’ FEES.*—*Fees awarded under this para-*
15 *graph shall be based on rates prevailing in the*
16 *community in which the action or proceeding*
17 *arose for the kind and quality of services fur-*
18 *nished. No bonus or multiplier may be used in*
19 *calculating the fees awarded under this sub-*
20 *section.*

21 “(D) *PROHIBITION OF ATTORNEYS’ FEES*
22 *AND RELATED COSTS FOR CERTAIN SERVICES.*—

23 “(i) *IN GENERAL.*—*Attorneys’ fees may*
24 *not be awarded and related costs may not*
25 *be reimbursed in any action or proceeding*

1 under this section for services performed
2 subsequent to the time of a written offer of
3 settlement to a parent if—

4 “(I) the offer is made within the
5 time prescribed by Rule 68 of the Fed-
6 eral Rules of Civil Procedure or, in the
7 case of an administrative proceeding,
8 at any time more than 10 days before
9 the proceeding begins;

10 “(II) the offer is not accepted
11 within 10 days; and

12 “(III) the court or administrative
13 hearing officer finds that the relief fi-
14 nally obtained by the parents is not
15 more favorable to the parents than the
16 offer of settlement.

17 “(ii) *IEP TEAM MEETINGS.*—Attor-
18 neys’ fees may not be awarded relating to
19 any meeting of the IEP Team unless such
20 meeting is convened as a result of an ad-
21 ministrative proceeding or judicial action,
22 or, at the discretion of the State, for a medi-
23 ation described in subsection (e).

24 “(iii) *OPPORTUNITY TO RESOLVE COM-*
25 *PLAINTS.*—A meeting conducted pursuant to

1 *subsection (f)(1)(B)(i) shall not be consid-*
2 *ered—*

3 *“(I) a meeting convened as a re-*
4 *sult of an administrative hearing or*
5 *judicial action; or*

6 *“(II) an administrative hearing*
7 *or judicial action for purposes of this*
8 *paragraph.*

9 *“(E) EXCEPTION TO PROHIBITION ON AT-*
10 *TORNEYS’ FEES AND RELATED COSTS.—Notwith-*
11 *standing subparagraph (D), an award of attor-*
12 *neys’ fees and related costs may be made to a*
13 *parent who is the prevailing party and who was*
14 *substantially justified in rejecting the settlement*
15 *offer.*

16 *“(F) REDUCTION IN AMOUNT OF ATTOR-*
17 *NEYS’ FEES.—Except as provided in subpara-*
18 *graph (G), whenever the court finds that—*

19 *“(i) the parent, or the parent’s attor-*
20 *ney, during the course of the action or pro-*
21 *ceeding, unreasonably protracted the final*
22 *resolution of the controversy;*

23 *“(ii) the amount of the attorneys’ fees*
24 *otherwise authorized to be awarded unrea-*
25 *sonably exceeds the hourly rate prevailing*

1 *in the community for similar services by at-*
2 *torneys of reasonably comparable skill, rep-*
3 *utation, and experience;*

4 “(iii) *the time spent and legal services*
5 *furnished were excessive considering the na-*
6 *ture of the action or proceeding; or*

7 “(iv) *the attorney representing the par-*
8 *ent did not provide to the local educational*
9 *agency the appropriate information in the*
10 *notice of the complaint described in sub-*
11 *section (b)(7)(A),*

12 *the court shall reduce, accordingly, the amount of*
13 *the attorneys’ fees awarded under this section.*

14 “(G) *EXCEPTION TO REDUCTION IN AMOUNT*
15 *OF ATTORNEYS’ FEES.—The provisions of sub-*
16 *paragraph (F) shall not apply in any action or*
17 *proceeding if the court finds that the State or*
18 *local educational agency unreasonably protracted*
19 *the final resolution of the action or proceeding or*
20 *there was a violation of this section.*

21 “(4) *PARENTS REPRESENTING THEIR CHILDREN*
22 *IN COURT.—Subject to subsection (m), and notwith-*
23 *standing any other provision of Federal law regard-*
24 *ing attorney representation (including the Federal*
25 *Rules of Civil Procedure), a parent of a child with a*

1 *disability may represent the child in any action*
2 *under this part in Federal or State court, without the*
3 *assistance of an attorney.*

4 “(j) *MAINTENANCE OF CURRENT EDUCATIONAL*
5 *PLACEMENT.—Except as provided in subsection (k)(4), dur-*
6 *ing the pendency of any proceedings conducted pursuant*
7 *to this section, unless the State or local educational agency*
8 *and the parents otherwise agree, the child shall remain in*
9 *the then-current educational placement of such child, or, if*
10 *applying for initial admission to a public school, shall,*
11 *with the consent of the parents, be placed in the public*
12 *school program until all such proceedings have been com-*
13 *pleted.*

14 “(k) *PLACEMENT IN ALTERNATIVE EDUCATIONAL SET-*
15 *TING.—*

16 “(1) *AUTHORITY OF SCHOOL PERSONNEL.—*

17 “(A) *IN GENERAL.—School personnel under*
18 *this section may order a change in the placement*
19 *of a child with a disability who violates a code*
20 *of student conduct to an appropriate interim al-*
21 *ternative educational setting, another setting, or*
22 *suspension, for not more than 10 school days (to*
23 *the extent such alternatives are applied to chil-*
24 *dren without disabilities).*

1 “(B) *ADDITIONAL AUTHORITY.*—*If school*
2 *personnel seek to order a change in placement*
3 *that would exceed 10 school days and the behav-*
4 *ior that gave rise to the violation of the school*
5 *code is determined not to be a manifestation of*
6 *the child’s disability pursuant to subparagraph*
7 *(C), the relevant disciplinary procedures appli-*
8 *cable to children without disabilities may be ap-*
9 *plied to the child in the same manner in which*
10 *the procedures would be applied to children with-*
11 *out disabilities, except as provided in section*
12 *612(a)(1).*

13 “(C) *MANIFESTATION DETERMINATION.*—

14 “(i) *IN GENERAL.*—*Except as provided*
15 *in subparagraphs (A) and (D), within 10*
16 *school days of any decision to change the*
17 *placement of a child with a disability be-*
18 *cause of a violation of a code of student con-*
19 *duct, the IEP Team shall review all rel-*
20 *evant information in the student’s file, any*
21 *information provided by the parents, and*
22 *teacher observations, to determine—*

23 “(I) *if the conduct in question*
24 *was the result of the child’s disability;*
25 *or*

1 “(II) if the conduct in question
2 resulted from the failure to implement
3 the IEP or to implement behavioral
4 interventions as required by section
5 614(d)(3)(B)(i).

6 “(ii) *MANIFESTATION*.—If the IEP
7 Team determines that either subclause (I)
8 or (II) of clause (i) is applicable for the
9 child, the conduct shall be determined to be
10 a manifestation of the child’s disability.

11 “(D) *SPECIAL CIRCUMSTANCES*.—In cases
12 where a child—

13 “(i) carries or possesses a weapon to or
14 at school, on school premises, or to or at a
15 school function under the jurisdiction of a
16 State or local educational agency; or

17 “(ii) knowingly possesses or uses illegal
18 drugs, or sells or solicits the sale of a con-
19 trolled substance, while at school or a school
20 function under the jurisdiction of a State or
21 local educational agency; or

22 “(iii) has committed serious bodily in-
23 jury upon another person while at school or
24 at a school function under the jurisdiction
25 of a State or local educational agency,

1 *school personnel may remove a student to an in-*
2 *terim alternative educational setting for not*
3 *more than 45 school days, without regard to*
4 *whether the behavior is determined to be a mani-*
5 *festation of the child's disability.*

6 “(E) NOTIFICATION.—*Not later than the*
7 *date on which the decision to take disciplinary*
8 *action is made, the local educational agency*
9 *shall notify the parents of that decision, and of*
10 *all procedural safeguards accorded under this*
11 *section.*

12 “(F) SERVICES.—*A child with a disability*
13 *who is removed from the child's current place-*
14 *ment under subparagraph (B) or (D) shall—*

15 “(i) *continue to receive educational*
16 *services pursuant to section 612(a)(1), so as*
17 *to enable the child to continue to partici-*
18 *pate in the general education curriculum,*
19 *although in another setting, and to progress*
20 *toward meeting the goals set out in the*
21 *child's IEP; and*

22 “(ii) *receive behavioral intervention*
23 *services as described in section*
24 *614(d)(3)(B)(i), and a functional behavioral*
25 *assessment (but only if the local educational*

1 *agency did not conduct such an assessment*
2 *before the violation occurred), designed to*
3 *address the behavior violation so that the*
4 *violation does not recur.*

5 *“(2) DETERMINATION OF SETTING.—The alter-*
6 *native educational setting shall be determined by the*
7 *IEP Team.*

8 *“(3) APPEAL.—*

9 *“(A) IN GENERAL.—The parent of a child*
10 *with a disability who disagrees with any deci-*
11 *sion regarding disciplinary action, placement, or*
12 *the manifestation determination under this sub-*
13 *section, or a local educational agency that be-*
14 *lieves that maintaining the current placement of*
15 *the child is substantially likely to result in in-*
16 *jury to the child or to others, may request a*
17 *hearing.*

18 *“(B) AUTHORITY OF HEARING OFFICER.—*

19 *“(i) IN GENERAL.—If a parent of a*
20 *child with a disability disagrees with a de-*
21 *cision as described in subparagraph (A), the*
22 *hearing officer may determine whether the*
23 *decision regarding such action was appro-*
24 *priate.*

1 “(i) *CHANGE OF PLACEMENT*
2 *ORDER.—A hearing officer under this sec-*
3 *tion may order a change in placement of a*
4 *child with a disability to an appropriate*
5 *interim alternative educational setting for*
6 *not more than 45 school days if the hearing*
7 *officer determines that maintaining the cur-*
8 *rent placement of such child is substantially*
9 *likely to result in injury to the child or to*
10 *others.*

11 “(4) *PLACEMENT DURING APPEALS.—When a*
12 *parent requests a hearing regarding a disciplinary*
13 *procedure described in paragraph (1)(B) or challenges*
14 *the interim alternative educational setting or mani-*
15 *festation determination—*

16 “(A) *the child shall remain in the interim*
17 *alternative educational setting pending the deci-*
18 *sion of the hearing officer or until the expiration*
19 *of the time period provided for in paragraph*
20 *(1)(B), whichever occurs first, unless the parent*
21 *and the State or local educational agency agree*
22 *otherwise; and*

23 “(B) *the State or local educational agency*
24 *shall arrange for an expedited hearing, which*

1 *shall occur within 20 school days of the date the*
2 *hearing is requested.*

3 “(5) *PROTECTIONS FOR CHILDREN NOT YET ELI-*
4 *GIBLE FOR SPECIAL EDUCATION AND RELATED SERV-*
5 *ICES.—*

6 “(A) *IN GENERAL.—A child who has not*
7 *been determined to be eligible for special edu-*
8 *cation and related services under this part and*
9 *who has engaged in behavior that violates a code*
10 *of student conduct, may assert any of the protec-*
11 *tions provided for in this part if the local edu-*
12 *cational agency had knowledge (as determined in*
13 *accordance with this paragraph) that the child*
14 *was a child with a disability before the behavior*
15 *that precipitated the disciplinary action oc-*
16 *curred.*

17 “(B) *BASIS OF KNOWLEDGE.—A local edu-*
18 *cational agency shall be deemed to have knowl-*
19 *edge that a child is a child with a disability if,*
20 *before the behavior that precipitated the discipli-*
21 *nary action occurred—*

22 “(i) *the parent of the child has ex-*
23 *pressed concern in writing (unless the par-*
24 *ent is illiterate or has a disability that pre-*
25 *vents compliance with the requirements con-*

1 *tained in this clause) to personnel of the ap-*
2 *propriate educational agency that the child*
3 *is in need of special education and related*
4 *services;*

5 “(ii) *the parent of the child has re-*
6 *quested an evaluation of the child pursuant*
7 *to section 614;*

8 “(iii) *the teacher of the child, or other*
9 *personnel of the local educational agency,*
10 *has expressed concern about a pattern of be-*
11 *havior demonstrated by the child, to the di-*
12 *rector of special education of such agency or*
13 *to other administrative personnel of the*
14 *agency; or*

15 “(iv) *the child has engaged in a pat-*
16 *tern of behavior that should have alerted*
17 *personnel of the local educational agency*
18 *that the child may be in need of special*
19 *education and related services.*

20 “(C) *EXCEPTION.—A local educational*
21 *agency shall not be deemed to have knowledge*
22 *that the child has a disability if the parent of the*
23 *child has not agreed to allow an evaluation of*
24 *the child pursuant to section 614.*

1 “(D) *CONDITIONS THAT APPLY IF NO BASIS*
2 *OF KNOWLEDGE.—*

3 “(i) *IN GENERAL.—If a local edu-*
4 *cational agency does not have knowledge*
5 *that a child is a child with a disability (in*
6 *accordance with subparagraph (B) or (C))*
7 *prior to taking disciplinary measures*
8 *against the child, the child may be subjected*
9 *to disciplinary measures applied to children*
10 *without disabilities who engaged in com-*
11 *parable behaviors consistent with clause*
12 *(ii).*

13 “(ii) *LIMITATIONS.—If a request is*
14 *made for an evaluation of a child during*
15 *the time period in which the child is sub-*
16 *jected to disciplinary measures under para-*
17 *graph (1), the evaluation shall be conducted*
18 *in an expedited manner. If the child is de-*
19 *termined to be a child with a disability,*
20 *taking into consideration information from*
21 *the evaluation conducted by the agency and*
22 *information provided by the parents, the*
23 *agency shall provide special education and*
24 *related services in accordance with this*
25 *part, except that, pending the results of the*

1 *evaluation, the child shall remain in the*
2 *educational placement determined by school*
3 *authorities.*

4 “(6) *REFERRAL TO AND ACTION BY LAW EN-*
5 *FORCEMENT AND JUDICIAL AUTHORITIES.—*

6 “(A) *CONSTRUCTION.—Nothing in this part*
7 *shall be construed to prohibit an agency from re-*
8 *porting a crime committed by a child with a dis-*
9 *ability to appropriate authorities or to prevent*
10 *State law enforcement and judicial authorities*
11 *from exercising their responsibilities with regard*
12 *to the application of Federal and State law to*
13 *crimes committed by a child with a disability.*

14 “(B) *TRANSMITTAL OF RECORDS.—An*
15 *agency reporting a crime committed by a child*
16 *with a disability shall ensure that copies of the*
17 *special education and disciplinary records of the*
18 *child are transmitted for consideration by the*
19 *appropriate authorities to whom the agency re-*
20 *ports the crime.*

21 “(7) *DEFINITIONS.—For purposes of this sub-*
22 *section, the following definitions apply:*

23 “(A) *CONTROLLED SUBSTANCE.—The term*
24 *‘controlled substance’ means a drug or other sub-*
25 *stance identified under schedule I, II, III, IV, or*

1 *V in section 202(c) of the Controlled Substances*
2 *Act (21 U.S.C. 812(c)).*

3 “(B) *ILLEGAL DRUG.*—*The term ‘illegal*
4 *drug’ means a controlled substance but does not*
5 *include a controlled substance that is legally pos-*
6 *essed or used under the supervision of a licensed*
7 *health-care professional or that is legally pos-*
8 *essed or used under any other authority under*
9 *that Act or under any other provision of Federal*
10 *law.*

11 “(C) *WEAPON.*—*The term ‘weapon’ has the*
12 *meaning given the term ‘dangerous weapon’*
13 *under section 930(g)(2) of title 18, United States*
14 *Code.*

15 “(D) *SERIOUS BODILY INJURY.*—*The term*
16 *‘serious bodily injury’ has the meaning given the*
17 *term ‘serious bodily injury’ under paragraph (3)*
18 *of subsection (h) of section 1365 of title 18,*
19 *United States Code.*

20 “(I) *RULE OF CONSTRUCTION.*—*Nothing in this title*
21 *shall be construed to restrict or limit the rights, procedures,*
22 *and remedies available under the Constitution, the Ameri-*
23 *cans with Disabilities Act of 1990, title V of the Rehabilita-*
24 *tion Act of 1973, or other Federal laws protecting the rights*
25 *of children with disabilities, except that before the filing of*

1 *a civil action under such laws seeking relief that is also*
 2 *available under this part, the procedures under subsections*
 3 *(f) and (g) shall be exhausted to the same extent as would*
 4 *be required had the action been brought under this part.*

5 “(m) *TRANSFER OF PARENTAL RIGHTS AT AGE OF*
 6 *MAJORITY.*—

7 “(1) *IN GENERAL.*—*A State that receives*
 8 *amounts from a grant under this part may provide*
 9 *that, when a child with a disability reaches the age*
 10 *of majority under State law (except for a child with*
 11 *a disability who has been determined to be incom-*
 12 *petent under State law)—*

13 “(A) *the public agency shall provide any*
 14 *notice required by this section to both the indi-*
 15 *vidual and the parents;*

16 “(B) *all other rights accorded to parents*
 17 *under this part transfer to the child;*

18 “(C) *the agency shall notify the individual*
 19 *and the parents of the transfer of rights; and*

20 “(D) *all rights accorded to parents under*
 21 *this part transfer to children who are incarcer-*
 22 *ated in an adult or juvenile Federal, State, or*
 23 *local correctional institution.*

24 “(2) *SPECIAL RULE.*—*If, under State law, a*
 25 *child with a disability who has reached the age of*

1 “(B) enforce this Act in accordance with
2 subsection (c); and

3 “(C) require States to monitor implementa-
4 tion of this Act by local educational agencies and
5 enforce this Act in accordance with paragraph
6 (3) of this subsection and subsection (c).

7 “(2) *FOCUSED MONITORING.*—The primary focus
8 of Federal and State monitoring activities described
9 in paragraph (1) shall be on improving educational
10 results and functional outcomes for all children with
11 disabilities, while ensuring compliance with program
12 requirements, with a particular emphasis on those re-
13 quirements that are most closely related to improving
14 educational results for children with disabilities.

15 “(3) *MONITORING PRIORITIES.*—The Secretary
16 shall monitor, and shall require States to monitor, the
17 following priority areas:

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

20 “(B) Provision of transition services, as de-
21 fined in section 602(33).

22 “(C) State exercise of general supervisory
23 authority, including the effective use of com-
24 plaint resolution and mediation.

1 “(D) *Overrepresentation of racial and eth-*
2 *nic groups in special education and related serv-*
3 *ices, to the extent the overrepresentation is the*
4 *result of inappropriate policies, procedures, and*
5 *practices.*

6 “(4) *PERMISSIVE AREAS OF REVIEW.—The Sec-*
7 *retary may examine other relevant information and*
8 *data, including data provided by States under section*
9 *618, and data from the State’s compliance plan under*
10 *subsection (b)(2)(C).*

11 “(b) *INDICATORS.—*

12 “(1) *SYSTEM.—The Secretary shall implement*
13 *and administer a system of required indicators as de-*
14 *scribed in paragraph (2) that measures the progress*
15 *of States in improving their performance under this*
16 *Act.*

17 “(2) *INDICATORS.—*

18 “(A) *IN GENERAL.—Using the performance*
19 *indicators established by States under section*
20 *612(a)(15), the Secretary shall review—*

21 “(i) *the performance of children with*
22 *disabilities in the State on assessments, in-*
23 *cluding alternate assessments, dropout rates,*
24 *and graduation rates, which for purposes of*
25 *this paragraph means the number and per-*

1 *centage of students with disabilities who*
2 *graduate with a regular diploma within the*
3 *number of years specified in a student's*
4 *IEP; and*

5 “(ii) *the performance of children with*
6 *disabilities in the State on assessments, in-*
7 *cluding alternate assessments, dropout rates,*
8 *and graduation rates, as compared to the*
9 *performance and rates for all children.*

10 “(B) *SECRETARY’S ASSESSMENT.—Based on*
11 *that review and a review of the State’s compli-*
12 *ance plan under subparagraph (C), the Secretary*
13 *shall assess the State’s progress in improving*
14 *educational results for children with disabilities.*

15 “(C) *STATE COMPLIANCE PLAN.—Not later*
16 *than 1 year after the date of the enactment of the*
17 *Individuals with Disabilities Education Im-*
18 *provement Act of 2003, each State shall have in*
19 *place a compliance plan developed in collabora-*
20 *tion with the Secretary. Each State’s compliance*
21 *plan shall—*

22 “(i) *include benchmarks to measure*
23 *continuous progress on the priority areas*
24 *described in subsection (a)(3);*

1 “(ii) describe strategies the State will
2 use to achieve the benchmarks; and

3 “(iii) be approved by the Secretary.

4 “(D) PUBLIC REPORTING AND PRIVACY.—

5 “(i) IN GENERAL.—After the Secretary
6 approves a State’s compliance plan under
7 subparagraph (C), the State shall use the
8 benchmarks in the plan and the indicators
9 described in this subsection to analyze the
10 progress of each local educational agency in
11 the State on those benchmarks and indica-
12 tors.

13 “(ii) REPORT.—The State shall report
14 annually to the public on each local edu-
15 cational agency’s progress under clause (i),
16 except where doing so would result in the
17 disclosure of personally identifiable infor-
18 mation about individual children or where
19 the available data is insufficient to yield
20 statistically reliable information.

21 “(3) DATA COLLECTION AND ANALYSIS.—The
22 Secretary shall—

23 “(A) review the data collection and analysis
24 capacity of States to ensure that data and infor-
25 mation determined necessary for implementation

1 *of this subsection is collected, analyzed, and ac-*
2 *curately reported to the Secretary; and*

3 *“(B) provide technical assistance to improve*
4 *the capacity of States to meet these data collec-*
5 *tion requirements.*

6 *“(c) COMPLIANCE AND ENFORCEMENT.—*

7 *“(1) IN GENERAL.—The Secretary shall examine*
8 *relevant State information and data annually, to de-*
9 *termine whether the State is making satisfactory*
10 *progress toward improving educational results for*
11 *children with disabilities using the indicators de-*
12 *scribed in subsection (b)(2)(A) and the benchmarks es-*
13 *tablished in the State compliance plan under sub-*
14 *section (b)(2)(C), and is in compliance with the pro-*
15 *visions of this Act.*

16 *“(2) LACK OF SATISFACTORY PROGRESS BY A*
17 *STATE.—*

18 *“(A) IN GENERAL.—If after examining*
19 *data, as provided in subsection (b)(2) (A) and*
20 *(C), the Secretary determines that a State failed*
21 *to make satisfactory progress in meeting the in-*
22 *dicators described in subsection (b)(2)(A) or has*
23 *failed to meet the benchmarks described in sub-*
24 *section (b)(2)(C) for 2 consecutive years after the*
25 *State has developed its compliance plan, the Sec-*

1 *retary shall notify the State that the State has*
2 *failed to make satisfactory progress, and shall*
3 *take 1 or more of the following actions:*

4 *“(i) Direct the use of State level funds*
5 *for technical assistance, services, or other*
6 *expenditures to ensure that the State re-*
7 *solves the area or areas of unsatisfactory*
8 *progress.*

9 *“(ii) Withhold not less than 20, but not*
10 *more than 50, percent of the State’s funds*
11 *for State administration and activities for*
12 *the fiscal year under section 611(e), after*
13 *providing the State the opportunity to show*
14 *cause why the withholding should not occur,*
15 *until the Secretary determines that suffi-*
16 *cient progress has been made in improving*
17 *educational results for children with dis-*
18 *abilities.*

19 *“(B) ADDITIONAL SECRETARIAL ACTION.—*
20 *If, at the end of the 5th year after the Secretary*
21 *has approved the compliance plan that the State*
22 *has developed under subsection (b)(2)(C), the*
23 *Secretary determines that a State failed to meet*
24 *the benchmarks in the State compliance plan*
25 *and make satisfactory progress in improving*

1 *educational results for children with disabilities*
2 *pursuant to the indicators described in sub-*
3 *section (b)(2)(A), the Secretary shall take 1 or*
4 *more of the following actions:*

5 “(i) *Seek to recover funds under section*
6 *452 of the General Education Provisions*
7 *Act.*

8 “(ii) *After providing reasonable notice*
9 *and an opportunity for a hearing to the*
10 *State educational agency involved, with-*
11 *hold, in whole or in part, any further pay-*
12 *ments to the State under this part pursuant*
13 *to subsection (c)(5).*

14 “(iii) *After providing reasonable notice*
15 *and an opportunity for a hearing to the*
16 *State educational agency involved, refer the*
17 *matter for appropriate enforcement action,*
18 *which may include referral to the Depart-*
19 *ment of Justice.*

20 “(iv) *Pending the outcome of any hear-*
21 *ing to withhold payments under clause (ii),*
22 *the Secretary may suspend payments to a*
23 *recipient, suspend the authority of the re-*
24 *recipient to obligate Federal funds, or both,*
25 *after such recipient has been given reason-*

1 *able notice and an opportunity to show*
2 *cause why future payments or authority to*
3 *obligate Federal funds should not be sus-*
4 *pending.*

5 *“(C) SUBSTANTIAL NONCOMPLIANCE.—Not-*
6 *withstanding subparagraph (B), at any time*
7 *that the Secretary determines that a State is not*
8 *in substantial compliance with any provision of*
9 *this part or that there is a substantial failure to*
10 *comply with any condition of a local agency’s or*
11 *State agency’s eligibility under this part, the*
12 *Secretary shall take 1 or more of the following*
13 *actions:*

14 *“(i) Request that the State prepare a*
15 *corrective action plan or improvement plan*
16 *if the Secretary determines that the State*
17 *should be able to correct the problem within*
18 *1 year.*

19 *“(ii) Identify the State as a high-risk*
20 *grantee and impose special conditions on*
21 *the State’s grant under this part.*

22 *“(iii) Require the State to enter into a*
23 *compliance agreement under section 457 of*
24 *the General Education Provisions Act, if the*
25 *Secretary has reason to believe that the*

1 *State cannot correct the problem within 1*
2 *year.*

3 “(iv) *Recovery of funds under section*
4 *452 of the General Education Provisions*
5 *Act.*

6 “(v) *After providing reasonable notice*
7 *and an opportunity for a hearing to the*
8 *State educational agency involved, with-*
9 *hold, in whole or in part, any further pay-*
10 *ments to the State under this part.*

11 “(vi) *After providing reasonable notice*
12 *and an opportunity for a hearing to the*
13 *State educational agency involved, refer the*
14 *matter for appropriate enforcement action,*
15 *which may include referral to the Depart-*
16 *ment of Justice.*

17 “(vii) *Pending the outcome of any*
18 *hearing to withhold payments under clause*
19 *(v), the Secretary may suspend payments to*
20 *a recipient, suspend the authority of the re-*
21 *recipient to obligate Federal funds, or both,*
22 *after such recipient has been given reason-*
23 *able notice and an opportunity to show*
24 *cause why future payments or authority to*

1 *obligate Federal funds should not be sus-*
2 *pending.*

3 “(3) *EGREGIOUS NONCOMPLIANCE.*—*At any time*
4 *that the Secretary determines that a State is in egre-*
5 *gious noncompliance or is willfully disregarding the*
6 *provisions of this Act, the Secretary shall take such*
7 *additional enforcement actions as the Secretary deter-*
8 *mines to be appropriate from among those actions*
9 *specified in paragraph (2)(C), and, additionally, may*
10 *impose 1 or more of the following sanctions upon that*
11 *State:*

12 “(A) *Institute a cease and desist action*
13 *under section 456 of the General Education Pro-*
14 *visions Act.*

15 “(B) *Refer the case to the Office of the In-*
16 *spector General.*

17 “(4) *REPORT TO CONGRESS.*—*The Secretary*
18 *shall report to Congress within 30 days of taking en-*
19 *forcement action pursuant to paragraph (2) (B) or*
20 *(C), or (3), on the specific action taken and the rea-*
21 *sons why enforcement action was taken.*

22 “(5) *NATURE OF WITHHOLDING.*—*If the Sec-*
23 *retary withholds further payments under paragraphs*
24 *(2)(B)(ii) and (2)(C)(v), the Secretary may determine*
25 *that such withholding will be limited to programs or*

1 *projects, or portions thereof, affected by the failure, or*
2 *that the State educational agency shall not make fur-*
3 *ther payments under this part to specified local edu-*
4 *cational agencies or State agencies affected by the*
5 *failure. Until the Secretary is satisfied that there is*
6 *no longer any failure to make satisfactory progress as*
7 *specified in paragraph (2)(B), or to comply with the*
8 *provisions of this part, as specified in paragraph*
9 *(2)(C), payments to the State under this part shall be*
10 *withheld in whole or in part, or payments by the*
11 *State educational agency under this part shall be lim-*
12 *ited to local educational agencies and State agencies*
13 *whose actions did not cause or were not involved in*
14 *the failure, as the case may be. Any State educational*
15 *agency, State agency, or local educational agency that*
16 *has received notice under paragraph (2)(B) or (2)(C)*
17 *shall, by means of a public notice, take such measures*
18 *as may be necessary to bring the pendency of an ac-*
19 *tion pursuant to this subsection to the attention of the*
20 *public within the jurisdiction of such agency.*

21 *“(6) JUDICIAL REVIEW.—*

22 *“(A) IN GENERAL.—If any State is dissatis-*
23 *fied with the Secretary’s final action with re-*
24 *spect to the eligibility of the State under section*
25 *612, such State may, not later than 60 days*

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

10 “(B) *JURISDICTION; REVIEW BY UNITED*
11 *STATES SUPREME COURT.—Upon the filing of*
12 *such petition, the court shall have jurisdiction to*
13 *affirm the action of the Secretary or to set it*
14 *aside, in whole or in part. The judgment of the*
15 *court shall be subject to review by the Supreme*
16 *Court of the United States upon certiorari or*
17 *certification as provided in section 1254 of title*
18 *28, United States Code.*

19 “(C) *STANDARD OF REVIEW.—The findings*
20 *of fact by the Secretary, if supported by substan-*
21 *tial evidence, shall be conclusive, but the court,*
22 *for good cause shown, may remand the case to*
23 *the Secretary to take further evidence, and the*
24 *Secretary may thereupon make new or modified*
25 *findings of fact and may modify the Secretary's*

1 *previous action, and shall file in the court the*
2 *record of the further proceedings. Such new or*
3 *modified findings of fact shall likewise be conclu-*
4 *sive if supported by substantial evidence.*

5 “(d) *DIVIDED STATE AGENCY RESPONSIBILITY.—For*
6 *purposes of this section, where responsibility for ensuring*
7 *that the requirements of this part are met with respect to*
8 *children with disabilities who are convicted as adults under*
9 *State law and incarcerated in adult prisons is assigned to*
10 *a public agency other than the State educational agency*
11 *pursuant to section 612(a)(11)(C), the Secretary, in in-*
12 *stances where the Secretary finds that the failure to comply*
13 *substantially with the provisions of this part are related*
14 *to a failure by the public agency, shall take appropriate*
15 *corrective action to ensure compliance with this part, except*
16 *that—*

17 “(1) *any reduction or withholding of payments*
18 *to the State shall be proportionate to the total funds*
19 *allotted under section 611 to the State as the number*
20 *of eligible children with disabilities in adult prisons*
21 *under the supervision of the other public agency is*
22 *proportionate to the number of eligible individuals*
23 *with disabilities in the State under the supervision of*
24 *the State educational agency; and*

1 “(2) any withholding of funds under paragraph
2 (1) shall be limited to the specific agency responsible
3 for the failure to comply with this part.

4 “(e) *STATE AND LOCAL MONITORING.*—

5 “(1) *IN GENERAL.*—The State educational agen-
6 cy shall monitor and enforce implementation of this
7 Act, implement a system of monitoring the bench-
8 marks in the State’s compliance plan under sub-
9 section (b)(2)(C), and require local educational agen-
10 cies to monitor and enforce implementation of this
11 Act.

12 “(2) *ADDITIONAL ENFORCEMENT OPTIONS.*—If a
13 State educational agency determines that a local edu-
14 cational agency is not meeting the requirements of
15 this part, including the benchmarks in the State’s
16 compliance plan, the State educational agency shall
17 prohibit the local educational agency from treating
18 funds received under this part as local funds under
19 section 613(a)(2)(C) for any fiscal year.

20 **“SEC. 617. ADMINISTRATION.**

21 “(a) *RESPONSIBILITIES OF SECRETARY.*—The Sec-
22 retary shall—

23 “(1) cooperate with, and (directly or by grant or
24 contract) furnish technical assistance necessary to, a
25 State in matters relating to—

1 “(A) *the education of children with disabili-*
2 *ties; and*

3 “(B) *carrying out this part; and*

4 “(2) *provide short-term training programs and*
5 *institutes.*

6 “(b) *CONFIDENTIALITY.—The Secretary shall take ap-*
7 *propriate action, in accordance with section 444 of the Gen-*
8 *eral Education Provisions Act (20 U.S.C. 1232g), to assure*
9 *the protection of the confidentiality of any personally iden-*
10 *tifiable data, information, and records collected or main-*
11 *tained by the Secretary and by State and local educational*
12 *agencies pursuant to this part.*

13 “(c) *PERSONNEL.—The Secretary is authorized to hire*
14 *qualified personnel necessary to carry out the Secretary’s*
15 *duties under subsection (a) and under sections 618, 661,*
16 *and 664, without regard to the provisions of title 5, United*
17 *States Code, relating to appointments in the competitive*
18 *service and without regard to chapter 51 and subchapter*
19 *III of chapter 53 of such title relating to classification and*
20 *general schedule pay rates, except that not more than 20*
21 *such personnel shall be employed at any 1 time.*

22 “(d) *MODEL FORMS.—Not later than the date that the*
23 *Secretary publishes final regulations under this Act, to im-*
24 *plement amendments made by the Individuals with Disabil-*
25 *ities Education Improvement Act of 2003, the Secretary*

1 *shall publish and disseminate widely to States, local edu-*
2 *cational agencies, and parent and community training and*
3 *information centers—*

4 “(1) *a model IEP form;*

5 “(2) *a model individualized family service plan*
6 *(IFSP) form;*

7 “(3) *a model form of the notice of procedural*
8 *safeguards described in section 615(d); and*

9 “(4) *a model form of the prior written notice de-*
10 *scribed in section 615 (b)(3) and (c)(1) that is con-*
11 *sistent with the requirements of this part and is suffi-*
12 *cient to meet such requirements.*

13 **“SEC. 618. PROGRAM INFORMATION.**

14 “(a) *IN GENERAL.—Each State that receives assist-*
15 *ance under this part, and the Secretary of the Interior, shall*
16 *provide data each year to the Secretary of Education and*
17 *the public on—*

18 “(1)(A) *the number and percentage of children*
19 *with disabilities, by race, ethnicity, limited English*
20 *proficiency status, gender, and disability category,*
21 *who are receiving a free appropriate public education;*

22 “(B) *the number and percentage of children with*
23 *disabilities, by race, gender, and ethnicity, who are*
24 *receiving early intervention services;*

1 “(C) the number and percentage of children with
2 disabilities, by race, ethnicity, limited English pro-
3 ficiency status, gender, and disability category, who
4 are participating in regular education;

5 “(D) the number and percentage of children with
6 disabilities, by race, ethnicity, limited English pro-
7 ficiency status, gender, and disability category, who
8 are in separate classes, separate schools or facilities,
9 or public or private residential facilities;

10 “(E) the number and percentage of children with
11 disabilities, by race, ethnicity, limited English pro-
12 ficiency status, gender, and disability category, who,
13 for each year of age from age 14 through 21, stopped
14 receiving special education and related services be-
15 cause of program completion (including graduation
16 with a regular secondary school diploma), or other
17 reasons, and the reasons why those children stopped
18 receiving special education and related services;

19 “(F) the number and percentage of children with
20 disabilities, by race, gender, and ethnicity, who, from
21 birth through age 2, stopped receiving early interven-
22 tion services because of program completion or for
23 other reasons;

24 “(G)(i) the number and percentage of children
25 with disabilities, by race, ethnicity, limited English

1 *proficiency status, gender, and disability category,*
2 *who are removed to an interim alternative edu-*
3 *catinal setting under section 615(k)(1);*

4 *“(ii) the acts or items precipitating those remov-*
5 *als; and*

6 *“(iii) the number of children with disabilities*
7 *who are subject to long-term suspensions or expul-*
8 *sions;*

9 *“(H) the incidence and duration of disciplinary*
10 *actions by race, ethnicity, limited English proficiency*
11 *status, gender, and disability category, of children*
12 *with disabilities, including suspensions of 1 day or*
13 *more;*

14 *“(I) the number and percentage of children with*
15 *disabilities who are removed to alternative edu-*
16 *catinal settings or expelled as compared to children*
17 *without disabilities who are removed to alternative*
18 *educational settings or expelled;*

19 *“(J) the number of due process complaints filed*
20 *under section 615 and the number of hearings con-*
21 *ducted;*

22 *“(K) the number of hearings requested under sec-*
23 *tion 615(k) and the number of changes in placements*
24 *ordered as a result of those hearings;*

1 “(L) the number of hearings requested under sec-
2 tion 615(k)(3)(B)(ii) and the number of changes in
3 placements ordered as a result of those hearings; and

4 “(M) the number of mediations held and the
5 number of settlement agreements reached through such
6 mediations;

7 “(2) the number and percentage of infants and
8 toddlers, by race, and ethnicity, who are at risk of
9 having substantial developmental delays (as defined
10 in section 632), and who are receiving early interven-
11 tion services under part C; and

12 “(3) any other information that may be required
13 by the Secretary.

14 “(b) *DATA REPORTING.*—The data described in sub-
15 section (a) shall be reported by each State at the school dis-
16 trict and State level in a manner that does not result in
17 the disclosure of data identifiable to individual children.

18 “(c) *TECHNICAL ASSISTANCE.*—The Secretary may
19 provide technical assistance to States to ensure compliance
20 with the data collection and reporting requirements under
21 this Act.

22 “(d) *DISPROPORTIONALITY.*—

23 “(1) *IN GENERAL.*—Each State that receives as-
24 sistance under this part, and the Secretary of the In-
25 terior, shall provide for the collection and examina-

1 *tion of data to determine if significant*
2 *disproportionality based on race is occurring in the*
3 *State with respect to—*

4 *“(A) the identification of children as chil-*
5 *dren with disabilities, including the identifica-*
6 *tion of children as children with disabilities in*
7 *accordance with a particular impairment de-*
8 *scribed in section 602(3);*

9 *“(B) the placement in particular edu-*
10 *cational settings of such children; and*

11 *“(C) the incidence, duration, and type of*
12 *disciplinary actions, including suspensions and*
13 *expulsions.*

14 *“(2) REVIEW AND REVISION OF POLICIES, PRAC-*
15 *TICES, AND PROCEDURES.—In the case of a deter-*
16 *mination of significant disproportionality with re-*
17 *spect to the identification of children as children with*
18 *disabilities, or the placement in particular edu-*
19 *cational settings of such children, in accordance with*
20 *paragraph (1), the State or the Secretary of the Inte-*
21 *rior, as the case may be, shall provide for the review*
22 *and, if appropriate, revision of the policies, proce-*
23 *dures, and practices used in such identification or*
24 *placement to ensure that such policies, procedures,*

1 *and practices comply with the requirements of this*
2 *Act.*

3 **“SEC. 619. PRESCHOOL GRANTS.**

4 “(a) *IN GENERAL.*—*The Secretary shall provide grants*
5 *under this section to assist States to provide special edu-*
6 *cation and related services, in accordance with this part—*

7 “(1) *to children with disabilities aged 3 through*
8 *5, inclusive; and*

9 “(2) *at the State’s discretion, to 2-year-old chil-*
10 *dren with disabilities who will turn 3 during the*
11 *school year.*

12 “(b) *ELIGIBILITY.*—*A State shall be eligible for a grant*
13 *under this section if such State—*

14 “(1) *is eligible under section 612 to receive a*
15 *grant under this part; and*

16 “(2) *makes a free appropriate public education*
17 *available to all children with disabilities, aged 3*
18 *through 5, residing in the State.*

19 “(c) *ALLOCATIONS TO STATES.*—

20 “(1) *IN GENERAL.*—*The Secretary shall allocate*
21 *the amount made available to carry out this section*
22 *for a fiscal year among the States in accordance with*
23 *paragraph (2) or (3), as the case may be.*

24 “(2) *INCREASE IN FUNDS.*—*If the amount avail-*
25 *able for allocations to States under paragraph (1) is*

1 *equal to or greater than the amount allocated to the*
2 *States under this section for the preceding fiscal year,*
3 *those allocations shall be calculated as follows:*

4 “(A) *ALLOCATION.*—

5 “(i) *IN GENERAL.*—*Except as provided*
6 *in subparagraph (B), the Secretary shall—*

7 “(I) *allocate to each State the*
8 *amount the State received under this*
9 *section for fiscal year 1997;*

10 “(II) *allocate 85 percent of any*
11 *remaining funds to States on the basis*
12 *of the States’ relative populations of*
13 *children aged 3 through 5; and*

14 “(III) *allocate 15 percent of those*
15 *remaining funds to States on the basis*
16 *of the States’ relative populations of all*
17 *children aged 3 through 5 who are liv-*
18 *ing in poverty.*

19 “(ii) *DATA.*—*For the purpose of mak-*
20 *ing grants under this paragraph, the Sec-*
21 *retary shall use the most recent population*
22 *data, including data on children living in*
23 *poverty, that are available and satisfactory*
24 *to the Secretary.*

1 “(B) *LIMITATIONS.*—*Notwithstanding sub-*
2 *paragraph (A), allocations under this paragraph*
3 *shall be subject to the following:*

4 “(i) *PRECEDING YEARS.*—*No State’s*
5 *allocation shall be less than its allocation*
6 *under this section for the preceding fiscal*
7 *year.*

8 “(ii) *MINIMUM.*—*No State’s allocation*
9 *shall be less than the greatest of—*

10 “(I) *the sum of—*

11 “(aa) *the amount the State*
12 *received under this section for fis-*
13 *cal year 1997; and*

14 “(bb) $\frac{1}{3}$ *of 1 percent of the*
15 *amount by which the amount ap-*
16 *propriated under subsection (j) for*
17 *the fiscal year exceeds the amount*
18 *appropriated for this section for*
19 *fiscal year 1997;*

20 “(II) *the sum of—*

21 “(aa) *the amount the State*
22 *received under this section for the*
23 *preceding fiscal year; and*

24 “(bb) *that amount multiplied*
25 *by the percentage by which the in-*

1 crease in the funds appropriated
2 under this section from the pre-
3 ceding fiscal year exceeds 1.5 per-
4 cent; or

5 “(III) the sum of—

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

9 “(bb) that amount multiplied
10 by 90 percent of the percentage
11 increase in the amount appro-
12 priated under this section from
13 the preceding fiscal year.

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

17 “(I) the amount the State received
18 under this section for the preceding fis-
19 cal year; and

20 “(II) that amount multiplied by
21 the sum of 1.5 percent and the percent-
22 age increase in the amount appro-
23 priated under this section from the
24 preceding fiscal year.

1 “(C) *RATABLE REDUCTIONS.*—If the
2 *amount available for allocations under this*
3 *paragraph is insufficient to pay those allocations*
4 *in full, those allocations shall be ratably reduced,*
5 *subject to subparagraph (B)(i).*

6 “(3) *DECREASE IN FUNDS.*—If the amount avail-
7 *able for allocations to States under paragraph (1) is*
8 *less than the amount allocated to the States under*
9 *this section for the preceding fiscal year, those alloca-*
10 *tions shall be calculated as follows:*

11 “(A) *ALLOCATIONS.*—If the amount avail-
12 *able for allocations is greater than the amount*
13 *allocated to the States for fiscal year 1997, each*
14 *State shall be allocated the sum of—*

15 “(i) *the amount the State received*
16 *under this section for fiscal year 1997; and*

17 “(ii) *an amount that bears the same*
18 *relation to any remaining funds as the in-*
19 *crease the State received under this section*
20 *for the preceding fiscal year over fiscal year*
21 *1997 bears to the total of all such increases*
22 *for all States.*

23 “(B) *If the amount available for allocations*
24 *under this paragraph is equal to or less than the*
25 *amount allocated under this section to the States*

1 *for fiscal year 1997, each State shall be allocated*
2 *the amount the State received for that year, rat-*
3 *ably reduced, if necessary.*

4 “(d) *RESERVATION FOR STATE ACTIVITIES.—*

5 “(1) *IN GENERAL.—Each State may reserve not*
6 *more than the amount described in paragraph (2) for*
7 *administration and other State-level activities in ac-*
8 *cordance with subsections (e) and (f).*

9 “(2) *AMOUNT DESCRIBED.—For each fiscal year,*
10 *the Secretary shall determine and report to the State*
11 *educational agency an amount that is 25 percent of*
12 *the amount the State received under this section for*
13 *fiscal year 1997, cumulatively adjusted by the Sec-*
14 *retary for each succeeding fiscal year by the lesser*
15 *of—*

16 “(A) *the percentage increase, if any, from*
17 *the preceding fiscal year in the State’s allocation*
18 *under this section; or*

19 “(B) *the percentage increase, if any, from*
20 *the preceding fiscal year in the Consumer Price*
21 *Index For All Urban Consumers published by the*
22 *Bureau of Labor Statistics of the Department of*
23 *Labor.*

24 “(e) *STATE ADMINISTRATION.—*

1 “(1) *IN GENERAL.*—For the purpose of admin-
2 istering this section (including the coordination of ac-
3 tivities under this part with, and providing technical
4 assistance to, other programs that provide services to
5 children with disabilities) a State may use not more
6 than 20 percent of the maximum amount the State
7 may reserve under subsection (d) for any fiscal year.

8 “(2) *ADMINISTRATION OF PART C.*—Funds de-
9 scribed in paragraph (1) may also be used for the ad-
10 ministration of part C of this Act, if the State edu-
11 cational agency is the lead agency for the State under
12 that part.

13 “(f) *OTHER STATE-LEVEL ACTIVITIES.*—Each State
14 shall use any funds the State reserves under subsection (d)
15 and does not use for administration under subsection (e)—

16 “(1) for support services (including establishing
17 and implementing the mediation process required by
18 section 615(e)), which may benefit children with dis-
19 abilities younger than 3 or older than 5 as long as
20 those services also benefit children with disabilities
21 aged 3 through 5;

22 “(2) for direct services for children eligible for
23 services under this section;

1 “(3) for activities at the State and local levels to
2 meet the performance goals established by the State
3 under section 612(a)(15);

4 “(4) to supplement other funds used to develop
5 and implement a statewide coordinated services sys-
6 tem designed to improve results for children and fam-
7 ilies, including children with disabilities and their
8 families, but not more than 1 percent of the amount
9 received by the State under this section for a fiscal
10 year; or

11 “(5) to provide early intervention services (which
12 shall include an educational component that promotes
13 school readiness and incorporates pre-literacy, lan-
14 guage, and numeracy skills) in accordance with part
15 C to children with disabilities who are eligible for
16 services under this section and who previously re-
17 ceived services under part C until such children enter,
18 or are eligible under State law to enter, kindergarten.

19 “(g) *SUBGRANTS TO LOCAL EDUCATIONAL AGEN-*
20 *CIES.—*

21 “(1) *SUBGRANTS REQUIRED.—*Each State that
22 receives a grant under this section for any fiscal year
23 shall distribute all of the grant funds that the State
24 does not reserve under subsection (d) to local edu-

1 *cational agencies in the State that have established*
2 *their eligibility under section 613, as follows:*

3 *“(A) BASE PAYMENTS.—The State shall*
4 *first award each local educational agency de-*
5 *scribed in paragraph (1) the amount that agency*
6 *would have received under this section for fiscal*
7 *year 1997 if the State had distributed 75 percent*
8 *of its grant for that year under section 619(c)(3),*
9 *as such section was then in effect.*

10 *“(B) ALLOCATION OF REMAINING FUNDS.—*
11 *After making allocations under subparagraph*
12 *(A), the State shall—*

13 *“(i) allocate 85 percent of any remain-*
14 *ing funds to those local educational agencies*
15 *on the basis of the relative numbers of chil-*
16 *dren enrolled in public and private elemen-*
17 *tary schools and secondary schools within*
18 *the local educational agency’s jurisdiction;*
19 *and*

20 *“(ii) allocate 15 percent of those re-*
21 *maining funds to those local educational*
22 *agencies in accordance with their relative*
23 *numbers of children living in poverty, as*
24 *determined by the State educational agency.*

1 “(2) *REALLOCATION OF FUNDS.*—If a State edu-
2 *cational agency determines that a local educational*
3 *agency is adequately providing a free appropriate*
4 *public education to all children with disabilities aged*
5 *3 through 5 residing in the area served by that agen-*
6 *cy with State and local funds, the State educational*
7 *agency may reallocate any portion of the funds under*
8 *this section that are not needed by that local edu-*
9 *cational agency to provide a free appropriate public*
10 *education to other local educational agencies in the*
11 *State that are not adequately providing special edu-*
12 *cation and related services to all children with dis-*
13 *abilities aged 3 through 5 residing in the areas the*
14 *other local educational agencies serve.*

15 “(h) *PART C INAPPLICABLE.*—Part C of this Act does
16 *not apply to any child with a disability receiving a free*
17 *appropriate public education, in accordance with this part,*
18 *with funds received under this section.*

19 “(i) *DEFINITION.*—For the purpose of this section, the
20 *term ‘State’ means each of the 50 States, the District of*
21 *Columbia, and the Commonwealth of Puerto Rico.*

22 “(j) *AUTHORIZATION OF APPROPRIATIONS.*—For the
23 *purpose of carrying out this section, there are authorized*
24 *to be appropriated such sums as may be necessary.*

1 **“PART C—INFANTS AND TODDLERS WITH**
2 **DISABILITIES**

3 **“SEC. 631. FINDINGS AND POLICY.**

4 “(a) *FINDINGS.—Congress finds that there is an ur-*
5 *gent and substantial need—*

6 “(1) *to enhance the development of infants and*
7 *toddlers with disabilities, to minimize their potential*
8 *for developmental delay, and to recognize the signifi-*
9 *cant brain development which occurs during a child’s*
10 *first 3 years of life;*

11 “(2) *to reduce the educational costs to our soci-*
12 *ety, including our Nation’s schools, by minimizing*
13 *the need for special education and related services*
14 *after infants and toddlers with disabilities reach*
15 *school age;*

16 “(3) *to maximize the potential for individuals*
17 *with disabilities to live independently in society;*

18 “(4) *to enhance the capacity of families to meet*
19 *the special needs of their infants and toddlers with*
20 *disabilities; and*

21 “(5) *to enhance the capacity of State and local*
22 *agencies and service providers to identify, evaluate,*
23 *and meet the needs of all children, particularly mi-*
24 *nority, low-income, inner city, and rural children.*

1 “(b) *POLICY.*—*It is the policy of the United States to*
2 *provide financial assistance to States—*

3 “(1) *to develop and implement a statewide, com-*
4 *prehensive, coordinated, multidisciplinary, inter-*
5 *agency system that provides early intervention serv-*
6 *ices for infants and toddlers with disabilities and*
7 *their families;*

8 “(2) *to facilitate the coordination of payment for*
9 *early intervention services from Federal, State, local,*
10 *and private sources (including public and private in-*
11 *surance coverage);*

12 “(3) *to enhance State capacity to provide high*
13 *quality early intervention services and expand and*
14 *improve existing early intervention services being*
15 *provided to infants and toddlers with disabilities and*
16 *their families; and*

17 “(4) *to encourage States to expand opportunities*
18 *for children under 3 years of age who would be at risk*
19 *of having substantial developmental delay if they did*
20 *not receive early intervention services.*

21 **“SEC. 632. DEFINITIONS.**

22 *“As used in this part:*

23 “(1) *AT-RISK INFANT OR TODDLER.*—*The term*
24 *‘at-risk infant or toddler’ means an individual under*
25 *3 years of age who would be at risk of experiencing*

1 *a substantial developmental delay if early interven-*
 2 *tion services were not provided to the individual.*

3 “(2) *COUNCIL.*—*The term ‘council’ means a*
 4 *State interagency coordinating council established*
 5 *under section 641.*

6 “(3) *DEVELOPMENTAL DELAY.*—*The term ‘devel-*
 7 *opmental delay’, when used with respect to an indi-*
 8 *vidual residing in a State, has the meaning given*
 9 *such term by the State under section 635(a)(1).*

10 “(4) *EARLY INTERVENTION SERVICES.*—*The term*
 11 *‘early intervention services’ means developmental*
 12 *services that—*

13 “(A) *are provided under public supervision;*

14 “(B) *are provided at no cost except where*
 15 *Federal or State law provides for a system of*
 16 *payments by families, including a schedule of*
 17 *sliding fees;*

18 “(C) *are designed to meet the developmental*
 19 *needs of an infant or toddler with a disability*
 20 *in any 1 or more of the following areas:*

21 “(i) *physical development;*

22 “(ii) *cognitive development;*

23 “(iii) *communication development;*

24 “(iv) *social or emotional development;*

25 *or*

1 “(v) *adaptive development;*

2 “(D) *meet the standards of the State in*
3 *which the services are provided, including the re-*
4 *quirements of this part;*

5 “(E) *include—*

6 “(i) *family training, counseling, and*
7 *home visits;*

8 “(ii) *special instruction;*

9 “(iii) *speech-language pathology and*
10 *audiology services, and sign language and*
11 *cued language services;*

12 “(iv) *occupational therapy;*

13 “(v) *physical therapy;*

14 “(vi) *psychological services;*

15 “(vii) *service coordination services;*

16 “(viii) *medical services only for diag-*
17 *nostic or evaluation purposes;*

18 “(ix) *early identification, screening,*
19 *and assessment services;*

20 “(x) *health services necessary to enable*
21 *the infant or toddler to benefit from the*
22 *other early intervention services;*

23 “(xi) *social work services;*

24 “(xii) *vision services;*

1 “(xiii) assistive technology devices and
2 assistive technology services; and

3 “(xiv) transportation and related costs
4 that are necessary to enable an infant or
5 toddler and the infant’s or toddler’s family
6 to receive another service described in this
7 paragraph;

8 “(F) are provided by qualified personnel,
9 including—

10 “(i) special educators;

11 “(ii) speech-language pathologists and
12 audiologists;

13 “(iii) teachers of the deaf;

14 “(iv) occupational therapists;

15 “(v) physical therapists;

16 “(vi) psychologists;

17 “(vii) social workers;

18 “(viii) nurses;

19 “(ix) nutritionists;

20 “(x) family therapists;

21 “(xi) orientation and mobility special-
22 ists;

23 “(xii) vision specialists, including
24 ophthamologists and optometrists; and

1 “(xiii) pediatricians and other physi-
2 cians;

3 “(G) to the maximum extent appropriate,
4 are provided in natural environments, including
5 the home, and community settings in which chil-
6 dren without disabilities participate; and

7 “(H) are provided in conformity with an
8 individualized family service plan adopted in
9 accordance with section 636.

10 “(5) INFANT OR TODDLER WITH A DISABILITY.—

11 The term ‘infant or toddler with a disability’—

12 “(A) means an individual under 3 years of
13 age who needs early intervention services because
14 the individual—

15 “(i) is experiencing developmental
16 delays, as measured by appropriate diag-
17 nostic instruments and procedures in 1 or
18 more of the areas of cognitive development,
19 physical development, communication devel-
20 opment, social or emotional development,
21 and adaptive development; or

22 “(ii) has a diagnosed physical or men-
23 tal condition which has a high probability
24 of resulting in developmental delay; and

1 “(B) may also include, at a State’s discre-
2 tion—

3 “(i) at-risk infants and toddlers; and

4 “(ii) children with disabilities who are
5 eligible for services under section 619 and
6 who previously received services under this
7 part until such children enter, or are eligi-
8 ble under State law to enter, kindergarten.

9 **“SEC. 633. GENERAL AUTHORITY.**

10 “The Secretary shall, in accordance with this part,
11 make grants to States (from their allotments under section
12 643) to assist each State to maintain and implement a
13 statewide, comprehensive, coordinated, multidisciplinary,
14 interagency system to provide early intervention services for
15 infants and toddlers with disabilities and their families.

16 **“SEC. 634. ELIGIBILITY.**

17 “In order to be eligible for a grant under section 633,
18 a State shall demonstrate to the Secretary that the 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 com-
6 ponents:

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 areas
15 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 en-
21 sures that appropriate early intervention services are
22 available to all infants and toddlers with disabilities
23 and their families, including Indian infants and tod-
24 dlers and their families residing on a reservation geo-
25 graphically located in the State.

1 “(3) *A timely, comprehensive, multidisciplinary*
2 *evaluation of the functioning of each infant or toddler*
3 *with a disability in the State, and a family-directed*
4 *identification of the needs of each family of such an*
5 *infant or toddler, to appropriately assist in the devel-*
6 *opment 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 coordi-*
10 *nation services in accordance with such service plan.*

11 “(5) *A comprehensive child find system, con-*
12 *sistent with part B, including a system for making*
13 *referrals to service providers that includes timelines*
14 *and provides for participation by primary referral*
15 *sources.*

16 “(6) *A public awareness program focusing on*
17 *early identification of infants and toddlers with dis-*
18 *abilities, including the preparation and dissemina-*
19 *tion by the lead agency designated or established*
20 *under paragraph (10) to all primary referral sources,*
21 *especially hospitals and physicians, of information*
22 *for parents on the availability of early intervention*
23 *services, and procedures for determining the extent to*
24 *which such sources disseminate such information to*
25 *parents of infants and toddlers.*

1 “(7) *A central directory that includes informa-*
2 *tion on early intervention services, resources, and ex-*
3 *ports available in the State and research and dem-*
4 *onstration projects being conducted in the State.*

5 “(8) *A comprehensive system of personnel devel-*
6 *opment, including the training of paraprofessionals*
7 *and the training of primary referral sources with re-*
8 *spect to the basic components of early intervention*
9 *services available in the State, which comprehensive*
10 *system may include—*

11 “(A) *implementing innovative strategies*
12 *and activities for the recruitment and retention*
13 *of early education service providers;*

14 “(B) *promoting the preparation of early*
15 *intervention providers who are fully and appro-*
16 *priately qualified to provide early intervention*
17 *services under this part;*

18 “(C) *training personnel to work in rural*
19 *and inner-city areas; and*

20 “(D) *training personnel to coordinate tran-*
21 *sition services for infants and toddlers served*
22 *under this part from an early intervention pro-*
23 *gram under this part to preschool or other ap-*
24 *propriate services.*

1 “(9) *Policies and procedures relating to the es-*
2 *tablishment and maintenance of standards to ensure*
3 *that personnel necessary to carry out this part are*
4 *appropriately and adequately prepared and trained,*
5 *including the establishment and maintenance of*
6 *standards which are consistent with any State-ap-*
7 *proved or recognized certification, licensing, registra-*
8 *tion, or other comparable requirements which apply*
9 *to the area in which such personnel are providing*
10 *early intervention services, except that nothing in this*
11 *part (including this paragraph) shall be construed to*
12 *prohibit the use of paraprofessionals and assistants*
13 *who are appropriately trained in accordance with*
14 *State law, regulation, or written policy, to assist in*
15 *the provision of early intervention services under this*
16 *part to infants and toddlers with disabilities.*

17 “(10) *A single line of responsibility in a lead*
18 *agency designated or established by the Governor for*
19 *carrying out—*

20 “(A) *the general administration and super-*
21 *vision of programs and activities receiving as-*
22 *sistance under section 633, and the monitoring*
23 *of programs and activities used by the State to*
24 *carry out this part, whether or not such pro-*
25 *grams or activities are receiving assistance made*

1 *available under section 633, to ensure that the*
2 *State complies with this part;*

3 *“(B) the identification and coordination of*
4 *all available resources within the State from*
5 *Federal, State, local, and private sources;*

6 *“(C) the assignment of financial responsi-*
7 *bility in accordance with section 637(a)(2) to the*
8 *appropriate agencies;*

9 *“(D) the development of procedures to en-*
10 *sure that services are provided to infants and*
11 *toddlers with disabilities and their families*
12 *under this part in a timely manner pending the*
13 *resolution of any disputes among public agencies*
14 *or service providers;*

15 *“(E) the resolution of intra- and inter-*
16 *agency disputes; and*

17 *“(F) the entry into formal interagency*
18 *agreements that define the financial responsi-*
19 *bility of each agency for paying for early inter-*
20 *vention services (consistent with State law) and*
21 *procedures for resolving disputes and that in-*
22 *clude all additional components necessary to en-*
23 *sure meaningful cooperation and coordination.*

24 *“(11) A policy pertaining to the contracting or*
25 *making of other arrangements with service providers*

1 to provide early intervention services in the State,
2 consistent with the provisions of this part, including
3 the contents of the application used and the condi-
4 tions of the contract or other arrangements.

5 “(12) A procedure for securing timely reimburse-
6 ments of funds used under this part in accordance
7 with section 640(a).

8 “(13) Procedural safeguards with respect to pro-
9 grams under this part, as required by section 639.

10 “(14) A system for compiling data requested by
11 the Secretary under section 618 that relates to this
12 part.

13 “(15) A State interagency coordinating council
14 that meets the requirements of section 641.

15 “(16) Policies and procedures to ensure that,
16 consistent with section 636(d)(5) to the maximum ex-
17 tent appropriate, early intervention services are pro-
18 vided in natural environments unless a specific out-
19 come cannot be met satisfactorily for the infant or
20 toddler in a natural environment.

21 “(b) *FLEXIBILITY TO SERVE CHILDREN 3 YEARS OF*
22 *AGE TO UNDER 6 YEARS OF AGE.*—

23 “(1) *IN GENERAL.*—A statewide system described
24 in section 633 may include a State policy, developed
25 and implemented jointly by the lead agency and the

1 *State educational agency, under which parents of*
2 *children with disabilities who are eligible for services*
3 *under section 619 and previously received services*
4 *under this part, may choose the continuation of early*
5 *intervention services (which shall include an edu-*
6 *cational component that promotes school readiness*
7 *and incorporates preliteracy, language, and*
8 *numeracy skills) for such children under this part*
9 *until such children enter, or are eligible under State*
10 *law to enter, kindergarten.*

11 “(2) *REQUIREMENTS.—If a statewide system in-*
12 *cludes a State policy described in paragraph (1), the*
13 *statewide system shall ensure—*

14 “(A) *that parents of infants or toddlers with*
15 *disabilities (as defined in section 632(5)(A)) pro-*
16 *vide informed written consent to the State, before*
17 *such infants and toddlers reach 3 years of age,*
18 *as to whether such parents intend to choose the*
19 *continuation of early intervention services pur-*
20 *suant to this subsection for such infants or tod-*
21 *dlers;*

22 “(B) *that the State policy will not affect the*
23 *right of any child served pursuant to this sub-*
24 *section to instead receive a free appropriate pub-*
25 *lic education under part B;*

1 “(C) that parents of children served pursu-
2 ant to this subsection are provided with annual
3 notice—

4 “(i) of such parents’ right to elect serv-
5 ices pursuant to this subsection or under
6 part B; and

7 “(ii) fully explaining the differences
8 between receiving services pursuant to this
9 subsection and receiving services under part
10 B, including—

11 “(I) the types of services available
12 under both provisions;

13 “(II) applicable procedural safe-
14 guards under both provisions, includ-
15 ing due-process protections and medi-
16 ation or other dispute resolution op-
17 tions; and

18 “(III) the possible costs, if any
19 (including any fees to be charged to
20 families as described in section
21 632(4)(B)) to parents under both pro-
22 visions;

23 “(D) that the conference under section
24 637(a)(9)(A)(ii)(II), the review under section
25 637(a)(9)(B), and the establishment of a transi-

1 *tion plan under section 637(a)(9)(C) occur not*
2 *less than 90 days (and at the discretion of the*
3 *parties to the conference, not more than 9*
4 *months) before each of the following:*

5 *“(i) the time the child will first be eli-*
6 *gible for services under part B, including*
7 *under section 619; and*

8 *“(ii) if the child is receiving services in*
9 *accordance with this subsection, the time the*
10 *child will no longer receive those services;*

11 *“(E) the continuance of all early interven-*
12 *tion services outlined in the child’s individual-*
13 *ized family service plan under section 636 while*
14 *any eligibility determination is being made for*
15 *services under this subsection;*

16 *“(F) that services provided pursuant to this*
17 *subsection include an educational component*
18 *that promotes school readiness and incorporates*
19 *preliteracy, language, and numeracy skills and*
20 *are provided in accordance with an individual-*
21 *ized family service plan under section 636; and*

22 *“(G) the referral for evaluation for early*
23 *intervention services of a child below the age of*
24 *3 who experiences a substantiated case of expo-*
25 *sure to violence or trauma.*

1 “(3) *REPORTING REQUIREMENT.*—*If a statewide*
2 *system includes a State policy described in paragraph*
3 *(1), the State shall submit to the Secretary, in the*
4 *State’s report under section 637(b)(4)(A), a report*
5 *on—*

6 “(A) *the percentage of children with disabil-*
7 *ities who are eligible for services under section*
8 *619 but whose parents choose for such children to*
9 *continue to receive early intervention services*
10 *under this part; and*

11 “(B) *the number of children who are eligible*
12 *for services under section 619 who instead con-*
13 *tinue to receive early intervention services under*
14 *this part.*

15 “(4) *RULE OF CONSTRUCTION.*—*Nothing in this*
16 *subsection shall be construed to require a provider of*
17 *services under this part to provide a child served*
18 *under this part with a free appropriate public edu-*
19 *cation.*

20 “(5) *AVAILABLE FUNDS.*—*If a statewide system*
21 *includes a State policy described in paragraph (1),*
22 *the policy shall describe the funds (including an iden-*
23 *tification as Federal, State, or local funds) that will*
24 *be used to ensure that the option described in para-*
25 *graph (1) is available to eligible children and families*

1 *who provide the consent described in paragraph*
 2 *(2)(A), including fees to be charged to families as de-*
 3 *scribed in section 632(4)(B).*

4 **“SEC. 636. INDIVIDUALIZED FAMILY SERVICE PLAN.**

5 *“(a) ASSESSMENT AND PROGRAM DEVELOPMENT.—A*
 6 *statewide system described in section 633 shall provide, at*
 7 *a minimum, for each infant or toddler with a disability,*
 8 *and the infant’s or toddler’s family, to receive—*

9 *“(1) a multidisciplinary assessment of the*
 10 *unique strengths and needs of the infant or toddler*
 11 *and the identification of services appropriate to meet*
 12 *such needs;*

13 *“(2) a family-directed assessment of the re-*
 14 *sources, priorities, and concerns of the family and the*
 15 *identification of the supports and services necessary*
 16 *to enhance the family’s capacity to meet the develop-*
 17 *mental needs of the infant or toddler; and*

18 *“(3) a written individualized family service plan*
 19 *developed by a multidisciplinary team, including the*
 20 *parents, as required by subsection (e), including a de-*
 21 *scription of the appropriate transition services for the*
 22 *child.*

23 *“(b) PERIODIC REVIEW.—The individualized family*
 24 *service plan shall be evaluated once a year and the family*
 25 *shall be provided a review of the plan at 6-month intervals*

1 *(or more often where appropriate based on infant or toddler*
2 *and family needs).*

3 “(c) *PROMPTNESS AFTER ASSESSMENT.*—*The individ-*
4 *ualized family service plan shall be developed within a rea-*
5 *sonable time after the assessment required by subsection*
6 *(a)(1) is completed. With the parents’ consent, early inter-*
7 *vention services may commence prior to the completion of*
8 *the assessment.*

9 “(d) *CONTENT OF PLAN.*—*The individualized family*
10 *service plan shall be in writing and contain—*

11 “(1) *a statement of the infant’s or toddler’s*
12 *present levels of physical development, cognitive devel-*
13 *opment, communication development, social or emo-*
14 *tional development, and adaptive development, based*
15 *on objective criteria;*

16 “(2) *a statement of the family’s resources, prior-*
17 *ities, and concerns relating to enhancing the develop-*
18 *ment of the family’s infant or toddler with a dis-*
19 *ability;*

20 “(3) *a statement of the measurable outcomes ex-*
21 *pected to be achieved for the infant or toddler and the*
22 *family, including, as appropriate, preliteracy and*
23 *language skills, and the criteria, procedures, and*
24 *timelines used to determine the degree to which*
25 *progress toward achieving the outcomes is being made*

1 *and whether modifications or revisions of the out-*
2 *comes or services are necessary;*

3 “(4) *a statement of specific early intervention*
4 *services necessary to meet the unique needs of the in-*
5 *fant or toddler and the family, including the fre-*
6 *quency, intensity, and method of delivering services;*

7 “(5) *a statement of the natural environments in*
8 *which early intervention services will appropriately*
9 *be provided, including a justification of the extent, if*
10 *any, to which the services will not be provided in a*
11 *natural environment;*

12 “(6) *the projected dates for initiation of services*
13 *and the anticipated length, duration, and frequency*
14 *of the services;*

15 “(7) *the identification of the service coordinator*
16 *from the profession most immediately relevant to the*
17 *infant’s or toddler’s or family’s needs (or who is oth-*
18 *erwise qualified to carry out all applicable respon-*
19 *sibilities under this part) who will be responsible for*
20 *the implementation of the plan and coordination with*
21 *other agencies and persons, including transition serv-*
22 *ices; and*

23 “(8) *the steps to be taken to support the transi-*
24 *tion of the toddler with a disability to preschool or*
25 *other appropriate services.*

1 “(e) *PARENTAL CONSENT.*—*The contents of the indi-*
2 *vidualized family service plan shall be fully explained to*
3 *the parents and informed written consent from the parents*
4 *shall be obtained prior to the provision of early intervention*
5 *services described in such plan. If the parents do not pro-*
6 *vide consent with respect to a particular early intervention*
7 *service, then only the early intervention services to which*
8 *consent is obtained shall be provided.*

9 “**SEC. 637. STATE APPLICATION AND ASSURANCES.**

10 “(a) *APPLICATION.*—*A State desiring to receive a*
11 *grant under section 633 shall submit an application to the*
12 *Secretary at such time and in such manner as the Secretary*
13 *may reasonably require. The application shall contain—*

14 “(1) *a designation of the lead agency in the*
15 *State that will be responsible for the administration*
16 *of funds provided under section 633;*

17 “(2) *a certification to the Secretary that the ar-*
18 *rangements to establish financial responsibility for*
19 *services provided under this part pursuant to section*
20 *640(b) are current as of the date of submission of the*
21 *certification;*

22 “(3) *information demonstrating eligibility of the*
23 *State under section 634, including—*

24 “(A) *information demonstrating to the Sec-*
25 *retary’s satisfaction that the State has in effect*

1 *the statewide system required by section 633;*
2 *and*

3 “(B) *a description of services to be provided*
4 *to infants and toddlers with disabilities and*
5 *their families through the system;*

6 “(4) *if the State provides services to at-risk in-*
7 *fants and toddlers through the system, a description*
8 *of such services;*

9 “(5) *a description of the uses for which funds*
10 *will be expended in accordance with this part;*

11 “(6) *a description of the State policies and pro-*
12 *cedures that require the referral for evaluation for*
13 *early intervention services of a child under the age of*
14 *3 who—*

15 “(A) *is involved in a substantiated case of*
16 *child abuse or neglect; or*

17 “(B) *is identified as affected by illegal sub-*
18 *stance abuse, or withdrawal symptoms resulting*
19 *from prenatal drug exposure;*

20 “(7) *a description of the procedure used to en-*
21 *sure that resources are made available under this part*
22 *for all geographic areas within the State;*

23 “(8) *a description of State policies and proce-*
24 *dures that ensure that, prior to the adoption by the*
25 *State of any other policy or procedure necessary to*

1 *meet the requirements of this part, there are public*
2 *hearings, adequate notice of the hearings, and an op-*
3 *portunity for comment available to the general public,*
4 *including individuals with disabilities and parents of*
5 *infants and toddlers with disabilities;*

6 *“(9) a description of the policies and procedures*
7 *to be used—*

8 *“(A) to ensure a smooth transition for tod-*
9 *dlers receiving early intervention services under*
10 *this part (and children receiving those services*
11 *under section 635(b)) to preschool, other appro-*
12 *priate services, or exiting the program, including*
13 *a description of how—*

14 *“(i) the families of such toddlers and*
15 *children will be included in the transition*
16 *plans required by subparagraph (C); and*

17 *“(ii) the lead agency designated or es-*
18 *tablished under section 635(a)(10) will—*

19 *“(I) notify the local educational*
20 *agency for the area in which such a*
21 *child resides that the child will shortly*
22 *reach the age of eligibility for preschool*
23 *services under part B, as determined*
24 *in accordance with State law;*

1 “(II) in the case of a child who
2 may be eligible for such preschool serv-
3 ices, with the approval of the family of
4 the child, convene a conference among
5 the lead agency, the family, and the
6 local educational agency at least 90
7 days (and at the discretion of all such
8 parties, not more than 9 months) be-
9 fore the child is eligible for the pre-
10 school services, to discuss any such
11 services that the child may receive; and

12 “(III) in the case of a child who
13 may not be eligible for such preschool
14 services, with the approval of the fam-
15 ily, make reasonable efforts to convene
16 a conference among the lead agency,
17 the family, and providers of other ap-
18 propriate services for children who are
19 not eligible for preschool services under
20 part B, to discuss the appropriate serv-
21 ices that the child may receive;

22 “(B) to review the child’s program options
23 for the period from the child’s third birthday
24 through the remainder of the school year; and

1 “(C) to establish a transition plan, includ-
2 ing, as appropriate, steps to exit from the pro-
3 gram; and

4 “(10) such other information and assurances as
5 the Secretary may reasonably require.

6 “(b) ASSURANCES.—The application described in sub-
7 section (a)—

8 “(1) shall provide satisfactory assurance that
9 Federal funds made available under section 643 to the
10 State will be expended in accordance with this part;

11 “(2) shall contain an assurance that the State
12 will comply with the requirements of section 640;

13 “(3) shall provide satisfactory assurance that the
14 control of funds provided under section 643, and title
15 to property derived from those funds, will be in a
16 public agency for the uses and purposes provided in
17 this part and that a public agency will administer
18 such funds and property;

19 “(4) shall provide for—

20 “(A) making such reports in such form and
21 containing such information as the Secretary
22 may require to carry out the Secretary’s func-
23 tions under this part; and

24 “(B) keeping such reports and affording
25 such access to the reports as the Secretary may

1 *find necessary to ensure the correctness and*
2 *verification of the reports and proper disburse-*
3 *ment of Federal funds under this part;*

4 “(5) *provide satisfactory assurance that Federal*
5 *funds made available under section 643 to the*
6 *State—*

7 “(A) *will not be commingled with State*
8 *funds; and*

9 “(B) *will be used so as to supplement the*
10 *level of State and local funds expended for in-*
11 *fants and toddlers with disabilities and their*
12 *families and in no case to supplant those State*
13 *and local funds;*

14 “(6) *shall provide satisfactory assurance that*
15 *such fiscal control and fund accounting procedures*
16 *will be adopted as may be necessary to ensure proper*
17 *disbursement of, and accounting for, Federal funds*
18 *paid under section 643 to the State;*

19 “(7) *shall provide satisfactory assurance that*
20 *policies and procedures have been adopted to ensure*
21 *meaningful involvement of underserved groups, in-*
22 *cluding minority, low-income, and rural families, in*
23 *the planning and implementation of all the require-*
24 *ments of this part; and*

1 “(8) shall contain such other information and
2 assurances as the Secretary may reasonably require
3 by regulation.

4 “(c) *STANDARD FOR DISAPPROVAL OF APPLICATION.*—
5 *The Secretary may not disapprove such an application un-*
6 *less the Secretary determines, after notice and opportunity*
7 *for a hearing, that the application fails to comply with the*
8 *requirements of this section.*

9 “(d) *SUBSEQUENT STATE APPLICATION.*—*If a State*
10 *has on file with the Secretary a policy, procedure, or assur-*
11 *ance that demonstrates that the State meets a requirement*
12 *of this section, including any policy or procedure filed*
13 *under part C, as in effect before the date of enactment of*
14 *the Individuals with Disabilities Education Improvement*
15 *Act of 2003, the Secretary shall consider the State to have*
16 *met the requirement for purposes of receiving a grant under*
17 *this part.*

18 “(e) *MODIFICATION OF APPLICATION.*—*An application*
19 *submitted by a State in accordance with this section shall*
20 *remain in effect until the State submits to the Secretary*
21 *such modifications as the State determines necessary. This*
22 *section shall apply to a modification of an application to*
23 *the same extent and in the same manner as this section*
24 *applies to the original application.*

1 “(f) *MODIFICATIONS REQUIRED BY THE SEC-*
 2 *RETARY.—The Secretary may require a State to modify its*
 3 *application under this section, but only to the extent nec-*
 4 *essary to ensure the State’s compliance with this part, if—*

5 “(1) *an amendment is made to this Act, or a*
 6 *Federal regulation issued under this Act;*

7 “(2) *a new interpretation of this Act is made by*
 8 *a Federal court or the State’s highest court; or*

9 “(3) *an official finding of noncompliance with*
 10 *Federal law or regulations is made with respect to the*
 11 *State.*

12 **“SEC. 638. USES OF FUNDS.**

13 *“In addition to using funds provided under section*
 14 *633 to maintain and implement the statewide system re-*
 15 *quired by such section, a State may use such funds—*

16 “(1) *for direct early intervention services for in-*
 17 *fants and toddlers with disabilities, and their fami-*
 18 *lies, under this part that are not otherwise funded*
 19 *through other public or private sources;*

20 “(2) *to expand and improve on services for in-*
 21 *fants and toddlers and their families under this part*
 22 *that are otherwise available;*

23 “(3) *to provide a free appropriate public edu-*
 24 *cation, in accordance with part B, to children with*

1 *disabilities from their third birthday to the beginning*
2 *of the following school year;*

3 *“(4) with the written consent of the parents, to*
4 *continue to provide early intervention services under*
5 *this part to children with disabilities from their 3rd*
6 *birthday to the beginning of the following school year,*
7 *in lieu of a free appropriate public education pro-*
8 *vided in accordance with part B; and*

9 *“(5) in any State that does not provide services*
10 *for at-risk infants and toddlers under section*
11 *637(a)(4), to strengthen the statewide system by initi-*
12 *ating, expanding, or improving collaborative efforts*
13 *related to at-risk infants and toddlers, including es-*
14 *tablishing linkages with appropriate public or private*
15 *community-based organizations, services, and per-*
16 *sonnel for the purposes of—*

17 *“(A) identifying and evaluating at-risk in-*
18 *fants and toddlers;*

19 *“(B) making referrals of the infants and*
20 *toddlers identified and evaluated under subpara-*
21 *graph (A); and*

22 *“(C) conducting periodic follow-up on each*
23 *such referral to determine if the status of the in-*
24 *fant or toddler involved has changed with respect*

1 *to the eligibility of the infant or toddler for serv-*
2 *ices under this part.*

3 **“SEC. 639. PROCEDURAL SAFEGUARDS.**

4 “(a) *MINIMUM PROCEDURES.*—*The procedural safe-*
5 *guards required to be included in a statewide system under*
6 *section 635(a)(13) shall provide, at a minimum, the fol-*
7 *lowing:*

8 “(1) *The timely administrative resolution of*
9 *complaints by parents. Any party aggrieved by the*
10 *findings and decision regarding an administrative*
11 *complaint shall have the right to bring a civil action*
12 *with respect to the complaint in any State court of*
13 *competent jurisdiction or in a district court of the*
14 *United States without regard to the amount in con-*
15 *troversy. In any action brought under this paragraph,*
16 *the court shall receive the records of the administra-*
17 *tive proceedings, shall hear additional evidence at the*
18 *request of a party, and, basing its decision on the*
19 *preponderance of the evidence, shall grant such relief*
20 *as the court determines is appropriate.*

21 “(2) *The right to confidentiality of personally*
22 *identifiable information, including the right of par-*
23 *ents to written notice of and written consent to the*
24 *exchange of such information among agencies con-*
25 *sistent with Federal and State law.*

1 “(3) *The right of the parents to determine wheth-*
2 *er they, their infant or toddler, or other family mem-*
3 *bers will accept or decline any early intervention*
4 *service under this part in accordance with State law*
5 *without jeopardizing other early intervention services*
6 *under this part.*

7 “(4) *The opportunity for parents to examine*
8 *records relating to assessment, screening, eligibility*
9 *determinations, and the development and implemen-*
10 *tation of the individualized family service plan.*

11 “(5) *Procedures to protect the rights of the infant*
12 *or toddler whenever the parents of the infant or tod-*
13 *dler are not known or cannot be found or the infant*
14 *or toddler is a ward of the State, including the as-*
15 *signment of an individual (who shall not be an em-*
16 *ployee of the State lead agency, or other State agency,*
17 *and who shall not be any person, or any employee of*
18 *a person, providing early intervention services to the*
19 *infant or toddler or any family member of the infant*
20 *or toddler) to act as a surrogate for the parents.*

21 “(6) *Written prior notice to the parents of the*
22 *infant or toddler with a disability whenever the State*
23 *agency or service provider proposes to initiate or*
24 *change, or refuses to initiate or change, the identifica-*
25 *tion, evaluation, or placement of the infant or toddler*

1 *with a disability, or the provision of appropriate*
2 *early intervention services to the infant or 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 clearly*
6 *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 ac-*
9 *cordance with section 615, except that—*

10 *“(A) any reference in the section to a State*
11 *educational agency shall be considered to be a*
12 *reference to a State’s lead agency established or*
13 *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 State’s*
17 *lead agency under this part, as the case may be;*
18 *and*

19 *“(C) any reference in the section to the pro-*
20 *vision 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 continue*
 6 *to receive the appropriate early intervention services cur-*
 7 *rently 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 sec-*
 11 *tion 643 may not be used to satisfy a financial commitment*
 12 *for services that would have been paid for from another pub-*
 13 *lic or private source, including any medical program ad-*
 14 *ministered by the Secretary of Defense, but for the enact-*
 15 *ment of this part, except that whenever considered necessary*
 16 *to prevent a delay in the receipt of appropriate early inter-*
 17 *vention services by an infant, toddler, or family in a timely*
 18 *fashion, funds provided under section 643 may be used to*
 19 *pay the provider of services pending reimbursement from*
 20 *the agency that has ultimate responsibility for the payment.*

21 “(b) *OBLIGATIONS RELATED TO AND METHODS OF*
 22 *ENSURING SERVICES.—*

23 “(1) *ESTABLISHING FINANCIAL RESPONSIBILITY*
 24 *FOR SERVICES.—*

1 “(A) *IN GENERAL.*—*The Chief Executive Of-*
2 *ficer of a State or designee of the officer shall en-*
3 *sure that an interagency agreement or other*
4 *mechanism for interagency coordination is in ef-*
5 *fect between each public agency and the State*
6 *educational agency, in order to ensure—*

7 “(i) *the provision of, and financial re-*
8 *sponsibility for, services provided under this*
9 *part; and*

10 “(ii) *such services are consistent with*
11 *the requirements of section 635 and the*
12 *State’s application pursuant to section 637,*
13 *including the provision of such services dur-*
14 *ing the pendency of any dispute.*

15 “(B) *CONSISTENCY BETWEEN AGREEMENTS*
16 *OR MECHANISMS UNDER PARTS B AND D.*—*The*
17 *Chief Executive Officer of a State or designee of*
18 *the officer shall ensure that the terms and condi-*
19 *tions of such agreement or mechanism are con-*
20 *sistent with the terms and conditions of the*
21 *State’s agreement or mechanism under section*
22 *612(a)(12).*

23 “(2) *REIMBURSEMENT FOR SERVICES BY PUBLIC*
24 *AGENCY.*—

1 “(A) *IN GENERAL.*—*If a public agency*
2 *other than an educational agency fails to provide*
3 *or pay for the services pursuant to an agreement*
4 *required under paragraph (1) the local edu-*
5 *cational agency or State agency (as determined*
6 *by the Chief Executive Officer or designee) shall*
7 *provide or pay for the provision of such services*
8 *to the child.*

9 “(B) *REIMBURSEMENT.*—*Such local edu-*
10 *cational agency or State agency is authorized to*
11 *claim reimbursement for the services from the*
12 *public agency that failed to provide or pay for*
13 *such services and such public agency shall reim-*
14 *burse the local educational agency or State agen-*
15 *cy pursuant to the terms of the interagency*
16 *agreement or other mechanism required under*
17 *paragraph (1).*

18 “(3) *SPECIAL RULE.*—*The requirements of para-*
19 *graph (1) may be met through—*

20 “(A) *State statute or regulation;*

21 “(B) *signed agreements between respective*
22 *agency officials that clearly identify the respon-*
23 *sibilities of each agency relating to the provision*
24 *of services; or*

1 “(C) *other appropriate written methods as*
2 *determined by the Chief Executive Officer of the*
3 *State or designee of the officer and approved by*
4 *the Secretary through the review and approval of*
5 *the State’s application pursuant to section 637.*

6 “(c) *REDUCTION OF OTHER BENEFITS.—Nothing in*
7 *this part shall be construed to permit the State to reduce*
8 *medical or other assistance available or to alter eligibility*
9 *under title V of the Social Security Act (relating to mater-*
10 *nal and child health) or title XIX of the Social Security*
11 *Act (relating to Medicaid for infants or toddlers with dis-*
12 *abilities) within the State.*

13 “**SEC. 641. STATE INTERAGENCY COORDINATING COUNCIL.**

14 “(a) *ESTABLISHMENT.—*

15 “(1) *IN GENERAL.—A State that desires to re-*
16 *ceive financial assistance under this part shall estab-*
17 *lish a State interagency coordinating council.*

18 “(2) *APPOINTMENT.—The council shall be ap-*
19 *pointed by the Governor. In making appointments to*
20 *the council, the Governor shall ensure that the mem-*
21 *bership of the council reasonably represents the popu-*
22 *lation of the State.*

23 “(3) *CHAIRPERSON.—The Governor shall des-*
24 *ignate a member of the council to serve as the chair-*
25 *person of the council, or shall require the council to*

1 so designate such a member. Any member of the coun-
2 cil who is a representative of the lead agency des-
3 ignated under section 635(a)(10) may not serve as the
4 chairperson of the council.

5 “(b) COMPOSITION.—

6 “(1) IN GENERAL.—The council shall be com-
7 posed as follows:

8 “(A) PARENTS.—At least 20 percent of the
9 members shall be parents of infants or toddlers
10 with disabilities or children with disabilities
11 aged 12 or younger, with knowledge of, or experi-
12 ence with, programs for infants and toddlers
13 with disabilities. At least 1 such member shall be
14 a parent of an infant or toddler with a dis-
15 ability or a child with a disability aged 6 or
16 younger.

17 “(B) SERVICE PROVIDERS.—At least 20
18 percent of the members shall be public or private
19 providers of early intervention services.

20 “(C) STATE LEGISLATURE.—At least 1
21 member shall be from the State legislature.

22 “(D) PERSONNEL PREPARATION.—At least
23 1 member shall be involved in personnel prepa-
24 ration.

1 “(E) AGENCY FOR EARLY INTERVENTION
2 SERVICES.—At least 1 member shall be from each
3 of the State agencies involved in the provision of,
4 or payment for, early intervention services to in-
5 fants and toddlers with disabilities and their
6 families and shall have sufficient authority to
7 engage in policy planning and implementation
8 on behalf of such agencies.

9 “(F) AGENCY FOR PRESCHOOL SERVICES.—
10 At least 1 member shall be from the State edu-
11 cational agency responsible for preschool services
12 to children with disabilities and shall have suffi-
13 cient authority to engage in policy planning and
14 implementation on behalf of such agency.

15 “(G) STATE MEDICAID AGENCY.—At least 1
16 member shall be from the agency responsible for
17 the State medicaid program.

18 “(H) HEAD START AGENCY.—At least 1
19 representative from a Head Start agency or pro-
20 gram in the State.

21 “(I) CHILD CARE AGENCY.—At least 1 rep-
22 resentative from a State agency responsible for
23 child care.

1 “(J) *AGENCY FOR HEALTH INSURANCE.*—At
2 *least 1 member shall be from the agency respon-*
3 *sible for the State regulation of health insurance.*

4 “(2) *OTHER MEMBERS.*—The council may in-
5 *clude other members selected by the Governor, includ-*
6 *ing a representative from the Bureau of Indian Af-*
7 *airs, or where there is no BIA-operated or BIA-fund-*
8 *ed school, from the Indian Health Service or the tribe*
9 *or tribal council.*

10 “(c) *MEETINGS.*—The council shall meet at least quar-
11 *terly and in such places as the council determines necessary.*
12 *The meetings shall be publicly announced, and, to the extent*
13 *appropriate, open and accessible to the general public.*

14 “(d) *MANAGEMENT AUTHORITY.*—Subject to the ap-
15 *proval of the Governor, the council may prepare and ap-*
16 *prove a budget using funds under this part to conduct hear-*
17 *ings and forums, to reimburse members of the council for*
18 *reasonable and necessary expenses for attending council*
19 *meetings and performing council duties (including child*
20 *care for parent representatives), to pay compensation to a*
21 *member of the council if the member is not employed or*
22 *must forfeit wages from other employment when performing*
23 *official council business, to hire staff, and to obtain the serv-*
24 *ices of such professional, technical, and clerical personnel*

1 *as may be necessary to carry out its functions under this*
2 *part.*

3 “(e) *FUNCTIONS OF COUNCIL.*—

4 “(1) *DUTIES.*—*The council shall—*

5 “(A) *advise and assist the lead agency des-*
6 *ignated or established under section 635(a)(10)*
7 *in the performance of the responsibilities set*
8 *forth in such section, particularly the identifica-*
9 *tion of the sources of fiscal and other support for*
10 *services for early intervention programs, assign-*
11 *ment of financial responsibility to the appro-*
12 *priate agency, and the promotion of the inter-*
13 *agency agreements;*

14 “(B) *advise and assist the lead agency in*
15 *the preparation of applications and amendments*
16 *thereto;*

17 “(C) *advise and assist the State educational*
18 *agency regarding the transition of toddlers with*
19 *disabilities to preschool and other appropriate*
20 *services; and*

21 “(D) *prepare and submit an annual report*
22 *to the Governor and to the Secretary on the sta-*
23 *tus of early intervention programs for infants*
24 *and toddlers with disabilities and their families*
25 *operated within the State.*

1 “(2) *AUTHORIZED ACTIVITY.*—*The council may*
2 *advise and assist the lead agency and the State edu-*
3 *catinal agency regarding the provision of appro-*
4 *priate services for children from birth through age 5.*
5 *The council may advise appropriate agencies in the*
6 *State with respect to the integration of services for in-*
7 *fants and toddlers with disabilities and at-risk in-*
8 *fants and toddlers and their families, regardless of*
9 *whether at-risk infants and toddlers are eligible for*
10 *early intervention services in the State.*

11 “(f) *CONFLICT OF INTEREST.*—*No member of the coun-*
12 *cil shall cast a vote on any matter that is likely to provide*
13 *a direct financial benefit to that member or otherwise give*
14 *the appearance of a conflict of interest under State law.*

15 **“SEC. 642. FEDERAL ADMINISTRATION.**

16 “*Sections 616, 617, and 618 shall, to the extent not*
17 *inconsistent with this part, apply to the program author-*
18 *ized by this part, except that—*

19 “(1) *any reference in such sections to a State*
20 *educational agency shall be considered to be a ref-*
21 *erence to a State’s lead agency established or des-*
22 *ignated under section 635(a)(10);*

23 “(2) *any reference in such sections to a local*
24 *educational agency, educational service agency, or a*
25 *State agency shall be considered to be a reference to*

1 *an early intervention service provider under this*
2 *part; and*

3 *“(3) any reference to the education of children*
4 *with disabilities or the education of all children with*
5 *disabilities shall be considered to be a reference to the*
6 *provision of appropriate early intervention services to*
7 *infants and toddlers with disabilities.*

8 **“SEC. 643. ALLOCATION OF FUNDS.**

9 *“(a) RESERVATION OF FUNDS FOR OUTLYING*
10 *AREAS.—*

11 *“(1) IN GENERAL.—From the sums appropriated*
12 *to carry out this part for any fiscal year, the Sec-*
13 *retary may reserve not more than 1 percent for pay-*
14 *ments to Guam, American Samoa, the United States*
15 *Virgin Islands, and the Commonwealth of the North-*
16 *ern Mariana Islands in accordance with their respec-*
17 *tive needs.*

18 *“(2) CONSOLIDATION OF FUNDS.—The provisions*
19 *of Public Law 95–134, permitting the consolidation of*
20 *grants to the outlying areas, shall not apply to funds*
21 *those areas receive under this part.*

22 *“(b) PAYMENTS TO INDIANS.—*

23 *“(1) IN GENERAL.—The Secretary shall, subject*
24 *to this subsection, make payments to the Secretary of*
25 *the Interior to be distributed to tribes, tribal organi-*

1 *zations (as defined under section 4 of the Indian Self-*
2 *Determination and Education Assistance Act), or*
3 *consortia of the above entities for the coordination of*
4 *assistance in the provision of early intervention serv-*
5 *ices by the States to infants and toddlers with disabil-*
6 *ities and their families on reservations served by ele-*
7 *mentary schools and secondary schools for Indian*
8 *children operated or funded by the Department of the*
9 *Interior. The amount of such payment for any fiscal*
10 *year shall be 1.25 percent of the aggregate of the*
11 *amount available to all States under this part for*
12 *such fiscal year.*

13 *“(2) ALLOCATION.—For each fiscal year, the Sec-*
14 *retary of the Interior shall distribute the entire pay-*
15 *ment received under paragraph (1) by providing to*
16 *each tribe, tribal organization, or consortium an*
17 *amount based on the number of infants and toddlers*
18 *residing on the reservation, as determined annually,*
19 *divided by the total of such children served by all*
20 *tribes, tribal organizations, or consortia.*

21 *“(3) INFORMATION.—To receive a payment*
22 *under this subsection, the tribe, tribal organization,*
23 *or consortium shall submit such information to the*
24 *Secretary of the Interior as is needed to determine the*
25 *amounts to be distributed under paragraph (2).*

1 “(4) *USE OF FUNDS.*—*The funds received by a*
2 *tribe, tribal organization, or consortium shall be used*
3 *to assist States in child find, screening, and other*
4 *procedures for the early identification of Indian chil-*
5 *dren under 3 years of age and for parent training.*
6 *Such funds may also be used to provide early inter-*
7 *vention services in accordance with this part. Such*
8 *activities may be carried out directly or through con-*
9 *tracts or cooperative agreements with the BIA, local*
10 *educational agencies, and other public or private non-*
11 *profit organizations. The tribe, tribal organization, or*
12 *consortium is encouraged to involve Indian parents*
13 *in the development and implementation of these ac-*
14 *tivities. The above entities shall, as appropriate, make*
15 *referrals to local, State, or Federal entities for the*
16 *provision of services or further diagnosis.*

17 “(5) *REPORTS.*—*To be eligible to receive a grant*
18 *under paragraph (2), a tribe, tribal organization, or*
19 *consortium shall make a biennial report to the Sec-*
20 *retary of the Interior of activities undertaken under*
21 *this subsection, including the number of contracts and*
22 *cooperative agreements entered into, the number of*
23 *children contacted and receiving services for each*
24 *year, and the estimated number of children needing*
25 *services during the 2 years following the year in*

1 *which the report is made. The Secretary of the Inte-*
2 *rior shall include a summary of this information on*
3 *a biennial basis to the Secretary of Education along*
4 *with such other information as required under section*
5 *611(h)(3)(E). The Secretary of Education may re-*
6 *quire any additional information from the Secretary*
7 *of the Interior.*

8 “(6) *PROHIBITED USES OF FUNDS.*—None of the
9 *funds under this subsection may be used by the Sec-*
10 *retary of the Interior for administrative purposes, in-*
11 *cluding child count, and the provision of technical as-*
12 *sistance.*

13 “(c) *STATE ALLOTMENTS.*—

14 “(1) *IN GENERAL.*—Except as provided in para-
15 *graphs (2) and (3), from the funds remaining for each*
16 *fiscal year after the reservation and payments under*
17 *subsections (a), (b), and (e), the Secretary shall first*
18 *allot to each State an amount that bears the same*
19 *ratio to the amount of such remainder as the number*
20 *of infants and toddlers in the State bears to the num-*
21 *ber of infants and toddlers in all States.*

22 “(2) *MINIMUM ALLOTMENTS.*—Except as pro-
23 *vided in paragraph (3), no State shall receive an*
24 *amount under this section for any fiscal year that is*
25 *less than the greater of—*

1 “(A) $\frac{1}{2}$ of 1 percent of the remaining
2 amount described in paragraph (1); or

3 “(B) \$500,000.

4 “(3) *RATABLE REDUCTION.*—

5 “(A) *IN GENERAL.*—If the sums made avail-
6 able under this part for any fiscal year are in-
7 sufficient to pay the full amounts that all States
8 are eligible to receive under this subsection for
9 such year, the Secretary shall ratably reduce the
10 allotments to such States for such year.

11 “(B) *ADDITIONAL FUNDS.*—If additional
12 funds become available for making payments
13 under this subsection for a fiscal year, allotments
14 that were reduced under subparagraph (A) shall
15 be increased on the same basis the allotments
16 were reduced.

17 “(4) *DEFINITIONS.*—For the purpose of this sub-
18 section—

19 “(A) the terms ‘infants’ and ‘toddlers’ mean
20 children under 3 years of age; and

21 “(B) the term ‘State’ means each of the 50
22 States, the District of Columbia, and the Com-
23 monwealth of Puerto Rico.

24 “(d) *REALLOTMENT OF FUNDS.*—If a State elects not
25 to receive its allotment under subsection (c), the Secretary

1 *shall reallocate, among the remaining States, amounts from*
2 *such State in accordance with such subsection.*

3 “(e) *RESERVATION FOR STATE BONUS GRANTS.—The*
4 *Secretary shall reserve 10 percent of the amount by which*
5 *the amount appropriated under section 644 for any fiscal*
6 *year exceeds \$434,159,000 to make allotments to States that*
7 *are carrying out the policy described in section 635(b), in*
8 *accordance with the formula described in subsection (c)(1)*
9 *without regard to subsections (c) (2) and (3).*

10 **“SEC. 644. AUTHORIZATION OF APPROPRIATIONS.**

11 “*For the purpose of carrying out this part, there are*
12 *authorized to be appropriated such sums as may be nec-*
13 *essary for each of the fiscal years 2004 through 2009.*

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

16 **“SEC. 650. FINDINGS.**

17 “*Congress finds the following:*

18 “(1) *The Federal Government has an ongoing ob-*
19 *ligation to support activities that contribute to posi-*
20 *tive results for children with disabilities, enabling*
21 *them to lead productive and independent adult lives.*

22 “(2) *Systemic change benefiting all students, in-*
23 *cluding children with disabilities, requires the in-*
24 *volvement of States, local educational agencies, par-*
25 *ents, individuals with disabilities and their families,*

1 *teachers and other service providers, and other inter-*
2 *ested individuals and organizations to develop and*
3 *implement comprehensive strategies that improve edu-*
4 *cational results for children with disabilities.*

5 *“(3) State educational agencies, in partnership*
6 *with local educational agencies, parents of children*
7 *with disabilities, and other individuals and organiza-*
8 *tions, are in the best position to improve education*
9 *for children with disabilities and to address their spe-*
10 *cial needs.*

11 *“(4) An effective educational system serving stu-*
12 *dents with disabilities should—*

13 *“(A) maintain high academic achievement*
14 *standards and clear performance goals for chil-*
15 *dren with disabilities, consistent with the stand-*
16 *ards and expectations for all students in the edu-*
17 *cational system, and provide for appropriate*
18 *and effective strategies and methods to ensure*
19 *that all children with disabilities have the oppor-*
20 *tunity to achieve those standards and goals;*

21 *“(B) clearly define, in objective, measurable*
22 *terms, the school and post-school results that*
23 *children with disabilities are expected to achieve;*
24 *and*

1 “(C) promote transition services and coordi-
2 nate State and local education, social, health,
3 mental health, and other services, in addressing
4 the full range of student needs, particularly the
5 needs of children with disabilities who need sig-
6 nificant levels of support to participate and
7 learn in school and the community.

8 “(5) The availability of an adequate number of
9 qualified personnel is critical to serve effectively chil-
10 dren with disabilities, to assume leadership positions
11 in administration and direct services, to provide
12 teacher training, and to conduct high quality research
13 to improve special education.

14 “(6) High quality, comprehensive professional
15 development programs are essential to ensure that the
16 persons responsible for the education or transition of
17 children with disabilities possess the skills and knowl-
18 edge necessary to address the educational and related
19 needs of those children.

20 “(7) Models of professional development should
21 be scientifically based and reflect successful practices,
22 including strategies for recruiting, preparing, and re-
23 taining personnel.

24 “(8) Continued support is essential for the devel-
25 opment and maintenance of a coordinated and high

1 *quality program of research to inform successful*
2 *teaching practices and model curricula for educating*
3 *children with disabilities.*

4 “(9) *A comprehensive research agenda should be*
5 *established and pursued to promote the highest qual-*
6 *ity and rigor in special education research, and to*
7 *address the full range of issues facing children with*
8 *disabilities, parents of children with disabilities,*
9 *school personnel, and others.*

10 “(10) *Training, technical assistance, support,*
11 *and dissemination activities are necessary to ensure*
12 *that parts B and C are fully implemented and*
13 *achieve high quality early intervention, educational,*
14 *and transitional results for children with disabilities*
15 *and their families.*

16 “(11) *Parents, teachers, administrators, and re-*
17 *lated services personnel need technical assistance and*
18 *information in a timely, coordinated, and accessible*
19 *manner in order to improve early intervention, edu-*
20 *cational, and transitional services and results at the*
21 *State and local levels for children with disabilities*
22 *and their families.*

23 “(12) *Parent training and information activities*
24 *assist parents of a child with a disability in dealing*

1 *with the multiple pressures of parenting such a child*
2 *and are of particular importance in—*

3 “(A) *playing a vital role in creating and*
4 *preserving constructive relationships between*
5 *parents of children with disabilities and schools*
6 *by facilitating open communication between the*
7 *parents and schools; encouraging dispute resolu-*
8 *tion at the earliest possible point in time; and*
9 *discouraging the escalation of an adversarial*
10 *process between the parents and schools;*

11 “(B) *ensuring the involvement of parents in*
12 *planning and decisionmaking with respect to*
13 *early intervention, educational, and transitional*
14 *services;*

15 “(C) *achieving high quality early interven-*
16 *tion, educational, and transitional results for*
17 *children with disabilities;*

18 “(D) *providing such parents information on*
19 *their rights, protections, and responsibilities*
20 *under this Act to ensure improved early inter-*
21 *vention, educational, and transitional results for*
22 *children with disabilities;*

23 “(E) *assisting such parents in the develop-*
24 *ment of skills to participate effectively in the*

1 *education and development of their children and*
 2 *in the transitions described in section 673(b)(6);*

3 “(F) *supporting the roles of such parents as*
 4 *participants within partnerships seeking to im-*
 5 *prove early intervention, educational, and tran-*
 6 *sitional services and results for children with*
 7 *disabilities and their families; and*

8 “(G) *supporting such parents who may*
 9 *have limited access to services and supports, due*
 10 *to economic, cultural, or linguistic barriers.*

11 “(13) *Support is needed to improve technological*
 12 *resources and integrate technology, including univer-*
 13 *sally designed technologies, into the lives of children*
 14 *with disabilities, parents of children with disabilities,*
 15 *school personnel, and others through curricula, serv-*
 16 *ices, and assistive technologies.*

17 **“Subpart 1—State Personnel Preparation and**
 18 **Professional Development Grants**

19 **“SEC. 651. PURPOSE; DEFINITION; PROGRAM AUTHORITY.**

20 “(a) *PURPOSE.—The purpose of this subpart is to as-*
 21 *sist State educational agencies in reforming and improving*
 22 *their systems for personnel preparation and professional de-*
 23 *velopment in early intervention, educational, and transi-*
 24 *tion services in order to improve results for children with*
 25 *disabilities.*

1 “(b) *DEFINITION.*—*In this subpart, the term ‘per-*
2 *sonnel’ means special education teachers, regular education*
3 *teachers, principals, administrators, related services per-*
4 *sonnel, paraprofessionals, and early intervention personnel*
5 *serving infants, toddlers, preschoolers, or children with dis-*
6 *abilities, except where a particular category of personnel,*
7 *such as related services personnel, is identified.*

8 “(c) *COMPETITIVE GRANTS.*—

9 “(1) *IN GENERAL.*—*Except as provided in sub-*
10 *section (d), for any fiscal year for which the amount*
11 *appropriated under section 655, that remains after*
12 *the Secretary reserves funds under subsection (e) for*
13 *the fiscal year, is less than \$100,000,000, the Sec-*
14 *retary shall award grants, on a competitive basis, to*
15 *State educational agencies to carry out the activities*
16 *described in the State plan submitted under section*
17 *653.*

18 “(2) *PRIORITY.*—*In awarding grants under*
19 *paragraph (1), the Secretary may give priority to*
20 *State educational agencies that—*

21 “(A) *are in States with the greatest per-*
22 *sonnel shortages; or*

23 “(B) *demonstrate the greatest difficulty*
24 *meeting the requirements of section 612(a)(14).*

1 “(3) *MINIMUM.*—*The Secretary shall make a*
2 *grant to each State educational agency selected under*
3 *paragraph (1) in an amount for each fiscal year that*
4 *is—*

5 “(A) *not less than \$500,000, nor more than*
6 *\$4,000,000, in the case of the 50 States, the Dis-*
7 *trict of Columbia, and the Commonwealth of*
8 *Puerto Rico; and*

9 “(B) *not less than \$80,000 in the case of an*
10 *outlying area.*

11 “(4) *INCREASES.*—*The Secretary may increase*
12 *the amounts under in paragraph (3) to account for*
13 *inflation.*

14 “(5) *FACTORS.*—*The Secretary shall set the*
15 *amount of each grant under paragraph (1) after con-*
16 *sidering—*

17 “(A) *the amount of funds available for mak-*
18 *ing the grants;*

19 “(B) *the relative population of the State or*
20 *outlying area;*

21 “(C) *the types of activities proposed by the*
22 *State or outlying area;*

23 “(D) *the alignment of proposed activities*
24 *with section 612(a)(14);*

1 “(E) the alignment of proposed activities
2 with the State plans and applications submitted
3 under sections 1111 and 2112, respectively, of
4 the Elementary and Secondary Education Act of
5 1965; and

6 “(F) the use, as appropriate, of scientif-
7 ically based activities.

8 “(d) FORMULA GRANTS.—

9 “(1) IN GENERAL.—Except as provided in para-
10 graphs (2) and (3), for the first fiscal year for which
11 the amount appropriated under section 655, that re-
12 mains after the Secretary reserves funds under sub-
13 section (e) for the fiscal year, is equal to or greater
14 than \$100,000,000, and for each fiscal year thereafter,
15 the Secretary shall allot to each State educational
16 agency, whose application meets the requirements of
17 this subpart, an amount that bears the same relation
18 to the amount appropriated as the amount the State
19 received under section 611(d) for that fiscal year
20 bears to the amount of funds received by all States
21 (whose applications meet the requirements of this sub-
22 part) under section 611(d) for that fiscal year.

23 “(2) MINIMUM ALLOTMENTS FOR STATES THAT
24 RECEIVED COMPETITIVE GRANTS.—

1 “(A) *IN GENERAL.*—*The amount allotted*
2 *under this subsection to any State that received*
3 *a competitive multi-year grant under subsection*
4 *(c) for which the grant period has not expired*
5 *shall be at least the amount specified for that fis-*
6 *cal year in the State’s grant award document*
7 *under that subsection.*

8 “(B) *SPECIAL RULE.*—*Each such State*
9 *shall use the minimum amount described in sub-*
10 *paragraph (A) for the activities described in its*
11 *competitive grant award document for that year,*
12 *unless the Secretary approves a request from the*
13 *State to spend the funds on other activities.*

14 “(3) *MINIMUM ALLOTMENT.*—*The amount of any*
15 *State educational agency’s allotment under this sub-*
16 *section for any fiscal year shall not be less than—*

17 “(A) *the greater of \$500,000 or ½ of 1 per-*
18 *cent of the total amount available under this*
19 *subsection for that year, in the case of each of the*
20 *50 States, the District of Columbia, and the*
21 *Commonwealth of Puerto Rico; and*

22 “(B) *\$80,000, in the case of an outlying*
23 *area.*

24 “(e) *CONTINUATION AWARDS.*—

1 “(1) *IN GENERAL.*—*Notwithstanding any other*
2 *provision of this subpart, from funds appropriated*
3 *under section 655 for each fiscal year, the Secretary*
4 *shall reserve the amount that is necessary to make a*
5 *continuation award to any State (at the request of the*
6 *State) that received a multi-year award under this*
7 *part (as this part was in effect on the day before the*
8 *date of enactment of the Individuals with Disabilities*
9 *Education Improvement Act of 2003), to enable the*
10 *State to carry out activities in accordance with the*
11 *terms of the multi-year award.*

12 “(2) *PROHIBITION.*—*A State that receives a con-*
13 *tinuation award under paragraph (1) for any fiscal*
14 *year may not receive any other award under this sub-*
15 *part for that fiscal year.*

16 **“SEC. 652. ELIGIBILITY AND COLLABORATIVE PROCESS.**

17 “(a) *ELIGIBLE APPLICANTS.*—*A State educational*
18 *agency may apply for a grant under this subpart for a*
19 *grant period of not less than 1 year and not more than*
20 *5 years.*

21 “(b) *PARTNERS.*—

22 “(1) *IN GENERAL.*—*In order to be considered for*
23 *a grant under this subpart, a State educational agen-*
24 *cy shall establish a partnership with local educational*
25 *agencies and other State agencies involved in, or con-*

1 cerned with, the education of children with disabili-
2 ties, including institutions of higher education and
3 the State agencies responsible for administering part
4 C, child care, and vocational rehabilitation programs.

5 “(2) *OTHER PARTNERS.*—In order to be consid-
6 ered for a grant under this subpart, a State edu-
7 cational agency shall work in partnership with other
8 persons and organizations involved in, and concerned
9 with, the education of children with disabilities,
10 which may include—

11 “(A) *the Governor;*

12 “(B) *parents of children with disabilities*
13 *ages birth through 26;*

14 “(C) *parents of nondisabled children ages*
15 *birth through 26;*

16 “(D) *individuals with disabilities;*

17 “(E) *parent training and information cen-*
18 *ters or community parent resource centers fund-*
19 *ed under sections 671 and 672, respectively;*

20 “(F) *community based and other nonprofit*
21 *organizations involved in the education and em-*
22 *ployment of individuals with disabilities;*

23 “(G) *personnel as defined in section 651(b);*

24 “(H) *the State advisory panel established*
25 *under part B;*

1 “(I) the State interagency coordinating
2 council established under part C;

3 “(J) individuals knowledgeable about voca-
4 tional education;

5 “(K) the State agency for higher education;

6 “(L) public agencies with jurisdiction in the
7 areas of health, mental health, social services,
8 and juvenile justice;

9 “(M) other providers of professional develop-
10 ment that work with infants, toddlers, pre-
11 schoolers, and children with disabilities; and

12 “(N) other individuals.

13 “(3) *REQUIRED PARTNER.*—If State law assigns
14 responsibility for teacher preparation and certifi-
15 cation to an individual, entity, or agency other than
16 the State educational agency, the State educational
17 agency shall—

18 “(A) include that individual, entity, or
19 agency as a partner in the partnership under
20 this subsection; and

21 “(B) ensure that any activities the State
22 will carry out under this subpart that are within
23 that partner’s jurisdiction (which may include
24 activities described in section 654(b)) are carried
25 out by that partner.

1 **“SEC. 653. APPLICATIONS.**

2 “(a) *IN GENERAL.*—

3 “(1) *SUBMISSION.*—*A State educational agency*
4 *that desires to receive a grant under this subpart*
5 *shall submit to the Secretary an application at such*
6 *time, in such manner, and including such informa-*
7 *tion as the Secretary may require.*

8 “(2) *STATE PLAN.*—*The application shall in-*
9 *clude a plan that identifies and addresses the State*
10 *and local needs for the personnel preparation and*
11 *professional development of administrators, prin-*
12 *cipals, and teachers, as well as individuals who pro-*
13 *vide direct supplementary aids and services to chil-*
14 *dren with disabilities, and that—*

15 “(A) *is designed to enable the State to meet*
16 *the requirements of section 612(a)(14) and sec-*
17 *tion 635(a) (8) and (9);*

18 “(B) *is based on an assessment of State and*
19 *local needs that identifies critical aspects and*
20 *areas in need of improvement related to the*
21 *preparation, ongoing training, and professional*
22 *development of personnel that serve infants, tod-*
23 *dlers, preschoolers, and children with disabilities*
24 *within the State, including—*

25 “(i) *current and anticipated personnel*
26 *vacancies and shortages; and*

1 “(ii) the number of preservice pro-
2 grams; and

3 “(C) is integrated and aligned, to the max-
4 imum extent possible, with State plans and ac-
5 tivities under the Elementary and Secondary
6 Education Act of 1965, the Rehabilitation Act of
7 1973, and the Higher Education Act of 1965.

8 “(3) REQUIREMENT.—The State application
9 shall contain an assurance that the State educational
10 agency will carry out each of the strategies described
11 in subsection (b)(4).

12 “(b) ELEMENTS OF STATE PERSONNEL PREPARATION
13 AND PROFESSIONAL DEVELOPMENT PLAN.—Each profes-
14 sional development plan under subsection (a)(2) shall—

15 “(1) describe a partnership agreement that is in
16 effect for the period of the grant, which agreement
17 shall specify—

18 “(A) the nature and extent of the partner-
19 ship described in section 652(b) and the respec-
20 tive roles of each member of the partnership, in-
21 cluding the partner described in section
22 652(b)(3) if applicable; and

23 “(B) how the State will work with other
24 persons and organizations involved in, and con-
25 cerned with, the education of children with dis-

1 abilities, including the respective roles of each of
2 the persons and organizations;

3 “(2) describe how the strategies and activities de-
4 scribed in paragraph (4) will be coordinated with
5 other public resources (including part B and part C
6 funds retained for use at the State level for personnel
7 and professional development purposes) and private
8 resources;

9 “(3) describe how the State will align its profes-
10 sional development plan under this subpart with the
11 plan and application submitted under sections 1111
12 and 2112, respectively, of the Elementary and Sec-
13 ondary Education Act of 1965;

14 “(4) describe what strategies the State will use to
15 address the professional development and personnel
16 needs identified under subsection (a)(2) and how those
17 strategies will be implemented, including—

18 “(A) a description of the preservice and in-
19 service programs and activities to be supported
20 under this subpart that will provide personnel
21 with the knowledge and skills to meet the needs
22 of, and improve the performance and achieve-
23 ment of, infants, toddlers, preschoolers, and chil-
24 dren with disabilities; and

1 “(B) how such strategies shall be integrated,
2 to the maximum extent possible, with other ac-
3 tivities supported by grants funded under this
4 part, including those under section 664;

5 “(5) provide an assurance that the State will
6 provide technical assistance to local educational agen-
7 cies to improve the quality of professional develop-
8 ment available to meet the needs of personnel who
9 serve children with disabilities;

10 “(6) provide an assurance that the State will
11 provide technical assistance to entities that provide
12 services to infants and toddlers with disabilities to
13 improve the quality of professional development avail-
14 able to meet the needs of personnel serving such chil-
15 dren;

16 “(7) describe how the State will recruit and re-
17 tain highly qualified teachers and other qualified per-
18 sonnel in geographic areas of greatest need;

19 “(8) describe the steps the State will take to en-
20 sure that poor and minority children are not taught
21 at higher rates by teachers who are not highly quali-
22 fied; and

23 “(9) describe how the State will assess, on a reg-
24 ular basis, the extent to which the strategies imple-
25 mented under this subpart have been effective in meet-

1 *ing the performance goals described in section*
2 *612(a)(15).*

3 *“(c) PEER REVIEW.—*

4 *“(1) IN GENERAL.—The Secretary shall use a*
5 *panel of experts who are competent, by virtue of their*
6 *training, expertise, or experience, to evaluate applica-*
7 *tions for grants under section 651(c)(1).*

8 *“(2) COMPOSITION OF PANEL.—A majority of a*
9 *panel described in paragraph (1) shall be composed of*
10 *individuals who are not employees of the Federal*
11 *Government.*

12 *“(3) PAYMENT OF FEES AND EXPENSES OF CER-*
13 *TAIN MEMBERS.—The Secretary may use available*
14 *funds appropriated to carry out this subpart to pay*
15 *the expenses and fees of panel members who are not*
16 *employees of the Federal Government.*

17 *“(d) REPORTING PROCEDURES.—Each State edu-*
18 *cational agency that receives a grant under this subpart*
19 *shall submit annual performance reports to the Secretary.*
20 *The reports shall describe the progress of the State in imple-*
21 *menting its plan and analyze the effectiveness of the State’s*
22 *activities under this subpart.*

23 **“SEC. 654. USE OF FUNDS.**

24 *“(a) PROFESSIONAL DEVELOPMENT ACTIVITIES.—A*
25 *State educational agency that receives a grant under this*

1 *subpart shall use the grant funds to support activities in*
2 *accordance with the State’s plan described in section 653,*
3 *including 1 or more of the following:*

4 “(1) *Carrying out programs that provide sup-*
5 *port to both special education and regular education*
6 *teachers of children with disabilities and principals,*
7 *such as programs that—*

8 “(A) *provide teacher mentoring, team teach-*
9 *ing, reduced class schedules and case loads, and*
10 *intensive professional development; and*

11 “(B) *use standards or assessments for guid-*
12 *ing beginning teachers that are consistent with*
13 *challenging State student academic achievement*
14 *and functional standards and with the require-*
15 *ments for professional development as defined in*
16 *section 9101(34) of the Elementary and Sec-*
17 *ondary Education Act of 1965.*

18 “(2) *Encouraging and supporting the training of*
19 *special education and regular education teachers and*
20 *administrators to effectively use and integrate tech-*
21 *nology—*

22 “(A) *into curricula and instruction, includ-*
23 *ing training to improve the ability to collect,*
24 *manage, and analyze data to improve teaching,*

1 *decisionmaking, school improvement efforts, and*
2 *accountability;*

3 “*(B) to enhance learning by children with*
4 *disabilities; and*

5 “*(C) to effectively communicate with par-*
6 *ents.*

7 “*(3) Providing professional development activi-*
8 *ties that—*

9 “*(A) improve the knowledge of special edu-*
10 *cation and regular education teachers con-*
11 *cerning—*

12 “*(i) the academic and developmental*
13 *or functional needs of students with disabil-*
14 *ities; or*

15 “*(ii) effective instructional strategies,*
16 *methods, and skills, and the use of State*
17 *academic content standards and student*
18 *academic achievement and functional*
19 *standards, and State assessments, to im-*
20 *prove teaching practices and student aca-*
21 *ademic achievement;*

22 “*(B) improve the knowledge of special edu-*
23 *cation and regular education teachers and prin-*
24 *cipals and, in appropriate cases, paraprofes-*

1 *sionals, concerning effective instructional prac-*
2 *tices and that—*

3 “(i) *provide training in how to teach*
4 *and address the needs of children with dif-*
5 *ferent learning styles and children with*
6 *limited English proficiency;*

7 “(ii) *involve collaborative groups of*
8 *teachers and administrators;*

9 “(iii) *provide training in methods of—*
10 “(I) *positive behavioral interven-*
11 *tions and supports to improve student*
12 *behavior in the classroom;*

13 “(II) *scientifically based reading*
14 *instruction, including early literacy*
15 *instruction;*

16 “(III) *early and appropriate*
17 *interventions to identify and help chil-*
18 *dren with disabilities;*

19 “(IV) *effective instruction for chil-*
20 *dren with low incidence disabilities;*

21 “(V) *successful transitioning to*
22 *postsecondary opportunities; and*

23 “(VI) *using classroom-based tech-*
24 *niques to assist children prior to refer-*
25 *ral for special education;*

1 “(iv) provide training to enable per-
2 sonnel to work with and involve parents in
3 their child’s education, including parents of
4 low income and limited English proficient
5 children with disabilities;

6 “(v) provide training for special edu-
7 cation personnel and regular education per-
8 sonnel in planning, developing, and imple-
9 menting effective and appropriate IEPs;
10 and

11 “(vi) providing training to meet the
12 needs of students with significant health,
13 mobility, or behavioral needs prior to serv-
14 ing such students; and

15 “(C) train administrators, principals, and
16 other relevant school personnel in conducting ef-
17 fective IEP meetings.

18 “(4) Developing and implementing initiatives to
19 promote the recruitment and retention of highly
20 qualified special education teachers, particularly ini-
21 tiatives that have been proven effective in recruitment
22 and retaining highly qualified teachers, including
23 programs that provide—

1 “(A) teacher mentoring from exemplary spe-
2 cial education teachers, principals, or super-
3 intendents;

4 “(B) induction and support for special edu-
5 cation teachers during their first 3 years of em-
6 ployment as teachers; or

7 “(C) incentives, including financial incen-
8 tives, to retain special education teachers who
9 have a record of success in helping students with
10 disabilities.

11 “(5) Carrying out programs and activities that
12 are designed to improve the quality of personnel who
13 serve children with disabilities, such as—

14 “(A) innovative professional development
15 programs (which may be provided through part-
16 nerships that include institutions of higher edu-
17 cation), including programs that train teachers
18 and principals to integrate technology into cur-
19 ricula and instruction to improve teaching,
20 learning, and technology literacy, which profes-
21 sional development shall be consistent with the
22 definition of professional development in section
23 9101(34) of the Elementary and Secondary Edu-
24 cation Act of 1965; and

1 “(B) the development and use of proven,
2 cost effective strategies for the implementation of
3 professional development activities, such as
4 through the use of technology and distance learn-
5 ing.

6 “(6) Carrying out programs and activities that
7 are designed to improve the quality of early interven-
8 tion personnel, including paraprofessionals and pri-
9 mary referral sources, such as—

10 “(A) professional development programs to
11 improve the delivery of early intervention serv-
12 ices;

13 “(B) initiatives to promote the recruitment
14 and retention of early intervention personnel;
15 and

16 “(C) interagency activities to ensure that
17 personnel are adequately prepared and trained.

18 “(b) OTHER ACTIVITIES.—A State educational agency
19 that receives a grant under this subpart shall use the grant
20 funds to support activities in accordance with the State’s
21 plan described in section 653, including 1 or more of the
22 following:

23 “(1) Reforming special education and regular
24 education teacher certification (including recertifi-
25 cation) or licensing requirements to ensure that—

1 “(A) special education and regular edu-
2 cation teachers have—

3 “(i) the training and information nec-
4 essary to address the full range of needs of
5 children with disabilities across disability
6 categories; and

7 “(ii) the necessary subject matter
8 knowledge and teaching skills in the aca-
9 demic subjects that they teach;

10 “(B) special education and regular edu-
11 cation teacher certification (including recertifi-
12 cation) or licensing requirements are aligned
13 with challenging State academic content stand-
14 ards; and

15 “(C) special education and regular edu-
16 cation teachers have the subject matter knowledge
17 and teaching skills, including technology lit-
18 eracy, necessary to help students with disabilities
19 meet challenging State student academic achieve-
20 ment and functional standards.

21 “(2) Programs that establish, expand, or improve
22 alternative routes for State certification of special
23 education teachers for highly qualified individuals
24 with a baccalaureate or master’s degree, including
25 mid-career professionals from other occupations,

1 *paraprofessionals, and recent college or university*
2 *graduates with records of academic distinction who*
3 *demonstrate the potential to become highly effective*
4 *special education teachers.*

5 *“(3) Teacher advancement initiatives for special*
6 *education teachers that promote professional growth*
7 *and emphasize multiple career paths (such as paths*
8 *to becoming a career teacher, mentor teacher, or exem-*
9 *plary teacher) and pay differentiation.*

10 *“(4) Developing and implementing mechanisms*
11 *to assist local educational agencies and schools in ef-*
12 *fectively recruiting and retaining highly qualified*
13 *special education teachers.*

14 *“(5) Reforming tenure systems, implementing*
15 *teacher testing for subject matter knowledge, and im-*
16 *plementing teacher testing for State certification or*
17 *licensing, consistent with title II of the Higher Edu-*
18 *cation Act of 1965.*

19 *“(6) Funding projects to promote reciprocity of*
20 *teacher certification or licensing between or among*
21 *States for special education teachers, except that no*
22 *reciprocity agreement developed under this paragraph*
23 *or developed using funds provided under this subpart*
24 *may lead to the weakening of any State teaching cer-*
25 *tification or licensing requirement.*

1 “(7) *Developing or assisting local educational*
2 *agencies to serve children with disabilities through the*
3 *development and use of proven, innovative strategies*
4 *to deliver intensive professional development pro-*
5 *grams that are both cost effective and easily acces-*
6 *sible, such as strategies that involve delivery through*
7 *the use of technology, peer networks, and distance*
8 *learning.*

9 “(8) *Developing, or assisting local educational*
10 *agencies in developing, merit based performance sys-*
11 *tems, and strategies that provide differential and*
12 *bonus pay for special education teachers.*

13 “(9) *Supporting activities that ensure that*
14 *teachers are able to use challenging State academic*
15 *content standards and student academic and func-*
16 *tional achievement standards, and State assessments*
17 *for all children with disabilities, to improve instruc-*
18 *tional practices and improve the academic achieve-*
19 *ment of children with disabilities.*

20 “(10) *When applicable, coordinating with, and*
21 *expanding centers established under, section*
22 *2113(c)(18) of the Elementary and Secondary Edu-*
23 *cation Act of 1965 to benefit special education teach-*
24 *ers.*

1 “(c) *CONTRACTS AND SUBGRANTS.*—*Each such State*
2 *educational agency—*

3 “(1) *shall award contracts or subgrants to local*
4 *educational agencies, institutions of higher education,*
5 *parent training and information centers, or commu-*
6 *nity parent resource centers, as appropriate, to carry*
7 *out its State plan under this subpart; and*

8 “(2) *may award contracts and subgrants to other*
9 *public and private entities, including the lead agency*
10 *under part C, to carry out such plan.*

11 “(d) *USE OF FUNDS FOR PROFESSIONAL DEVELOP-*
12 *MENT.*—*A State educational agency that receives a grant*
13 *under this subpart shall use—*

14 “(1) *not less than 75 percent of the funds the*
15 *State educational agency receives under the grant for*
16 *any fiscal year for activities under subsection (a);*
17 *and*

18 “(2) *not more than 25 percent of the funds the*
19 *State educational agency receives under the grant for*
20 *any fiscal year for activities under subsection (b).*

21 “(e) *GRANTS TO OUTLYING AREAS.*—*Public Law 95-*
22 *134, permitting the consolidation of grants to the outlying*
23 *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 the*
4 *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 scientifically*
11 *based research, technical assistance, model demonstra-*
12 *tion projects, and information dissemination to im-*
13 *prove early intervention, educational, and transi-*
14 *tional 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 Sec-*
22 *retary shall develop and implement a comprehensive*
23 *plan for activities carried out under this subpart*
24 *(other than activities assisted under section 665 and*
25 *subpart 3) 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 plan*
3 *developed pursuant to section 177(c) of the Education*
4 *Sciences Reform Act of 2002 and shall include mecha-*
5 *nisms to address early intervention, educational, re-*
6 *lated service and transitional needs identified by*
7 *State educational agencies in applications submitted*
8 *for State Personnel and Professional Development*
9 *grants under subpart 1 and for grants under this sub-*
10 *part.*

11 *“(2) PUBLIC COMMENT.—The Secretary shall*
12 *provide a public comment period of at least 60 days*
13 *on the plan.*

14 *“(3) DISTRIBUTION OF FUNDS.—In imple-*
15 *menting the plan, the Secretary shall, to the extent*
16 *appropriate, ensure that funds are awarded to recipi-*
17 *ents under this subpart, subpart 3, and subpart 4 to*
18 *carry out activities that benefit, directly or indirectly,*
19 *children with the full range of disabilities and of all*
20 *ages.*

21 *“(4) REPORTS TO CONGRESS.—The Secretary*
22 *shall annually report to Congress on the Secretary’s*
23 *activities under this subpart, subpart 3, and subpart*
24 *4, including an initial report not later than 12*
25 *months after the date of enactment of the Individuals*

1 *with Disabilities Education Improvement Act of*
2 *2003.*

3 “(b) *ELIGIBLE APPLICANTS.*—

4 “(1) *IN GENERAL.*—*Except as otherwise provided*
5 *in this subpart, the following entities are eligible to*
6 *apply for a grant, contract, or cooperative agreement*
7 *under this subpart:*

8 “(A) *A State educational agency.*

9 “(B) *A local educational agency.*

10 “(C) *A public charter school that is a local*
11 *educational agency under State law.*

12 “(D) *An institution of higher education.*

13 “(E) *Any other public agency.*

14 “(F) *A private nonprofit organization.*

15 “(G) *An outlying area.*

16 “(H) *An Indian tribe or a tribal organiza-*
17 *tion (as defined under section 4 of the Indian*
18 *Self-Determination and Education Assistance*
19 *Act).*

20 “(I) *A for-profit organization.*

21 “(2) *SPECIAL RULE.*—*The Secretary may limit*
22 *the entities eligible for an award of a grant, contract,*
23 *or cooperative agreement to 1 or more categories of el-*
24 *igible entities described in paragraph (1).*

25 “(c) *SPECIAL POPULATIONS.*—

1 “(1) *APPLICATION REQUIREMENT.*—*In making*
2 *an award of a grant, contract, or cooperative agree-*
3 *ment under this subpart, subpart 3, and subpart 4,*
4 *the Secretary shall, as appropriate, require an appli-*
5 *cant to meet the criteria set forth by the Secretary*
6 *under this subpart and demonstrate how the appli-*
7 *cant will address the needs of children with disabil-*
8 *ities from minority backgrounds.*

9 “(2) *OUTREACH AND TECHNICAL ASSISTANCE.*—
10 *Notwithstanding any other provision of this Act, the*
11 *Secretary shall reserve at least 1 percent of the total*
12 *amount of funds made available to carry out this sub-*
13 *part, subpart 3, or subpart 4 for 1 or both of the fol-*
14 *lowing activities:*

15 “(A) *To provide outreach and technical as-*
16 *istance to Historically Black Colleges and Uni-*
17 *versities, and to institutions of higher education*
18 *with minority enrollments of at least 25 percent,*
19 *to promote the participation of such colleges,*
20 *universities, and institutions in activities under*
21 *this subpart.*

22 “(B) *To enable Historically Black Colleges*
23 *and Universities, and the institutions described*
24 *in subparagraph (A), to assist other colleges,*
25 *universities, institutions, and agencies in im-*

1 *proving educational and transitional results for*
2 *children with disabilities.*

3 “(d) *PRIORITIES.—The Secretary, in making an*
4 *award of a grant, contract, or cooperative agreement under*
5 *this subpart, subpart 3, or subpart 4, may, without regard*
6 *to the rulemaking procedures under section 553(a) of title*
7 *5, United States Code, limit competitions to, or otherwise*
8 *give priority to—*

9 “(1) *projects that address 1 or more—*

10 “(A) *age ranges;*

11 “(B) *disabilities;*

12 “(C) *school grades;*

13 “(D) *types of educational placements or*
14 *early intervention environments;*

15 “(E) *types of services;*

16 “(F) *content areas, such as reading; or*

17 “(G) *effective strategies for helping children*
18 *with disabilities learn appropriate behavior in*
19 *the school and other community based edu-*
20 *cational settings;*

21 “(2) *projects that address the needs of children*
22 *based on the severity or incidence of their disability;*

23 “(3) *projects that address the needs of—*

24 “(A) *low achieving students;*

25 “(B) *underserved populations;*

- 1 “(C) children from low income families;
- 2 “(D) limited English proficient children;
- 3 “(E) unserved and underserved areas;
- 4 “(F) rural or urban areas;
- 5 “(G) children whose behavior interferes with
- 6 their learning and socialization;
- 7 “(H) children with reading difficulties;
- 8 “(I) children in charter schools; or
- 9 “(J) children who are gifted and talented;
- 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 cov-
- 15 erage;
- 16 “(6) projects that promote the development and
- 17 use of universally designed technologies, assistive tech-
- 18 nology devices, and assistive technology services to
- 19 maximize children with disabilities’ access to and
- 20 participation in the general education curriculum;
- 21 and
- 22 “(7) any activity that is authorized in this sub-
- 23 part or subpart 3.
- 24 “(e) *APPLICANT AND RECIPIENT RESPONSIBILITIES.*—

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, subpart 3, or subpart 4—*

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 Sec-*
14 *retary may require a recipient of a grant, contract,*
15 *or cooperative agreement under this subpart, subpart*
16 *3, or subpart 4 to—*

17 “(A) *share in the cost of the project;*

18 “(B) *prepare any findings and products*
19 *from the project in formats that are useful for*
20 *specific audiences, including parents, adminis-*
21 *trators, teachers, early intervention personnel,*
22 *related services personnel, and individuals with*
23 *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 es-
6 tablish and use a standing panel of experts who
7 are competent, by virtue of their training, exper-
8 tise, or experience, to evaluate applications
9 under this subpart (other than applications for
10 assistance under section 665), subpart 3, and
11 subpart 4 that, individually, request more than
12 \$75,000 per 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 that
17 plan, develop, and carry out high quality
18 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 inte-
25 grate 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 ex-*
23 *pertise or for a specific competition, no indi-*
24 *vidual shall serve on the standing panel for more*
25 *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 section 665), subpart 3,*
7 *and subpart 4 includes—*

8 “(i) *individuals with knowledge and*
9 *expertise on the issues addressed by the ac-*
10 *tivities authorized by the relevant subpart;*
11 *and*

12 “(ii) *to the extent practicable, parents*
13 *of children with disabilities ages birth*
14 *through 26, individuals with disabilities,*
15 *and persons from diverse backgrounds.*

16 “(B) *FEDERAL EMPLOYMENT LIMITATION.—*
17 *A majority of the individuals on each sub panel*
18 *that reviews an application under this subpart*
19 *(other than an application under section 665),*
20 *subpart 3, and subpart 4 shall be individuals*
21 *who are not employees of the Federal Govern-*
22 *ment.*

23 “(3) *USE OF DISCRETIONARY FUNDS FOR ADMIN-*
24 *ISTRATIVE PURPOSES.—*

1 “(A) *EXPENSES AND FEES OF NON-FED-*
2 *ERAL PANEL MEMBERS.*—*The Secretary may use*
3 *funds made available under this subpart, sub-*
4 *part 3, and subpart 4 to pay the expenses and*
5 *fees of the panel members who are not officers or*
6 *employees of the Federal Government.*

7 “(B) *ADMINISTRATIVE SUPPORT.*—*The Sec-*
8 *retary may use not more than 1 percent of the*
9 *funds made available to carry out this subpart,*
10 *subpart 3, or subpart 4 to pay non-Federal enti-*
11 *ties for administrative support related to man-*
12 *agement of applications submitted under this*
13 *subpart.*

14 “(4) *AVAILABILITY OF CERTAIN PRODUCTS.*—*The*
15 *Secretary shall ensure that recipients of grants, coop-*
16 *erative agreements, or contracts under this subpart,*
17 *subpart 3, and subpart 4 make available in formats*
18 *that are accessible to individuals with disabilities any*
19 *products developed under such grants, cooperative*
20 *agreements, or contracts that the recipient is making*
21 *available to the public.*

22 “(g) *PROGRAM EVALUATION.*—*The Secretary may use*
23 *funds made available to carry out this subpart, subpart 3,*
24 *and subpart 4 to evaluate activities carried out under this*
25 *subpart.*

1 “(h) *MINIMUM FUNDING REQUIRED.*—

2 “(1) *IN GENERAL.*—Subject to paragraph (2), the
3 Secretary shall ensure that, for each fiscal year, at
4 least the following amounts are provided under this
5 subpart and subpart 3 to address the following needs:

6 “(A) \$12,832,000 to address the edu-
7 cational, related services, transitional, and early
8 intervention needs of children with deaf-blind-
9 ness.

10 “(B) \$4,000,000 to address the postsec-
11 ondary, vocational, technical, continuing, and
12 adult education needs of individuals with deaf-
13 ness.

14 “(C) \$4,000,000 to address the educational,
15 related services, and transitional needs of chil-
16 dren with an emotional disturbance and those
17 who are at risk of developing an emotional dis-
18 turbance.

19 “(2) *RATABLE REDUCTION.*—If the total amount
20 appropriated to carry out this subpart, subpart 3,
21 and part E of the Education Sciences Reform Act of
22 2002 for any fiscal year is less than \$130,000,000, the
23 amounts listed in paragraph (1) shall be ratably re-
24 duced.

1 *including the practices of professionals and others involved*
2 *in providing such services to children with disabilities, that*
3 *promote academic achievement and functional performance*
4 *to improve educational results and functional outcomes for*
5 *children with disabilities through—*

6 “(1) *implementing effective strategies that are*
7 *conducive to learning and for addressing inappro-*
8 *prate behavior of students with disabilities in*
9 *schools, including strategies to prevent children with*
10 *emotional and behavioral problems from developing*
11 *emotional disturbances that require the provision of*
12 *special education and related services;*

13 “(2) *improving the alignment, compatibility,*
14 *and development of valid and reliable assessment*
15 *methods, including alternate assessment methods and*
16 *evaluation methods, for assessing adequately yearly*
17 *progress as described in section 1111(b)(2) of the Ele-*
18 *mentary and Secondary Education Act of 1965;*

19 “(3) *providing information to both regular edu-*
20 *cation teachers and special education teachers to ad-*
21 *dress the different learning styles and disabilities of*
22 *students;*

23 “(4) *disseminating information on innovative,*
24 *effective, and efficient curricula, materials (including*

1 *those that are universally designed), instructional ap-*
2 *proaches, and strategies that—*

3 “(A) *support effective transitions between*
4 *educational settings or from school to post-school*
5 *settings;*

6 “(B) *support effective inclusion of students*
7 *with disabilities in general education settings,*
8 *especially students with low-incidence disabili-*
9 *ties; and*

10 “(C) *improve educational and transitional*
11 *results at all levels of the educational system in*
12 *which the activities are carried out and, in par-*
13 *ticular, that improve the progress of children*
14 *with disabilities, as measured by assessments*
15 *within the general education curriculum in-*
16 *volved; and*

17 “(5) *demonstrating and applying scientifically-*
18 *based findings to facilitate systematic changes related*
19 *to the provision of services to children with disabili-*
20 *ties.*

21 “(c) *AUTHORIZED ACTIVITIES.—Activities that may*
22 *be carried out under this section include activities to im-*
23 *prove services provided under this Act, including the prac-*
24 *tices of professionals and others involved in providing such*
25 *services to children with disabilities, that promote increased*

1 *academic achievement and enhanced functional outcomes*
2 *for children with disabilities through—*

3 “(1) *supporting and promoting the coordination*
4 *of early intervention, education, and transitional*
5 *services for children with disabilities with services*
6 *provided by health, rehabilitation, and social service*
7 *agencies;*

8 “(2) *promoting improved alignment and com-*
9 *patibility of general and special education reforms*
10 *concerned with curriculum and instructional reform,*
11 *and evaluating of such reforms;*

12 “(3) *enabling professionals, parents of children*
13 *with disabilities, and other persons, to learn about,*
14 *and implement, the findings of scientifically based re-*
15 *search and effective practices relating to the provision*
16 *of services to children with disabilities;*

17 “(4) *disseminating information relating to suc-*
18 *cessful approaches to overcoming systemic barriers to*
19 *the effective and efficient delivery of early interven-*
20 *tion, educational, and transitional services, to per-*
21 *sonnel who provide services to children with disabil-*
22 *ities;*

23 “(5) *assisting States and local educational agen-*
24 *cies with the process of planning systemic changes*
25 *that will promote improved early intervention, edu-*

1 *ational, and transitional results for children with*
2 *disabilities;*

3 “(6) *promoting change through a multi-State or*
4 *regional framework that benefits States, local edu-*
5 *cational agencies, and other participants in partner-*
6 *ships that are in the process of achieving systemic*
7 *change;*

8 “(7) *focusing on the needs and issues that are*
9 *specific to a population of children with disabilities,*
10 *such as providing single-State and multi-State tech-*
11 *nical assistance and in-service training—*

12 “(A) *to schools and agencies serving deaf-*
13 *blind children and their families;*

14 “(B) *to programs and agencies serving other*
15 *groups of children with low-incidence disabilities*
16 *and their families;*

17 “(C) *to address the postsecondary education*
18 *needs of individuals who are deaf or hard-of-*
19 *hearing; and*

20 “(D) *to schools and personnel providing*
21 *special education and related services for chil-*
22 *dren with autism spectrum disorders;*

23 “(8) *demonstrating models of personnel prepara-*
24 *tion to ensure appropriate placements and services for*
25 *all students with disabilities and to reduce*

1 *disproportionality in eligibility, placement, and dis-*
2 *ciplinary actions for minority and limited English*
3 *proficient children: and*

4 *“(9) disseminating information on how to reduce*
5 *racial and ethnic disproportionalities.*

6 *“(d) BALANCE AMONG DISABILITIES AND AGE*
7 *RANGES.—In carrying out this section, the Secretary shall*
8 *ensure that there is an appropriate balance across all age*
9 *ranges and disabilities.*

10 *“(e) LINKING STATES TO INFORMATION SOURCES.—*
11 *In carrying out this section, the Secretary may support*
12 *projects that link States to technical assistance resources,*
13 *including special education and general education re-*
14 *sources, and may make research and related products avail-*
15 *able through libraries, electronic networks, parent training*
16 *projects, and other information sources.*

17 *“(f) APPLICATIONS.—*

18 *“(1) IN GENERAL.—An eligible entity that de-*
19 *sires to receive a grant, or to enter into a contract or*
20 *cooperative agreement, under this section shall submit*
21 *an application to the Secretary at such time, in such*
22 *manner, and containing such information as the Sec-*
23 *retary may require.*

24 *“(2) CONTENTS.—The Secretary may, as appro-*
25 *priate, require eligible entities to demonstrate that the*

1 *projects described in their applications are supported*
2 *by scientifically based research that has been carried*
3 *out in conjunction with the standards for the conduct*
4 *and evaluation of all research and development estab-*
5 *lished by the National Center for Education Research*
6 *under sections 133 and 134 of the Education Sciences*
7 *Reform Act of 2002.*

8 *“(3) PRIORITY.—As appropriate, the Secretary*
9 *shall give priority to applications that propose to*
10 *serve teachers and school personnel directly in the*
11 *school environment or that strengthen State and local*
12 *agency capacity to improve instructional practices of*
13 *personnel to improve educational results for children*
14 *with disabilities in the school environment.*

15 **“SEC. 664. PERSONNEL DEVELOPMENT TO IMPROVE SERV-**
16 **ICES AND RESULTS FOR CHILDREN WITH DIS-**
17 **ABILITIES.**

18 *“(a) IN GENERAL.—The Secretary, on a competitive*
19 *basis, shall award grants to, or enter into contracts or coop-*
20 *erative agreements with, eligible entities for 1 or more of*
21 *the following:*

22 *“(1) To help address the needs identified in the*
23 *State plan described in section 653(a)(2) for highly*
24 *qualified personnel, as defined in section 651(b), to*
25 *work with infants, toddlers, or children with disabil-*

1 *ities, consistent with the standards described in sec-*
2 *tion 612(a)(14).*

3 *“(2) To ensure that those personnel have the nec-*
4 *essary skills and knowledge, derived from practices*
5 *that have been determined, through scientifically*
6 *based research, to be successful in serving those chil-*
7 *dren.*

8 *“(3) To encourage increased focus on academics*
9 *and core content areas in special education personnel*
10 *preparation programs.*

11 *“(4) To ensure that regular education teachers*
12 *have the necessary skills and knowledge to provide in-*
13 *struction to students with disabilities in the regular*
14 *education classroom.*

15 *“(5) To ensure that all special education teachers*
16 *are highly qualified.*

17 *“(6) To ensure that preservice and in-service*
18 *personnel preparation programs include training*
19 *in—*

20 *“(A) the use of new technologies;*

21 *“(B) the area of early intervention, edu-*
22 *cational, and transition services;*

23 *“(C) effectively involving parents; and*

24 *“(D) positive behavioral supports.*

1 “(7) *To provide high-quality professional devel-*
2 *opment for principals, superintendents, and other ad-*
3 *ministrators, including training in—*

4 “(A) *instructional leadership;*

5 “(B) *behavioral supports in the school and*
6 *classroom;*

7 “(C) *paperwork reduction;*

8 “(D) *promoting improved collaboration be-*
9 *tween special education and general education*
10 *teachers;*

11 “(E) *assessment and accountability;*

12 “(F) *ensuring effective learning environ-*
13 *ments; and*

14 “(G) *fostering positive relationships with*
15 *parents.*

16 “(b) *PERSONNEL DEVELOPMENT; AUTHORIZED AC-*
17 *TIVITIES.—*

18 “(1) *IN GENERAL.—In carrying out this section,*
19 *the Secretary shall support activities to prepare per-*
20 *sonnel, including activities for the preparation of per-*
21 *sonnel who will serve children with high-incidence*
22 *and low-incidence disabilities, consistent with the ob-*
23 *jectives described in subsection (a).*

1 “(2) *AUTHORIZED ACTIVITIES.*—Activities that
2 may be carried out under this subsection include the
3 following:

4 “(A) *Supporting collaborative personnel*
5 *preparation activities undertaken by institutions*
6 *of higher education, local educational agencies,*
7 *and other local entities—*

8 “(i) *to improve and reform their exist-*
9 *ing programs, to support effective existing*
10 *programs, to support the development of*
11 *new programs, and to prepare teachers,*
12 *principals, administrators, and related*
13 *services personnel—*

14 “(I) *to meet the diverse needs of*
15 *children with disabilities for early*
16 *intervention, educational, and transi-*
17 *tional services; and*

18 “(II) *to work collaboratively in*
19 *regular classroom settings; and*

20 “(ii) *to incorporate best practices and*
21 *scientifically based research about pre-*
22 *paring personnel—*

23 “(I) *so the personnel will have the*
24 *knowledge and skills to improve edu-*

1 *ational results for children with dis-*
2 *abilities; and*

3 *“(II) to implement effective teach-*
4 *ing strategies and interventions to pre-*
5 *vent the misidentification, overidenti-*
6 *fication, or underidentification of chil-*
7 *dren as having a disability, especially*
8 *minority and limited English pro-*
9 *ficient children.*

10 *“(B) Developing, evaluating, and dissemi-*
11 *nating innovative models for the recruitment, in-*
12 *duction, retention, and assessment of highly*
13 *qualified teachers to reduce teachers shortages.*

14 *“(C) Providing continuous personnel prepa-*
15 *ration, training, and professional development*
16 *designed to provide support and ensure retention*
17 *of teachers and personnel who teach and provide*
18 *related services to children with disabilities.*

19 *“(D) Developing and improving programs*
20 *for paraprofessionals to become special education*
21 *teachers, related services personnel, and early*
22 *intervention personnel, including interdiscipli-*
23 *nary training to enable the paraprofessionals to*
24 *improve early intervention, educational, and*
25 *transitional results for children with disabilities.*

1 “(E) *Demonstrating models for the prepara-*
2 *tion of, and interdisciplinary training of, early*
3 *intervention, special education, and general edu-*
4 *cation personnel, to enable the personnel to ac-*
5 *quire the collaboration skills necessary to work*
6 *within teams and to improve results for children*
7 *with disabilities, particularly within the general*
8 *education curriculum.*

9 “(F) *Promoting effective parental involve-*
10 *ment practices to enable the personnel to work*
11 *with parents and involve parents in the edu-*
12 *cation of such parents’ children.*

13 “(G) *Promoting the transferability, across*
14 *State and local jurisdictions, of licensure and*
15 *certification of teachers, principals, and admin-*
16 *istrators working with such children.*

17 “(H) *Developing and disseminating models*
18 *that prepare teachers with strategies, including*
19 *positive behavioral interventions, for addressing*
20 *the conduct of children with disabilities that im-*
21 *pedes their learning and that of others in the*
22 *classroom.*

23 “(I) *Developing and improving programs to*
24 *enhance the ability of general education teachers,*
25 *principals, school administrators, and school*

1 board members to improve results for children
2 with disabilities.

3 “(J) Supporting institutions of higher edu-
4 cation with minority enrollments of at least 25
5 percent for the purpose of preparing personnel to
6 work with children with disabilities.

7 “(K) Preparing personnel to work in high
8 need elementary schools and secondary schools,
9 including urban schools, rural schools, and
10 schools operated by an entity described in section
11 7113(d)(1)(A)(ii) of the Elementary and Sec-
12 ondary Education Act of 1965, and schools that
13 serve high numbers or percentages of limited
14 English proficient children.

15 “(L) Developing, evaluating, and dissemi-
16 nating innovative models for the recruitment, in-
17 duction, retention, and assessment of new, highly
18 qualified teachers, especially from groups that
19 are underrepresented in the teaching profession,
20 including individuals with disabilities.

21 “(M) Developing and improving programs
22 to train special education teachers to develop an
23 expertise in autism spectrum disorders.

24 “(c) *LOW INCIDENCE DISABILITIES; AUTHORIZED AC-*
25 *TIVITIES.*—

1 “(1) *IN GENERAL.*—*In carrying out this section,*
2 *the Secretary shall support activities, consistent with*
3 *the objectives described in subsection (a), that benefit*
4 *children with low incidence disabilities.*

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 persons who—*

9 “(i) *have prior training in educational*
10 *and other related service fields; and*

11 “(ii) *are studying to obtain degrees,*
12 *certificates, or licensure that will enable the*
13 *persons to assist children with low incidence*
14 *disabilities to achieve the objectives set out*
15 *in their individualized education programs*
16 *described in section 614(d), or to assist in-*
17 *fants and toddlers with low incidence dis-*
18 *abilities to achieve the outcomes described*
19 *in their individualized family service plans*
20 *described in section 636.*

21 “(B) *Providing personnel from various dis-*
22 *ciplines with interdisciplinary training that will*
23 *contribute to improvement in early intervention,*
24 *educational, and transitional results for children*
25 *with low incidence disabilities.*

1 “(C) *Preparing personnel in the innovative*
2 *uses and application of technology, including*
3 *universally designed technologies, assistive tech-*
4 *nology devices, and assistive technology serv-*
5 *ices—*

6 “(i) *to enhance learning by children*
7 *with low incidence disabilities through early*
8 *intervention, educational, and transitional*
9 *services; and*

10 “(ii) *to improve communication with*
11 *parents.*

12 “(D) *Preparing personnel who provide serv-*
13 *ices to visually impaired or blind children to*
14 *teach and use Braille in the provision of services*
15 *to such children.*

16 “(E) *Preparing personnel to be qualified*
17 *educational interpreters, to assist children with*
18 *low incidence disabilities, particularly deaf and*
19 *hard of hearing children in school and school re-*
20 *lated activities, and deaf and hard of hearing in-*
21 *fants and toddlers and preschool children in*
22 *early intervention and preschool programs.*

23 “(F) *Preparing personnel who provide serv-*
24 *ices to children with significant cognitive dis-*
25 *abilities and children with multiple disabilities.*

1 “(3) *DEFINITION.*—As used in this section, the
2 term ‘low incidence disability’ means—

3 “(A) a visual or hearing impairment, or si-
4 multaneous visual and hearing impairments;

5 “(B) a significant cognitive impairment; or

6 “(C) any impairment for which a small
7 number of personnel with highly specialized
8 skills and knowledge are needed in order for chil-
9 dren with that impairment to receive early
10 intervention services or a free appropriate public
11 education.

12 “(4) *SELECTION OF RECIPIENTS.*—In selecting
13 recipients under this subsection, the Secretary may
14 give preference to eligible entities submitting applica-
15 tions that include 1 or more of the following:

16 “(A) A proposal to prepare personnel in
17 more than 1 low incidence disability, such as
18 deafness and blindness.

19 “(B) A demonstration of an effective col-
20 laboration with an eligible entity and a local
21 educational agency that promotes recruitment
22 and subsequent retention of highly qualified per-
23 sonnel to serve children with disabilities.

24 “(5) *PREPARATION IN USE OF BRAILLE.*—The
25 Secretary shall ensure that all recipients of assistance

1 *under this subsection who will use that assistance to*
2 *prepare personnel to provide services to visually im-*
3 *paired or blind children that can appropriately be*
4 *provided in Braille will prepare those individuals to*
5 *provide those services in Braille.*

6 *“(d) LEADERSHIP PREPARATION; AUTHORIZED AC-*
7 *TIVITIES.—*

8 *“(1) IN GENERAL.—In carrying out this section,*
9 *the Secretary shall support leadership preparation ac-*
10 *tivities that are consistent with the objectives de-*
11 *scribed in subsection (a).*

12 *“(2) AUTHORIZED ACTIVITIES.—Activities that*
13 *may be carried out under this subsection include ac-*
14 *tivities such as the following:*

15 *“(A) Preparing personnel at the graduate,*
16 *doctoral, and postdoctoral levels of training to*
17 *administer, enhance, or provide services to im-*
18 *prove results for children with disabilities.*

19 *“(B) Providing interdisciplinary training*
20 *for various types of leadership personnel, includ-*
21 *ing teacher preparation faculty, administrators,*
22 *researchers, supervisors, principals, related serv-*
23 *ices personnel, and other persons whose work af-*
24 *fects early intervention, educational, and transi-*
25 *tional services for children with disabilities.*

1 “(e) *ENHANCED SUPPORT AND TRAINING FOR BEGIN-*
2 *NING SPECIAL EDUCATORS; AUTHORIZED ACTIVITIES.*—

3 “(1) *IN GENERAL.*—*In carrying out this section,*
4 *the Secretary shall support personnel preparation ac-*
5 *tivities that are consistent with the objectives de-*
6 *scribed in subsection (a).*

7 “(2) *AUTHORIZED ACTIVITIES.*—*Activities that*
8 *may be carried out under this subsection include—*

9 “(A) *enhancing and restructuring an exist-*
10 *ing program or developing a preservice teacher*
11 *education program, to prepare special education*
12 *teachers, at colleges or departments of education*
13 *within the institution of higher education, by in-*
14 *corporating an additional 5th year clinical*
15 *learning opportunity, field experience, or super-*
16 *vised practicum into a program of preparation*
17 *and coursework for special education teachers; or*

18 “(B) *Creating or supporting professional*
19 *development schools that provide—*

20 “(i) *high quality mentoring and induc-*
21 *tion opportunities with ongoing support for*
22 *beginning special education teachers; or*

23 “(ii) *inservice professional development*
24 *to veteran special education teachers*

1 *through the ongoing exchange of informa-*
 2 *tion and instructional strategies.*

3 “(3) *ELIGIBLE PARTNERSHIPS.—Eligible recipi-*
 4 *ents of assistance under this subsection are partner-*
 5 *ships—*

6 “(A) *that shall consist of—*

7 “(i) *1 or more institutions of higher*
 8 *education with special education personnel*
 9 *preparation programs; and*

10 “(ii) *1 or more local educational agen-*
 11 *cies; and*

12 “(iii) *in the case of activities assisted*
 13 *under paragraph (2)(B), an elementary*
 14 *school or secondary school; and*

15 “(B) *that may include other entities eligible*
 16 *for assistance under this part, such as a State*
 17 *educational agency.*

18 “(4) *PRIORITY.—In awarding grants or entering*
 19 *into contracts or cooperative agreements under this*
 20 *subsection, the Secretary shall give priority to part-*
 21 *nerships that include local educational agencies that*
 22 *serve—*

23 “(A) *high numbers or percentages of low-in-*
 24 *come students; or*

1 “(B) schools that have failed to make ade-
2 quate yearly progress toward enabling children
3 with disabilities to meet academic achievement
4 standards.

5 “(f) TRAINING TO SUPPORT GENERAL EDUCATORS;
6 AUTHORIZED ACTIVITIES.—

7 “(1) IN GENERAL.—In carrying out this section,
8 the Secretary shall support personnel preparation ac-
9 tivities that are consistent with the objectives de-
10 scribed in subsection (a).

11 “(2) AUTHORIZED ACTIVITIES.—Activities that
12 may be carried out under this subsection include—

13 “(A) high quality professional development
14 for general educators that develops the knowledge
15 and skills, and enhances the ability, of general
16 educators to—

17 “(i) use classroom-based techniques to
18 identify students who may be eligible for
19 special education services, and deliver in-
20 struction in a way that meets the individ-
21 ualized needs of children with disabilities
22 through appropriate supports, accommoda-
23 tions, and curriculum modifications;

1 “(ii) use classroom-based techniques,
2 such as scientifically based reading instruc-
3 tion;

4 “(iii) work collaboratively with special
5 education teachers and related services per-
6 sonnel;

7 “(iv) implement strategies, such as
8 positive behavioral interventions—

9 “(I) to address the behavior of
10 children with disabilities that impedes
11 the learning of such children and oth-
12 ers; or

13 “(II) to prevent children from
14 being misidentified as children with
15 disabilities;

16 “(v) prepare children with disabilities
17 to participate in statewide assessments
18 (with or without accommodations) and al-
19 ternate assessments, as appropriate;

20 “(vi) develop effective practices for en-
21 suring that all children with disabilities are
22 a part of all accountability systems under
23 the Elementary and Secondary Education
24 Act of 1965;

1 “(vii) *work with and involve parents of*
2 *children with disabilities in their child’s*
3 *education;*

4 “(viii) *understand how to effectively*
5 *construct IEPs, participate in IEP meet-*
6 *ings, and implement IEPs; and*

7 “(ix) *in the case of principals and su-*
8 *perintendents, be instructional leaders and*
9 *promote improved collaboration between*
10 *general educators, special education teach-*
11 *ers, and related services personnel; and*

12 “(B) *release and planning time for the ac-*
13 *tivities described in this subsection.*

14 “(3) *ELIGIBLE PARTNERSHIPS.—Eligible recipi-*
15 *ents of assistance under this subsection are partner-*
16 *ships—*

17 “(A) *that consist of—*

18 “(i) *1 or more institutions of higher*
19 *education with special education personnel*
20 *preparation programs; and*

21 “(ii) *1 or more local educational agen-*
22 *cies; and*

23 “(B) *that may include other entities eligible*
24 *for assistance under this part, such as a State*
25 *educational agency.*

1 “(g) *APPLICATIONS.*—

2 “(1) *IN GENERAL.*—*Any eligible entity that de-*
3 *sires to receive a grant, or enter into a contract or*
4 *cooperative agreement, under this section shall submit*
5 *an application to the Secretary at such time, in such*
6 *manner, and containing such information as the Sec-*
7 *retary may require.*

8 “(2) *IDENTIFIED STATE NEEDS.*—

9 “(A) *REQUIREMENT TO ADDRESS IDENTI-*
10 *FIED NEEDS.*—*Any application under subsection*
11 *(b), (c), (d), (e), or (f) shall include information*
12 *demonstrating to the satisfaction of the Secretary*
13 *that the activities described in the application*
14 *will address needs identified by the State or*
15 *States the applicant proposes to serve, consistent*
16 *with the needs identified in the State plan de-*
17 *scribed in section 653(a)(2).*

18 “(B) *COOPERATION WITH STATE EDU-*
19 *CATIONAL AGENCIES.*—*Any applicant that is not*
20 *a local educational agency or a State edu-*
21 *cational agency shall include in the application*
22 *information demonstrating to the satisfaction of*
23 *the Secretary that the applicant and 1 or more*
24 *State educational agencies or local educational*

1 *agencies have engaged in a cooperative effort to*
2 *carry out and monitor the project to be assisted.*

3 “(3) *ACCEPTANCE BY STATES OF PERSONNEL*
4 *PREPARATION REQUIREMENTS.—The Secretary may*
5 *require applicants to provide assurances from 1 or*
6 *more States that such States intend to accept success-*
7 *ful completion of the proposed personnel preparation*
8 *program as meeting State personnel standards for*
9 *servicing children with disabilities or servicing infants*
10 *and toddlers with disabilities.*

11 “(h) *SELECTION OF RECIPIENTS.—*

12 “(1) *IMPACT OF PROJECT.—In selecting award*
13 *recipients under this section, the Secretary shall con-*
14 *sider the impact of the proposed project described in*
15 *the application in meeting the need for personnel*
16 *identified by the States.*

17 “(2) *REQUIREMENT FOR APPLICANTS TO MEET*
18 *STATE AND PROFESSIONAL STANDARDS.—The Sec-*
19 *retary shall make grants and enter into contracts and*
20 *cooperative agreements under this section only to eli-*
21 *gible applicants that meet State and professionally*
22 *recognized standards for the preparation of special*
23 *education and related services personnel, if the pur-*
24 *pose of the project is to assist personnel in obtaining*
25 *degrees.*

1 “(3) *PREFERENCES.—In selecting recipients*
2 *under this section, the Secretary may give preference*
3 *to institutions of higher education that are—*

4 “(A) *educating regular education personnel*
5 *to meet the needs of children with disabilities in*
6 *integrated settings;*

7 “(B) *educating special education personnel*
8 *to work in collaboration with regular educators*
9 *in integrated settings; and*

10 “(C) *successfully recruiting and preparing*
11 *individuals with disabilities and individuals*
12 *from groups that are underrepresented in the*
13 *profession for which the institution of higher*
14 *education is preparing individuals.*

15 “(i) *SERVICE OBLIGATION.—Each application for*
16 *funds under subsections (b), (c), (d), and (e) shall include*
17 *an assurance that the applicant will ensure that individ-*
18 *uals who receive assistance under the proposed project will*
19 *subsequently provide special education and related services*
20 *to children with disabilities for a period of 1 year for every*
21 *year for which assistance was received, or repay all or part*
22 *of the cost of that assistance, in accordance with regulations*
23 *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) *AUTHORIZATION OF APPROPRIATIONS.*—*There*
 5 *are authorized to be appropriated to carry out this section*
 6 *such sums as may be necessary for each of the fiscal years*
 7 *2004 through 2009.*

8 “**SEC. 665. STUDIES AND EVALUATIONS.**

9 “(a) *STUDIES AND EVALUATIONS.*—

10 “(1) *DELEGATION.*—*The Secretary shall delegate*
 11 *to the Director of the Institute for Education Sciences*
 12 *responsibility to carry out this section, other than*
 13 *subsections (d) and (f).*

14 “(2) *ASSESSMENT.*—*The Secretary shall, directly*
 15 *or through grants, contracts, or cooperative agree-*
 16 *ments awarded on a competitive basis, assess the*
 17 *progress in the implementation of this Act, including*
 18 *the effectiveness of State and local efforts to provide—*

19 “(A) *a free appropriate public education to*
 20 *children with disabilities; and*

21 “(B) *early intervention services to infants*
 22 *and toddlers with disabilities, and infants and*
 23 *toddlers who would be at risk of having substan-*
 24 *tial developmental delays if early intervention*
 25 *services were not provided to them.*

1 “(b) *NATIONAL ASSESSMENT.*—

2 “(1) *IN GENERAL.*—*The Secretary shall carry*
3 *out a national assessment of activities carried out*
4 *with Federal funds under this Act in order—*

5 “(A) *to determine the effectiveness of this*
6 *Act in achieving its purposes;*

7 “(B) *to provide timely information to the*
8 *President, Congress, the States, local educational*
9 *agencies, and the public on how to implement*
10 *this Act more effectively; and*

11 “(C) *to provide the President and Congress*
12 *with information that will be useful in devel-*
13 *oping legislation to achieve the purposes of this*
14 *Act more effectively.*

15 “(2) *CONSULTATION.*—*The Secretary shall plan,*
16 *review, and conduct the national assessment under*
17 *this subsection in consultation with researchers, State*
18 *practitioners, local practitioners, parents of children*
19 *with disabilities, and other appropriate individuals.*

20 “(3) *SCOPE OF ASSESSMENT.*—*The national as-*
21 *essment shall assess the—*

22 “(A) *implementation of programs assisted*
23 *under this Act and the impact of those programs*
24 *on addressing the developmental, educational,*
25 *and transitional needs of, and improving the*

1 *academic achievement and functional outcomes*
2 *of, children with disabilities to enable the chil-*
3 *dren to reach challenging developmental goals*
4 *and challenging State academic content stand-*
5 *ards based on State academic assessments, in-*
6 *cluding alternate assessments;*

7 *“(B) types of programs and services that*
8 *have demonstrated the greatest likelihood of help-*
9 *ing students reach the challenging State aca-*
10 *ademic content standards and developmental*
11 *goals;*

12 *“(C) implementation of the personnel prep-*
13 *aration and professional development activities*
14 *assisted under this Act and the impact on in-*
15 *struction, student academic achievement, and*
16 *teacher qualifications to enhance the ability of*
17 *special education teachers and regular education*
18 *teachers to improve results for children with dis-*
19 *abilities; and*

20 *“(D) effectiveness of schools, local edu-*
21 *cational agencies, States, and other recipients of*
22 *assistance under this Act, in achieving the pur-*
23 *poses of this Act in—*

24 *“(i) improving the academic achieve-*
25 *ment of children with disabilities and their*

1 *performance on regular statewide assess-*
2 *ments, and the performance of children with*
3 *disabilities on alternate assessments;*

4 “(ii) *improving the participation rate*
5 *of children with disabilities in the general*
6 *education curriculum;*

7 “(iii) *improving the transitions of chil-*
8 *dren with disabilities at natural transition*
9 *points;*

10 “(iv) *placing and serving children with*
11 *disabilities, including minority children, in*
12 *the least restrictive environment appro-*
13 *priate;*

14 “(v) *preventing children with disabil-*
15 *ities, especially children with emotional dis-*
16 *turbances and specific learning disabilities,*
17 *from dropping out of school;*

18 “(vi) *addressing the reading and lit-*
19 *eracy needs of children with disabilities;*

20 “(vii) *coordinating services provided*
21 *under this Act with each other, with other*
22 *educational and pupil services (including*
23 *preschool services), and with health and so-*
24 *cial services funded from other sources;*

1 “(viii) improving the participation of
2 parents of children with disabilities in the
3 education of their children;

4 “(ix) resolving disagreements between
5 education personnel and parents through al-
6 ternate dispute resolution activities includ-
7 ing mediation; and

8 “(x) reducing the misidentification of
9 children, especially minority and limited
10 English proficient children.

11 “(4) *INTERIM AND FINAL REPORTS.*—*The Sec-*
12 *retary shall submit to the President and Congress—*

13 “(A) *an interim report that summarizes the*
14 *preliminary findings of the national assessment*
15 *not later than 3 years after the date of enact-*
16 *ment of the Individuals with Disabilities Edu-*
17 *cation Improvement Act of 2003; and*

18 “(B) *a final report of the findings of the as-*
19 *essment not later than 5 years after the date of*
20 *enactment of the Individuals with Disabilities*
21 *Education Improvement Act of 2003.*

22 “(c) *STUDY ON ENSURING ACCOUNTABILITY FOR STU-*
23 *DENTS WITH SIGNIFICANT DISABILITIES.*—*The Secretary*
24 *shall carry out a national study or studies to examine—*

1 “(1) the criteria that States use to determine eli-
2 gibility for alternate assessments and the number and
3 type of children who take those assessments;

4 “(2) the validity and reliability of alternate as-
5 sessment instruments and procedures;

6 “(3) the alignment of alternate assessments with
7 State academic content and achievement standards or
8 with alternate academic achievement standards; and

9 “(4) the use and effectiveness of alternate assess-
10 ments in appropriately measuring student progress
11 and outcomes specific to individualized instructional
12 need.

13 “(d) ANNUAL REPORT.—The Secretary shall provide
14 an annual report to Congress that—

15 “(1) summarizes the research conducted under
16 section 662;

17 “(2) analyzes and summarizes the data reported
18 by the States and the Secretary of the Interior under
19 section 618;

20 “(3) summarizes the studies and evaluations con-
21 ducted under this section and the timeline for their
22 completion;

23 “(4) describes the extent and progress of the na-
24 tional assessment; and

1 “(5) describes the findings and determinations
2 resulting from reviews of State implementation of this
3 Act.

4 “(e) *AUTHORIZED ACTIVITIES.*—In carrying out this
5 section, the Secretary may support objective studies, evalua-
6 tions, and assessments, including studies that—

7 “(1) analyze measurable impact, outcomes, and
8 results achieved by State educational agencies and
9 local educational agencies through their activities to
10 reform policies, procedures, and practices designed to
11 improve educational and transitional services and re-
12 sults for children with disabilities;

13 “(2) analyze State and local needs for profes-
14 sional development, parent training, and other appro-
15 priate activities that can reduce the need for discipli-
16 nary actions involving children with disabilities;

17 “(3) assess educational and transitional services
18 and results for children with disabilities from minor-
19 ity backgrounds, including—

20 “(A) data on—

21 “(i) the number of minority children
22 who are referred for special education eval-
23 uation;

24 “(ii) the number of minority children
25 who are receiving special education and re-

1 *lated services and their educational or other*
2 *service placement;*

3 *“(iii) the number of minority children*
4 *who graduated from secondary programs*
5 *with a regular diploma in the standard*
6 *number of years; and*

7 *“(iv) the number of minority children*
8 *who drop out of the educational system; and*

9 *“(B) the performance of children with dis-*
10 *abilities from minority backgrounds on State as-*
11 *essments and other performance indicators es-*
12 *tablished for all students;*

13 *“(4) measure educational and transitional serv-*
14 *ices and results of children with disabilities served*
15 *under this Act, including longitudinal studies that—*

16 *“(A) examine educational and transitional*
17 *services and results for children with disabilities*
18 *who are 3 through 17 years of age and are re-*
19 *ceiving special education and related services*
20 *under this Act, using a national, representative*
21 *sample of distinct age cohorts and disability cat-*
22 *egories; and*

23 *“(B) examine educational results, transition*
24 *services, postsecondary placement, and employ-*
25 *ment status of individuals with disabilities, 18*

1 *through 21 years of age, who are receiving or*
2 *have received special education and related serv-*
3 *ices under this Act; and*

4 “(5) *identify and report on the placement of*
5 *children with disabilities by disability category.*

6 “(f) *STUDY.—The Secretary shall study, and report to*
7 *Congress regarding, the extent to which States adopt poli-*
8 *cies described in section 635(b)(1) and on the effects of those*
9 *policies.*

10 “(g) *RESERVATION FOR STUDIES AND EVALUA-*
11 *TIONS.—*

12 “(1) *IN GENERAL.—Except as provided in para-*
13 *graph (2) and notwithstanding any other provision of*
14 *this Act, the Secretary may reserve not more than 1/2*
15 *of 1 percent of the amount appropriated under parts*
16 *B and C for each fiscal year to carry out this section,*
17 *of which not more than \$3,000,000 shall be available*
18 *to carry out subsection (c).*

19 “(2) *MAXIMUM AMOUNT.—The maximum*
20 *amount the Secretary may reserve under paragraph*
21 *(1) for any fiscal year is \$40,000,000, increased by*
22 *the cumulative rate of inflation since fiscal year 2003.*

1 **“Subpart 3—Supports To Improve Results for**
2 **Children With Disabilities**

3 **“SEC. 670. PURPOSES.**

4 *“The purposes of this subpart are to ensure that—*

5 *“(1) children with disabilities and their parents*
6 *receive training and information on their rights, re-*
7 *sponsibilities, and protections under this Act, in order*
8 *to develop the skills necessary to cooperatively and ef-*
9 *fectively participate in planning and decision making*
10 *relating to early intervention, educational, and tran-*
11 *sitional services;*

12 *“(2) parents, teachers, administrators, early*
13 *intervention personnel, related services personnel, and*
14 *transition personnel receive coordinated and acces-*
15 *sible technical assistance and information to assist*
16 *them in improving early intervention, educational,*
17 *and transitional services and results for children with*
18 *disabilities and their families; and*

19 *“(3) appropriate technology and media are re-*
20 *searched, developed, and demonstrated, to improve*
21 *and implement early intervention, educational, and*
22 *transitional services and results for children with dis-*
23 *abilities and their families.*

24 **“SEC. 671. PARENT TRAINING AND INFORMATION CENTERS.**

25 *“(a) PROGRAM AUTHORIZED.—The Secretary may*
26 *award grants to, and enter into contracts and cooperative*

1 *agreements with, parent organizations to support parent*
2 *training and information centers to carry out activities*
3 *under this section.*

4 “(b) *REQUIRED ACTIVITIES.—Each parent training*
5 *and information center that receives assistance under this*
6 *section shall—*

7 “(1) *provide training and information that*
8 *meets the needs of parents of children with disabilities*
9 *living in the area served by the center, particularly*
10 *underserved parents and parents of children who may*
11 *be inappropriately identified, to enable their children*
12 *with disabilities to—*

13 “(A) *meet developmental and functional*
14 *goals, and challenging academic achievement*
15 *goals that have been established for all children;*
16 *and*

17 “(B) *be prepared to lead productive inde-*
18 *pendent adult lives, to the maximum extent pos-*
19 *sible;*

20 “(2) *serve the parents of infants, toddlers, and*
21 *children with the full range of disabilities described in*
22 *section 602(3);*

23 “(3) *assist parents to—*

1 “(A) better understand the nature of their
2 children’s disabilities and their educational, de-
3 velopmental, and transitional needs;

4 “(B) communicate effectively and work col-
5 laboratively with personnel responsible for pro-
6 viding special education, early intervention serv-
7 ices, transition services, and related services;

8 “(C) participate in decisionmaking proc-
9 esses and the development of individualized edu-
10 cation programs under part B and individual-
11 ized family service plans under part C;

12 “(D) obtain appropriate information about
13 the range, type, and quality of options, pro-
14 grams, services, technologies, and research based
15 practices and interventions, and resources avail-
16 able to assist children with disabilities and their
17 families in school and at home;

18 “(E) understand the provisions of this Act
19 for the education of, and the provision of early
20 intervention services to, children with disabil-
21 ities; and

22 “(F) participate in school reform activities;

23 “(4) in States where the State elects to contract
24 with the parent training and information center, con-
25 tract with State educational agencies to provide, con-

1 *sistent with subparagraphs (B) and (D) of section*
2 *615(e)(2), individuals who meet with parents to ex-*
3 *plain the mediation process to the parents;*

4 *“(5) assist parents in resolving disputes in the*
5 *most expeditious and effective way possible, including*
6 *encouraging the use, and explaining the benefits, of*
7 *alternative methods of dispute resolution, such as the*
8 *mediation process described in section 615(e);*

9 *“(6) assist parents and students with disabilities*
10 *to understand their rights and responsibilities under*
11 *this Act, including those under section 615(m) on the*
12 *student’s reaching the age of majority;*

13 *“(7) assist parents to understand the availability*
14 *of, and how to effectively use, procedural safeguards*
15 *under this Act;*

16 *“(8) assist parents in understanding, preparing*
17 *for, and participating in, the process described in sec-*
18 *tion 615(f)(1)(B);*

19 *“(9) establish cooperative partnerships with com-*
20 *munity parent resource centers funded under section*
21 *672;*

22 *“(10) network with appropriate clearinghouses,*
23 *including organizations conducting national dissemi-*
24 *nation activities under section 663, and with other*
25 *national, State, and local organizations and agencies,*

1 *such as protection and advocacy agencies, that serve*
2 *parents and families of children with the full range*
3 *of disabilities described in section 602(3); and*

4 “(11) annually report to the Secretary on—

5 “(A) the number and demographics of par-
6 ents to whom the center provided information
7 and training in the most recently concluded fis-
8 cal year;

9 “(B) the effectiveness of strategies used to
10 reach and serve parents, including underserved
11 parents of children with disabilities; and

12 “(C) the number of parents served who have
13 resolved disputes through alternative methods of
14 dispute resolution.

15 “(c) *OPTIONAL ACTIVITIES.*—A parent training and
16 *information center that receives assistance under this sec-*
17 *tion may provide information to teachers and other profes-*
18 *sionals to assist the teachers and professionals in improving*
19 *results for children with disabilities.*

20 “(d) *APPLICATION REQUIREMENTS.*—Each applica-
21 *tion for assistance under this section shall identify with*
22 *specificity the special efforts that the parent organization*
23 *will undertake—*

24 “(1) to ensure that the needs for training and in-
25 *formation of underserved parents of children with dis-*

1 *abilities in the area to be served are effectively met;*
2 *and*

3 *“(2) to work with community based organiza-*
4 *tions.*

5 *“(e) DISTRIBUTION OF FUNDS.—*

6 *“(1) IN GENERAL.—The Secretary shall—*

7 *“(A) make at least 1 award to a parent or-*
8 *ganization in each State for a parent training*
9 *and information center which is designated as*
10 *the statewide parent training and information*
11 *center; or*

12 *“(B) in the case of a large State, make*
13 *awards to multiple parent training and infor-*
14 *mation centers, but only if the centers dem-*
15 *onstrate that coordinated services and supports*
16 *will occur among the multiple centers.*

17 *“(2) SELECTION REQUIREMENT.—The Secretary*
18 *shall select among applications submitted by parent*
19 *organizations in a State in a manner that ensures the*
20 *most effective assistance to parents, including parents*
21 *in urban and rural areas, in the State.*

22 *“(f) QUARTERLY REVIEW.—*

23 *“(1) MEETINGS.—The board of directors of each*
24 *parent organization that receives an award under*
25 *this section shall meet at least once in each calendar*

1 *quarter to review the activities for which the award*
2 *was made.*

3 *“(2) CONTINUATION AWARD.—When an organi-*
4 *zation requests a continuation award under this sec-*
5 *tion, the board of directors shall submit to the Sec-*
6 *retary a written review of the parent training and*
7 *information program conducted by the organization*
8 *during the preceding fiscal year.*

9 *“(g) DEFINITION OF PARENT ORGANIZATION.—As*
10 *used in this section, the term ‘parent organization’ means*
11 *a private nonprofit organization (other than an institution*
12 *of higher education) that—*

13 *“(1) has a board of directors—*

14 *“(A) the majority of whom are parents of*
15 *children with disabilities ages birth through 26;*

16 *“(B) that includes—*

17 *“(i) individuals working in the fields*
18 *of special education, related services, and*
19 *early intervention; and*

20 *“(ii) individuals with disabilities;*

21 *“(C) the parent and professional members of*
22 *which are broadly representative of the popu-*
23 *lation to be served; and*

24 *“(2) has as its mission serving families of chil-*
25 *dren and youth with disabilities who—*

1 “(A) are ages birth through 26; and

2 “(B) have the full range of disabilities de-
3 scribed in section 602(3).

4 **“SEC. 672. COMMUNITY PARENT RESOURCE CENTERS.**

5 “(a) *IN GENERAL.*—*The Secretary may award grants*
6 *to, and enter into contracts and cooperative agreements*
7 *with, local parent organizations to support parent training*
8 *and information centers that will help ensure that under-*
9 *served parents of children with disabilities, including low*
10 *income parents, parents of children with limited English*
11 *proficiency, and parents with disabilities, have the training*
12 *and information the parents need to enable the parents to*
13 *participate effectively in helping their children with dis-*
14 *abilities—*

15 “(1) *to meet developmental and functional goals,*
16 *and challenging academic achievement goals that have*
17 *been established for all children; and*

18 “(2) *to be prepared to lead productive inde-*
19 *pendent adult lives, to the maximum extent possible.*

20 “(b) *REQUIRED ACTIVITIES.*—*Each community par-*
21 *ent resource center assisted under this section shall—*

22 “(1) *provide training and information that*
23 *meets the training and information needs of parents*
24 *of children with disabilities proposed to be served by*
25 *the grant, contract, or cooperative agreement;*

1 “(2) carry out the activities required of parent
2 training and information centers under paragraphs
3 (2) through (9) of section 671(b);

4 “(3) establish cooperative partnerships with the
5 parent training and information centers funded
6 under section 671; and

7 “(4) be designed to meet the specific needs of
8 families who experience significant isolation from
9 available sources of information and support.

10 “(c) *DEFINITION.*—As used in this section, the term
11 ‘local parent organization’ means a parent organization,
12 as defined in section 671(g), that—

13 “(1) has a board of directors the majority of
14 whom are parents of children with disabilities ages
15 birth through 26 from the community to be served;
16 and

17 “(2) has as its mission serving parents of chil-
18 dren with disabilities who—

19 “(A) are ages birth through 26; and

20 “(B) have the full range of disabilities de-
21 scribed in section 602(3).

22 **“SEC. 673. TECHNICAL ASSISTANCE FOR PARENT TRAINING**
23 **AND INFORMATION CENTERS.**

24 “(a) *IN GENERAL.*—The Secretary may make an
25 award to 1 parent organization (as defined in section

1 671(g)) that receives assistance under section 671 to enable
 2 the parent organization to provide technical assistance for
 3 developing, assisting, and coordinating parent training and
 4 information programs carried out by parent training and
 5 information centers receiving assistance under sections 671
 6 and 672.

7 “(b) *AUTHORIZED ACTIVITIES.*—The Secretary may
 8 provide technical assistance to a parent training and infor-
 9 mation center under this section in areas such as—

10 “(1) effective national coordination of parent
 11 training efforts, which includes encouraging collabo-
 12 rative efforts among award recipients under sections
 13 671 and 672;

14 “(2) dissemination of information, scientifically
 15 based research, and research based practices and
 16 interventions;

17 “(3) promotion of the use of technology, includ-
 18 ing universally designed technologies, assistive tech-
 19 nology devices, and assistive technology services;

20 “(4) reaching underserved populations;

21 “(5) including children with disabilities in gen-
 22 eral education programs;

23 “(6) facilitation of transitions from—

24 “(A) early intervention services to preschool;

25 “(B) preschool to elementary school;

1 “(C) elementary school to secondary school;
2 and

3 “(D) secondary school to postsecondary en-
4 vironments; and

5 “(7) promotion of alternative methods of dispute
6 resolution, including mediation.

7 “(c) REGIONAL PARENT CENTERS.—The recipient of
8 the award described in section 673(a) shall establish no
9 fewer than 4 regional centers from the parent training and
10 information centers and community parent resource centers
11 receiving assistance under sections 671 and 672 for the pur-
12 pose of carrying out the authorized activities described in
13 subsection (b). These regional centers shall be selected on
14 the basis of the center’s—

15 “(1) willingness to be a regional parent center;

16 “(2) demonstrated expertise in the delivery of re-
17 quired parent training and information center activi-
18 ties described in section 671(b);

19 “(3) demonstrated capacity to deliver the author-
20 ized activities described in subsection (b);

21 “(4) history of collaboration with other parent
22 training and information centers, community parent
23 resource centers, regional resource centers, clearing-
24 houses, and other projects; and

25 “(5) geographic location.

1 “(d) *COLLABORATION WITH THE RESOURCE CEN-*
 2 *TERS.—The recipient of the award described in subsection*
 3 *(a), in conjunction with the regional parent centers de-*
 4 *scribed in subsection (c), shall develop collaborative agree-*
 5 *ments with the geographically appropriate Regional Re-*
 6 *source Center to further parent and professional collabora-*
 7 *tion.*

8 “**SEC. 674. TECHNOLOGY DEVELOPMENT, DEMONSTRATION,**
 9 **AND UTILIZATION; AND MEDIA SERVICES.**

10 “(a) *IN GENERAL.—The Secretary, on a competitive*
 11 *basis, shall award grants to, and enter into contracts and*
 12 *cooperative agreements with, eligible entities to support ac-*
 13 *tivities described in subsections (b) and (c).*

14 “(b) *TECHNOLOGY DEVELOPMENT, DEMONSTRATION,*
 15 *AND USE.—*

16 “(1) *IN GENERAL.—In carrying out this section,*
 17 *the Secretary shall support activities to promote the*
 18 *development, demonstration, and use of technology.*

19 “(2) *AUTHORIZED ACTIVITIES.—The following*
 20 *activities may be carried out under this subsection:*

21 “(A) *Conducting research on and promoting*
 22 *the demonstration and use of innovative, emerg-*
 23 *ing, and universally designed technologies for*
 24 *children with disabilities, by improving the*

1 *transfer of technology from research and develop-*
2 *ment to practice.*

3 “(B) *Supporting research, development, and*
4 *dissemination of technology with universal de-*
5 *sign features, so that the technology is accessible*
6 *to the broadest range of individuals with disabil-*
7 *ities without further modification or adaptation.*

8 “(C) *Demonstrating the use of systems to*
9 *provide parents and teachers with information*
10 *and training concerning early diagnosis of,*
11 *intervention for, and effective teaching strategies*
12 *for, young children with reading disabilities.*

13 “(D) *Supporting the use of Internet-based*
14 *communications for students with cognitive dis-*
15 *abilities in order to maximize their academic*
16 *and functional skills.*

17 “(c) *EDUCATIONAL MEDIA SERVICES; OPTIONAL AC-*
18 *TIVITIES.—*

19 “(1) *IN GENERAL.—In carrying out this section,*
20 *the Secretary shall support—*

21 “(A) *educational media activities that are*
22 *designed to be of educational value in the class-*
23 *room setting to children with disabilities;*

1 “(B) providing video description, open cap-
2 tioning, or closed captioning, that is appropriate
3 for use in the classroom setting, of—

4 “(i) television programs;

5 “(ii) videos;

6 “(iii) other materials, including pro-
7 grams and materials associated with new
8 and emerging technologies, such as CDs,
9 DVDs, video streaming, and other forms of
10 multimedia; or

11 “(iv) news (but only until September
12 30, 2006);

13 “(C) distributing materials described in
14 subparagraphs (A) and (B) through such mecha-
15 nisms as a loan service; and

16 “(D) providing free educational materials,
17 including textbooks, in accessible media for vis-
18 ually impaired and print disabled students in
19 elementary schools and secondary schools.

20 “(2) *LIMITATION.*—The video description, open
21 captioning, or closed captioning described in para-
22 graph (1)(B) shall only be provided when the descrip-
23 tion or captioning has not been previously provided
24 by the producer or distributor, or has not been fully
25 funded by other sources.

1 “(d) *APPLICATIONS.*—Any eligible entity that wishes
 2 to receive a grant, or enter into a contract or cooperative
 3 agreement, under this section shall submit an application
 4 to the Secretary at such time, in such manner, and con-
 5 taining such information as the Secretary may require.

6 “(e) *AUTHORIZATION OF APPROPRIATIONS.*—There are
 7 authorized to be appropriated to carry out this section such
 8 sums as may be necessary for each of the fiscal years 2004
 9 through 2009.

10 **“SEC. 675. ACCESSIBILITY OF INSTRUCTIONAL MATERIALS.**

11 “(a) *INSTRUCTIONAL MATERIALS ACCESSIBILITY*
 12 *STANDARD.*—

13 “(1) *ACCESSIBILITY STANDARD.*—Not later than
 14 180 days after the date of enactment of the Individ-
 15 uals with Disabilities Education Improvement Act of
 16 2003, the Secretary shall, by rulemaking, promulgate
 17 an *Instructional Materials Accessibility Standard*
 18 which shall constitute the technical standards to be
 19 used by publishers for the preparation of electronic
 20 files for States under section 612(a)(22).

21 “(2) *RELATIONSHIP TO OTHER LAWS.*—For pur-
 22 poses of this section:

23 “(A) *AUTHORIZED ENTITY.*—Notwith-
 24 standing the provisions of section 106 of title 17,
 25 United States Code, it is not an infringement of

1 *copyright for an authorized entity to reproduce*
2 *or to distribute copies of the electronic files de-*
3 *scribed in section 612(a)(22)(B), containing the*
4 *contents of the print instructional materials*
5 *using the Instructional Materials Accessibility*
6 *Standard, if such copies are used solely for re-*
7 *production or distribution of the contents of such*
8 *print instructional materials in specialized for-*
9 *formats designed exclusively for use by the blind or*
10 *other persons with print disabilities.*

11 “(B) PUBLISHER.—*Notwithstanding the*
12 *provisions of section of 106 of title 17, United*
13 *States Code, it is not an infringement of copy-*
14 *right for a publisher to create and distribute cop-*
15 *ies of the electronic files described in section*
16 *612(a)(22)(B), containing the contents of the*
17 *print instructional materials using the Instruc-*
18 *tional Material Accessibility Standard, if such*
19 *copies are used solely for reproduction or dis-*
20 *tribution of the contents of such print instruc-*
21 *tional materials in specialized formats designed*
22 *exclusively for use by the blind or other persons*
23 *with print disabilities.*

24 “(C) COPIES.—*Copies of the electronic files*
25 *containing the contents of the print instructional*

1 *materials using the Instructional Materials Ac-*
2 *cessibility Standard shall be made in compliance*
3 *with the provisions of section 121(b) of title 17,*
4 *United States Code, regarding the reproduction*
5 *and distribution of copyrighted print instruc-*
6 *tional materials in specialized formats.*

7 “(3) *DEFINITIONS.—In this section:*

8 “(A) *INSTRUCTIONAL MATERIALS ACCESSI-*
9 *BILITY STANDARD.—The term ‘Instructional Ma-*
10 *terials Accessibility Standard’ means the tech-*
11 *nical standards described in paragraph (2), to be*
12 *used in the preparation of electronic files suit-*
13 *able and used solely for efficient conversion into*
14 *specialized formats.*

15 “(B) *BLIND OR OTHER PERSONS WITH*
16 *PRINT DISABILITIES.—The term ‘blind or other*
17 *persons with print disabilities’ means children*
18 *served under this Act and who may qualify in*
19 *accordance with the Act entitled “An Act to pro-*
20 *vide books for the adult blind”, approved March*
21 *3, 1931 (2 U.S.C. 135a; 46 Stat. 1487) to receive*
22 *books and other publications produced in special-*
23 *ized formats.*

24 “(C) *SPECIALIZED FORMATS.—The term*
25 *‘specialized formats’ has the meaning given the*

1 *term in section 121(c)(3) of title 17, United*
2 *States Code, and for the purposes of this section,*
3 *includes synthesized speech, digital audio, and*
4 *large print.*

5 “(D) *PRINT INSTRUCTIONAL MATERIALS.*—
6 *The term ‘print instructional materials’ means*
7 *printed textbooks and related printed core mate-*
8 *rials that are written and published primarily*
9 *for use in elementary school and secondary*
10 *school instruction and are required by a State*
11 *educational agency or local educational agency*
12 *for use by pupils in the classroom.*

13 “(E) *AUTHORIZED ENTITY.*—*The term ‘au-*
14 *thorized entity’ has the meaning given the term*
15 *in section 121(c)(1) of title 17, United States*
16 *Code.*

17 “(4) *APPLICABILITY.*—*This section shall apply to*
18 *print instructional materials published and copy-*
19 *righted after the date on which the final rule estab-*
20 *lishing the Instructional Materials Accessibility*
21 *Standard is published in the Federal Register.*

22 “(b) *NATIONAL INSTRUCTIONAL MATERIALS ACCESS*
23 *CENTER.*—

24 “(1) *ESTABLISHMENT.*—*Not later than 2 years*
25 *after the date of enactment of the Individuals with*

1 *Disabilities Education Improvement Act of 2003, the*
2 *Secretary shall establish a center, to be known as the*
3 *National Instructional Materials Access Center, which*
4 *shall coordinate the acquisition and distribution of*
5 *print instructional materials prepared in the Instruc-*
6 *tional Materials Accessibility Standard described in*
7 *subsection (a)(2).*

8 *“(2) RESPONSIBILITIES.—The duties of the Na-*
9 *tional Instructional Materials Access Center are the*
10 *following:*

11 *“(A) To receive and maintain a catalog of*
12 *print instructional materials made available*
13 *under section 612(a)(22) and section 613(a)(6).*

14 *“(B) To provide authorized entities with ac-*
15 *cess to such print instructional materials, free of*
16 *charge, in accordance with such terms and proce-*
17 *dures as the National Instructional Materials*
18 *Access Center may prescribe.*

19 *“(C) To develop, adopt, and publish proce-*
20 *dures to protect against copyright infringement*
21 *and otherwise to administratively assure compli-*
22 *ance with title 17, United States Code, with re-*
23 *spect to the print instructional materials pro-*
24 *vided under section 612(a)(22) and section*
25 *613(a)(6).*

1 “(3) *CONTRACT AUTHORIZED.*—*To assist in car-*
2 *rying out paragraph (1), the Secretary shall award,*
3 *on a competitive basis, a contract renewable on a bi-*
4 *ennial basis with a nonprofit organization, or with a*
5 *consortium of such organizations, determined by the*
6 *Secretary to be best qualified to carry out the respon-*
7 *sibilities described in paragraph (2). The contractor*
8 *shall report directly to the Assistant Secretary for*
9 *Special Education and Rehabilitative Services.*

10 “(4) *AUTHORIZATION OF APPROPRIATIONS.*—
11 *There are authorized to be appropriated to carry out*
12 *this subsection such sums as may be necessary.*

13 **“SEC. 676. AUTHORIZATION OF APPROPRIATIONS.**

14 *“There are authorized to be appropriated to carry out*
15 *sections 671, 672, 673, and 663 such sums as may be nec-*
16 *essary for each of the fiscal years 2004 through 2009.*

17 **“Subpart 4—Interim Alternative Educational Set-**
18 ***tings, Behavioral Supports, and Whole School***
19 ***Interventions***

20 **“SEC. 681. PURPOSE.**

21 *“The purpose of this subpart is to authorize resources*
22 *to foster a safe learning environment that supports aca-*
23 *demic achievement for all students by improving the quality*
24 *of interim alternative educational settings, providing more*

1 *behavioral supports in schools, and supporting whole school*
2 *interventions.*

3 **“SEC. 682. DEFINITION OF ELIGIBLE ENTITY.**

4 *“In this subpart, the term ‘eligible entity’ means—*

5 *“(1) a local educational agency; or*

6 *“(2) a consortium consisting of a local edu-*
7 *cational agency and 1 or more of the following enti-*
8 *ties:*

9 *“(A) another local educational agency;*

10 *“(B) a community-based organization with*
11 *a demonstrated record of effectiveness in helping*
12 *children with disabilities who have behavioral*
13 *challenges succeed;*

14 *“(C) an institution of higher education;*

15 *“(D) a mental health provider; or*

16 *“(E) an educational service agency.*

17 **“SEC. 683. PROGRAM AUTHORIZED.**

18 *“The Secretary is authorized to award grants, on a*
19 *competitive basis, to eligible entities to enable the eligible*
20 *entities—*

21 *“(1) to establish or expand behavioral supports*
22 *and whole school behavioral interventions by pro-*
23 *viding for effective, research-based practices, includ-*
24 *ing—*

1 “(A) comprehensive, early screening efforts
2 for students at risk for emotional and behavioral
3 difficulties;

4 “(B) training for school staff on early iden-
5 tification, prereferral, and referral procedures;

6 “(C) training for administrators, teachers,
7 related services personnel, behavioral specialists,
8 and other school staff in whole school positive be-
9 havioral interventions and supports, behavioral
10 intervention planning, and classroom and stu-
11 dent management techniques;

12 “(D) joint training for administrators, par-
13 ents, teachers, related services personnel, behav-
14 ioral specialists, and other school staff on effec-
15 tive strategies for positive behavioral interven-
16 tions and behavior management strategies that
17 focus on the prevention of behavior problems;

18 “(E) developing or implementing specific
19 curricula, programs, or interventions aimed at
20 addressing behavioral problems;

21 “(F) stronger linkages between school-based
22 services and community-based resources, such as
23 community mental health and primary care pro-
24 viders; or

1 “(G) using behavioral specialists, related
2 services personnel, and other staff necessary to
3 implement behavioral supports; or

4 “(2) to improve interim alternative educational
5 settings by—

6 “(A) improving the training of administra-
7 tors, teachers, related services personnel, behav-
8 ioral specialists, and other school staff (including
9 ongoing mentoring of new teachers);

10 “(B) attracting and retaining a high qual-
11 ity, diverse staff;

12 “(C) providing for on-site counseling serv-
13 ices;

14 “(D) using research-based interventions,
15 curriculum, and practices;

16 “(E) allowing students to use instructional
17 technology that provides individualized instruc-
18 tion;

19 “(F) ensuring that the services are fully
20 consistent with the goals of the individual stu-
21 dent’s IEP;

22 “(G) promoting effective case management
23 and collaboration among parents, teachers, phy-
24 sicians, related services personnel, behavioral

1 specialists, principals, administrators, and other
2 school staff;

3 “(H) promoting interagency coordination
4 and coordinated service delivery among schools,
5 juvenile courts, child welfare agencies, commu-
6 nity mental health providers, primary care pro-
7 viders, public recreation agencies, and commu-
8 nity-based organizations; or

9 “(I) providing for behavioral specialists to
10 help students transitioning from interim alter-
11 native educational settings reintegrate into their
12 regular classrooms.

13 **“SEC. 684. PROGRAM EVALUATIONS.**

14 “(a) *REPORT AND EVALUATION.*—Each eligible entity
15 receiving a grant under this subpart shall prepare and sub-
16 mit annually to the Secretary a report on the outcomes of
17 the activities assisted under the grant.

18 “(b) *BEST PRACTICES ON WEBSITE.*—The Secretary
19 shall make available on the Department’s website informa-
20 tion for parents, teachers, and school administrators on best
21 practices for interim alternative educational settings, be-
22 havior supports, and whole school intervention.

23 **“SEC. 685. AUTHORIZATION OF APPROPRIATIONS.**

24 “*There are authorized to be appropriated to carry out*
25 *this subpart \$50,000,000 for fiscal year 2004 and such sums*

1 *as may be necessary for each of the 5 succeeding fiscal*
2 *years.”.*

3 ***TITLE II—AMENDMENTS TO THE***
4 ***REHABILITATION ACT OF 1973***

5 ***SEC. 201. FINDINGS.***

6 *Section 2(a) of the Rehabilitation Act of 1973 (29*
7 *U.S.C. 701(a)) is amended—*

8 *(1) in paragraph (5), by striking “and” at the*
9 *end;*

10 *(2) in paragraph (6), by striking the period and*
11 *inserting “; and”; and*

12 *(3) by adding at the end the following:*

13 *“(7) there is a substantial need to improve and*
14 *expand services for students with disabilities under*
15 *this Act.”.*

16 ***SEC. 202. DEFINITIONS.***

17 *Section 7 of the Rehabilitation Act of 1973 (29 U.S.C.*
18 *705) is amended—*

19 *(1) by redesignating paragraphs (35) through*
20 *(39) as paragraphs (36), (37), (38), (40), and (41),*
21 *respectively;*

22 *(2) in subparagraph (A)(ii) of paragraph (36)*
23 *(as redesignated in paragraph (1)), by striking*
24 *“paragraph (36)(C)” and inserting “paragraph*
25 *(37)(C)”;*

1 (3) by inserting after paragraph (34) the fol-
2 lowing:

3 “(35)(A) The term ‘student with a disability’
4 means an individual with a disability who—

5 “(i) is not younger than 14 and not older
6 than 21;

7 “(ii) has been determined to be eligible
8 under section 102(a) for assistance under this
9 title; and

10 “(iii)(I) is eligible for, and is receiving, spe-
11 cial education under part B of the Individuals
12 with Disabilities Education Act (20 U.S.C. 1411
13 et seq.); or

14 “(II) is an individual with a disability, for
15 purposes of section 504.

16 “(B) The term ‘students with disabilities’ means
17 more than 1 student with a disability.”; and

18 (4) by inserting after paragraph (38) the fol-
19 lowing:

20 “(39) The term ‘transition services expansion
21 year’ means—

22 “(A) the first fiscal year for which the
23 amount appropriated under section 100(b) ex-
24 ceeds the amount appropriated under section

1 100(b) for fiscal year 2004 by not less than
2 \$100,000,000; and

3 “(B) each fiscal year subsequent to that first
4 fiscal year.”.

5 **SEC. 203. STATE PLAN.**

6 (a) *ASSESSMENT AND STRATEGIES.*—Section
7 101(a)(15) of the Rehabilitation Act of 1973 (29 U.S.C.
8 721(a)(15)) is amended—

9 (1) in subparagraph (A)(i)—

10 (A) in subclause (II), by striking “and” at
11 the end;

12 (B) in subclause (III), by adding “and” at
13 the end; and

14 (C) by adding at the end the following:

15 “(IV) in a transition services ex-
16 pansion year, students with disabil-
17 ities, including their need for transi-
18 tion services;”; and

19 (2) in subparagraph (D)—

20 (A) by redesignating clauses (iii), (iv), and
21 (v) as clauses (iv), (v), and (vi), respectively;
22 and

23 (B) by inserting after clause (ii) the fol-
24 lowing:

1 “(iii) in a transition services expan-
 2 sion year, the methods to be used to improve
 3 and expand vocational rehabilitation serv-
 4 ices for students with disabilities, including
 5 the coordination of services designed to fa-
 6 cilitate the transition of such students from
 7 the receipt of educational services in school
 8 to the receipt of vocational rehabilitation
 9 services under this title or to postsecondary
 10 education or employment;”.

11 (b) *SERVICES FOR STUDENTS WITH DISABILITIES.*—
 12 Section 101(a) of the Rehabilitation Act of 1973 (29 U.S.C.
 13 721(a)) is amended by adding at the end the following:

14 “(25) *SERVICES FOR STUDENTS WITH DISABIL-*
 15 *ITIES.*—The State plan for a transition services ex-
 16 pansion year shall provide an assurance satisfactory
 17 to the Secretary that the State—

18 “(A) has developed and implemented strate-
 19 gies to address the needs identified in the assess-
 20 ment described in paragraph (15), and achieve
 21 the goals and priorities identified by the State,
 22 to improve and expand vocational rehabilitation
 23 services for students with disabilities on a state-
 24 wide basis in accordance with paragraph (15);
 25 and

1 “(B) from funds reserved under section
2 110A, shall carry out programs or activities de-
3 signed to improve and expand vocational reha-
4 bilitation services for students with disabilities
5 that—

6 “(i) facilitate the transition of the stu-
7 dents with disabilities from the receipt of
8 educational services in school, to the receipt
9 of vocational rehabilitation services under
10 this title, including, at a minimum, those
11 services specified in the interagency agree-
12 ment required in paragraph (11)(D);

13 “(ii) improve the achievement of post-
14 school goals of students with disabilities, in-
15 cluding improving the achievement through
16 participation in meetings regarding indi-
17 vidualized education programs developed
18 under section 614 of the Individuals with
19 Disabilities Education Act (20 U.S.C.
20 1414);

21 “(iii) provide vocational guidance, ca-
22 reer exploration services, and job search
23 skills and strategies and technical assistance
24 to students with disabilities;

1 “(iv) support the provision of training
2 and technical assistance to State and local
3 educational agency and designated State
4 agency personnel responsible for the plan-
5 ning and provision of services to students
6 with disabilities; and

7 “(v) support outreach activities to stu-
8 dents with disabilities who are eligible for,
9 and need, services under this title.”.

10 **SEC. 204. SCOPE OF SERVICES.**

11 Section 103 of the Rehabilitation Act of 1973 (29
12 U.S.C. 723) is amended—

13 (1) in subsection (a), by striking paragraph (15)
14 and inserting the following:

15 “(15) transition services for students with dis-
16 abilities, that facilitate the achievement of the em-
17 ployment outcome identified in the individualized
18 plan for employment, including, in a transition serv-
19 ices expansion year, services described in clauses (i)
20 through (iii) of section 101(a)(25)(B);”;

21 (2) in subsection (b), by striking paragraph (6)
22 and inserting the following:

23 “(6)(A)(i) Consultation and technical assistance
24 services to assist State and local educational agencies
25 in planning for the transition of students with dis-

1 abilities from school to post-school activities, includ-
2 ing employment.

3 “(i) In a transition services expansion year,
4 training and technical assistance described in section
5 101(a)(25)(B)(iv).

6 “(B) In a transition services expansion year,
7 services for groups of individuals with disabilities
8 who meet the requirements of clauses (i) and (iii) of
9 section 7(35)(A), including services described in
10 clauses (i), (ii), (iii), and (v) of section
11 101(a)(25)(B), to assist in the transition from school
12 to post-school activities.”.

13 **SEC. 205. STANDARDS AND INDICATORS.**

14 Section 106(a) of the Rehabilitation Act of 1973 (29
15 U.S.C. 726(a)) is amended by striking paragraph (1)(C)
16 and all that follows through paragraph (2) and inserting
17 the following:

18 “(2) *MEASURES.*—The standards and indicators
19 shall include outcome and related measures of pro-
20 gram performance that—

21 “(A) facilitate the accomplishment of the
22 purpose and policy of this title;

23 “(B) to the maximum extent practicable,
24 are consistent with the core indicators of per-
25 formance, and corresponding State adjusted lev-

1 *els of performance, established under section*
 2 *136(b) of the Workforce Investment Act of 1998*
 3 *(29 U.S.C. 2871(b)); and*

4 *“(C) include measures of the program’s per-*
 5 *formance with respect to the transition to post-*
 6 *school activities, and achievement of the post-*
 7 *school goals, of students with disabilities served*
 8 *under the program.”.*

9 **SEC. 206. RESERVATION FOR EXPANDED TRANSITION SERV-**
 10 **ICES.**

11 *The Rehabilitation Act of 1973 is amended by insert-*
 12 *ing after section 110 (29 U.S.C. 730) the following:*

13 **“SEC. 110A. RESERVATION FOR EXPANDED TRANSITION**
 14 **SERVICES.**

15 *“(a) RESERVATION.—From the State allotment under*
 16 *section 110 in a transition services expansion year, each*
 17 *State shall reserve an amount calculated by the Commis-*
 18 *sioner under subsection (b) to carry out programs and ac-*
 19 *tivities under sections 101(a)(25)(B) and 103(b)(6).*

20 *“(b) CALCULATION.—The Commissioner shall calculate*
 21 *the amount to be reserved for such programs and activities*
 22 *for a fiscal year by each State by multiplying \$50,000,000*
 23 *by the percentage determined by dividing—*

24 *“(1) the amount allotted to that State under sec-*
 25 *tion 110 for the prior fiscal year; by*

1 “(2) the total amount allotted to all States under
2 section 110 for that prior fiscal year.”.

3 **SEC. 207. CONFORMING AMENDMENT.**

4 Section 1(b) of the Rehabilitation Act of 1973 is
5 amended by inserting after the item relating to section 110
6 the following:

 “Sec. 110A. Reservation for expanded transition services.”.

7 **TITLE III—NATIONAL CENTER**
8 **FOR SPECIAL EDUCATION RE-**
9 **SEARCH**

10 **SEC. 301. NATIONAL CENTER FOR SPECIAL EDUCATION RE-**
11 **SEARCH.**

12 (a) *AMENDMENT.*—*The Education Sciences Reform*
13 *Act of 2002 (20 U.S.C. 9501 et seq.) is amended—*

14 (1) *by redesignating part E as part F; and*

15 (2) *by inserting after part D the following:*

16 **“PART E—NATIONAL CENTER FOR SPECIAL**
17 **EDUCATION RESEARCH**

18 **“SEC. 175. ESTABLISHMENT.**

19 “(a) *ESTABLISHMENT.*—*There is established in the In-*
20 *stitute a National Center for Special Education Research.*

21 “(b) *MISSION.*—*The mission of the National Center for*
22 *Special Education Research (in this part referred to as the*
23 *‘Special Education Research Center’) is—*

24 “(1) *to sponsor research to expand knowledge*
25 *and understanding of the needs of infants, toddlers,*

1 *management, and the education of children with disabili-*
2 *ties.*

3 **“SEC. 177. DUTIES.**

4 “(a) *GENERAL DUTIES.*—*The Special Education Re-*
5 *search Center shall carry out research activities under this*
6 *part consistent with the mission described in section 175(b),*
7 *such as activities that—*

8 “(1) *improve services provided under the Indi-*
9 *viduals with Disabilities Education Act in order to*
10 *improve—*

11 “(A) *academic achievement, functional out-*
12 *comes, and educational results for children with*
13 *disabilities; and*

14 “(B) *developmental outcomes for infants*
15 *and toddlers;*

16 “(2) *identify scientifically based educational*
17 *practices that support learning and improve aca-*
18 *ademic achievement, functional outcomes, and edu-*
19 *cational results for all students with disabilities;*

20 “(3) *examine the special needs of preschool aged*
21 *children, infants, and toddlers with disabilities, in-*
22 *cluding factors that may result in developmental*
23 *delays;*

24 “(4) *identify scientifically based related services*
25 *and interventions that promote participation and*

1 *progress in the general education curriculum and*
2 *general education settings;*

3 *“(5) improve the alignment, compatibility, and*
4 *development of valid and reliable assessments, includ-*
5 *ing alternate assessments, as required by section*
6 *1111(b) of the Elementary and Secondary Education*
7 *Act of 1965;*

8 *“(6) examine State content standards and alter-*
9 *nate assessments for students with significant cog-*
10 *nitive impairment in terms of academic achievement,*
11 *individualized instructional need, appropriate edu-*
12 *cation settings, and improved post-school results;*

13 *“(7) examine the educational, developmental,*
14 *and transitional needs of children with high incidence*
15 *and low incidence disabilities;*

16 *“(8) examine the extent to which overidentifica-*
17 *tion and underidentification of children with disabil-*
18 *ities occurs, and the causes thereof;*

19 *“(9) improve reading and literacy skills of chil-*
20 *dren with disabilities;*

21 *“(10) examine and improve secondary and post-*
22 *secondary education and transitional outcomes and*
23 *results for children with disabilities;*

1 “(11) examine methods of early intervention for
2 children with disabilities, including children with
3 multiple or complex developmental delays;

4 “(12) examine and incorporate universal design
5 concepts in the development of standards, assessments,
6 curricula, and instructional methods as a method to
7 improve educational and transitional results for chil-
8 dren with disabilities;

9 “(13) improve the preparation of personnel, in-
10 cluding early intervention personnel, who provide
11 educational and related services to children with dis-
12 abilities to increase the academic achievement and
13 functional performance of students with disabilities;

14 “(14) examine the excess costs of educating a
15 child with a disability and expenses associated with
16 high cost special education and related services;

17 “(15) help parents improve educational results
18 for their children, particularly related to transition
19 issues; and

20 “(16) address the unique needs of children with
21 significant cognitive disabilities.

22 “(b) STANDARDS.—The Commissioner of Special Edu-
23 cation Research shall ensure that activities assisted under
24 this section—

1 “(1) conform to high standards of quality, integ-
2 rity, accuracy, validity, and reliability;

3 “(2) are carried out in conjunction with the
4 standards for the conduct and evaluation of all re-
5 search and development established by the National
6 Center for Education Research; and

7 “(3) are objective, secular, neutral, and nonideo-
8 logical, and are free of partisan political influence,
9 and racial, cultural, gender, regional, or disability
10 bias.

11 “(c) PLAN.—The Commissioner of Special Education
12 Research shall propose to the Director a research plan, de-
13 veloped in collaboration with the Assistant Secretary for
14 Special Education and Rehabilitative Services, that—

15 “(1) is consistent with the priorities and mission
16 of the Institute and the mission of the Special Edu-
17 cation Research Center;

18 “(2) is carried out, updated, and modified, as
19 appropriate;

20 “(3) is consistent with the purpose of the Indi-
21 viduals with Disabilities Education Act;

22 “(4) contains an appropriate balance across all
23 age ranges and types of children with disabilities;

1 “(5) provides for research that is objective and
2 uses measurable indicators to assess its progress and
3 results;

4 “(6) is coordinated with the comprehensive plan
5 developed under section 661 of the Individuals with
6 Disabilities Education Act; and

7 “(7) provides that the research conducted under
8 part D of the Individuals with Disabilities Education
9 Act is relevant to special education practice and pol-
10 icy.

11 “(d) GRANTS, CONTRACTS, AND COOPERATIVE AGREE-
12 MENTS.—In carrying out the duties under this section, the
13 Director may award grants to, or enter into contracts or
14 cooperative agreements with, eligible entities.

15 “(e) APPLICATIONS.—An eligible entity that wishes to
16 receive a grant, or enter into a contract or cooperative
17 agreement, under this part shall submit an application to
18 the Director at such time, in such manner, and containing
19 such information as the Director may require.

20 “(f) DISSEMINATION.—The Special Education Re-
21 search Center shall—

22 “(1) synthesize and disseminate, through the Na-
23 tional Center for Education Evaluation and Regional
24 Assistance, the findings and results of special edu-

1 *cation research conducted or supported by the Special*
 2 *Education Research Center; and*

3 *“(2) assist the Director in the preparation of a*
 4 *biennial report, as described in section 119.*

5 *“(g) AUTHORIZATION OF APPROPRIATIONS.—There*
 6 *are authorized to be appropriated to carry out this part*
 7 *such sums as may be necessary for each of fiscal years 2004*
 8 *through 2009.”.*

9 *(b) CONFORMING AMENDMENTS.—*

10 *(1) EDUCATION SCIENCES REFORM ACT OF*
 11 *2002.—The Education Sciences Reform Act of 2002*
 12 *(20 U.S.C. 9501 et seq.) is amended—*

13 *(C) in section 111(b)(1)(A) (20 U.S.C.*
 14 *9511(b)(1)(A)), by inserting “and special edu-*
 15 *cation” after “early childhood education”.*

16 *(B) in section 111(c)(3) (20 U.S.C.*
 17 *9511(c)(3))—*

18 *(i) in subparagraph (B), by striking*
 19 *“and” after the semicolon;*

20 *(ii) in subparagraph (C), by striking*
 21 *the period and inserting “; and”; and*

22 *(iii) by adding at the end the fol-*
 23 *lowing:*

24 *“(D) the National Center for Special Edu-*
 25 *cation Research (as described in part E).”;*

1 (C) in section 115(a) (20 U.S.C. 9515(a)),
 2 by striking “including those” and all that follows
 3 through “such as” and inserting “including those
 4 associated with the goals and requirements of the
 5 Elementary and Secondary Education Act of
 6 1965 (20 U.S.C. 6301 et seq.), the Individuals
 7 with Disabilities Education Act (20 U.S.C. 1400
 8 et seq.), and the Higher Education Act of 1965
 9 (20 U.S.C. 1001 et seq.), such as”; and

10 (D) in section 116(c)(4)(A)(ii) (20 U.S.C.
 11 9516(c)(4)(A)(ii) is amended by inserting “spe-
 12 cial education experts,” after “early childhood
 13 experts,”.

14 (2) *ELEMENTARY AND SECONDARY EDUCATION*
 15 *ACT OF 1965.*—Section 1117(a)(3) of the *Elementary*
 16 *and Secondary Education Act of 1965* (20 U.S.C.
 17 6317(a)(3)) is amended by striking “part E” and in-
 18 serting “part D”.

19 (c) *TRANSITION PROVISIONS.*—

20 (1) *ORDERLY TRANSITION.*—Notwithstanding
 21 any other provision of law, the Secretary of Edu-
 22 cation shall take such steps as are necessary to pro-
 23 vide for the orderly transition to, and implementation
 24 of, part E of the *Education Science Reform Act of*
 25 2002, as enacted by subsection (a), from research ac-

1 *tivities carried out under section 672 of the Individ-*
2 *uals with Disabilities Education Act (as such section*
3 *was in effect on the day before the date of enactment*
4 *of this Act).*

5 (2) *CONTINUATION OF AWARDS.—The Secretary*
6 *of Education shall continue research awards made*
7 *under section 672 of the Individuals with Disabilities*
8 *Education Act (as such section was in effect on the*
9 *day before the date of enactment of this Act) that are*
10 *in effect on the day before the date of enactment of*
11 *this Act in accordance with the terms of those awards.*

12 (d) *EFFECTIVE DATES.—Notwithstanding any other*
13 *provision of law—*

14 (1) *the amendments made by subsections (a) and*
15 *(b) of this section shall take effect on October 1, 2004;*
16 *and*

17 (2) *section 672 of the Individuals with Disabil-*
18 *ities Education Act (as such section was in effect on*
19 *the day before the date of enactment of this Act) shall*
20 *remain in effect through September 30, 2004.*

1 **TITLE IV—COMMISSION ON UNI-**
2 **VERSAL DESIGN AND THE AC-**
3 **CESSIBILITY OF CURRICULUM**
4 **AND INSTRUCTIONAL MATE-**
5 **RIALS**

6 **SEC. 401. COMMISSION ON UNIVERSAL DESIGN AND THE**
7 **ACCESSIBILITY OF CURRICULUM AND IN-**
8 **STRUCTIONAL MATERIALS.**

9 *(a) ESTABLISHMENT AND PURPOSE.—*

10 *(1) ESTABLISHMENT.—There is established a*
11 *Commission (hereafter in this section referred to as*
12 *the “Commission”) to study, evaluate, and make ap-*
13 *propriate recommendations to the Congress and to the*
14 *Secretary on universal design and accessibility of cur-*
15 *riculum and instructional materials for use by all*
16 *children, with a particular focus on children with dis-*
17 *abilities, in elementary schools and secondary schools.*

18 *(2) PURPOSE.—The purpose of the Commission*
19 *is—*

20 *(A) to survey the issues related to improv-*
21 *ing access to curriculum and instructional mate-*
22 *rials for children with disabilities, with and*
23 *without assistive technologies;*

24 *(B) to study the benefits, current or poten-*
25 *tial costs, and challenges of developing and im-*

1 *plementing a standard definition of the term*
2 *universal design as a means to achieve accessi-*
3 *bility of curriculum and instructional materials,*
4 *and as the Commission determines necessary, to*
5 *recommend a definition for the term universal*
6 *design, or other terms, taking into consideration*
7 *educational objectives, investment of resources,*
8 *state of technology, and effect on development of*
9 *curriculum and instructional materials;*

10 *(C) to examine issues related to the need for*
11 *and current availability and accessibility of cur-*
12 *riculum and instructional materials for use in*
13 *elementary schools and secondary schools by chil-*
14 *dren with disabilities, gaps in or conflicts among*
15 *relevant technical standards, educational qual-*
16 *ity, availability of instructional materials, tech-*
17 *nical standards, intellectual property rights, and*
18 *the economic and technical feasibility of imple-*
19 *menting any recommended definitions; and*

20 *(D) to provide the Congress and the Sec-*
21 *retary, not later than 24 months after the date*
22 *of enactment of this Act, the report described in*
23 *subsection (d).*

24 *(b) MEMBERSHIP.—*

1 (1) *COMPOSITION.*—*The Commission shall be*
2 *composed of 21 members, of which—*

3 (A) *3 members shall be appointed by the*
4 *Majority Leader of the Senate;*

5 (B) *2 members shall be appointed by the*
6 *Minority Leader of the Senate;*

7 (C) *3 members shall be appointed by the*
8 *Speaker of the House of Representatives;*

9 (D) *2 members shall be appointed by the*
10 *Minority Leader of the House;*

11 (E) *8 members shall be appointed by the*
12 *Secretary including representatives of States,*
13 *local educational agencies, publishers of instruc-*
14 *tional material, individuals with disabilities,*
15 *technical standard setting bodies, and authorized*
16 *entities as defined in section 121(c)(1) of title*
17 *17, United States Code; and*

18 (F) *3 members shall be appointed by the*
19 *Registrar of Copyrights.*

20 (2) *EXPERTISE OF COMMISSIONERS.*—*All mem-*
21 *bers of the Commission shall be individuals who have*
22 *been appointed on the basis of technical qualifica-*
23 *tions, professional expertise, and demonstrated knowl-*
24 *edge and shall include at least 4 representatives of*
25 *each of the following:*

1 (A) publishers of instructional materials,
2 including of textbooks, software, and other print,
3 electronic, or digital curricular materials;

4 (B) elementary and secondary education,
5 including teachers, special educators, and State
6 and local education officials or administrators;

7 (C) researchers in the fields of disabilities,
8 technology, and accessible media;

9 (D) experts in intellectual property rights;
10 and

11 (E) advocates of children with disabilities,
12 including parents of blind, visually impaired,
13 deaf, hearing impaired, physically challenged,
14 cognitively impaired, or learning disabled, or
15 representatives of organizations that advocate for
16 such children.

17 (3) *DATE.*—The appointment of the members of
18 the Commission shall be made not later than 60 days
19 after the date of enactment of this Act.

20 (4) *PERIOD OF APPOINTMENT AND VACANCIES.*—
21 Members shall be appointed for the life of the Com-
22 mission. Any vacancy in the Commission shall not af-
23 fect its powers, but shall be filled in the same manner
24 as the original appointment.

1 (5) *INITIAL MEETING.*—Not later than 45 days
2 after the date on which all members of the Commis-
3 sion have been appointed, the Commission shall hold
4 the Commission’s first meeting.

5 (6) *MEETINGS.*—The Commission shall meet at
6 the call of the Chairperson.

7 (7) *QUORUM.*—A majority of the members of the
8 Commission shall constitute a quorum, but a lesser
9 number of members may hold hearings.

10 (8) *CHAIRPERSON AND VICE CHAIRPERSON.*—The
11 Commission shall select a chairperson and vice chair-
12 person from among the members of the Commission.

13 (c) *DUTIES OF THE COMMISSION.*—The Commission
14 shall study and make recommendations to Congress and the
15 Secretary regarding—

16 (1) the purposes of the Commission described in
17 subsection (a)(2);

18 (2) priority topics for additional research;

19 (3) the availability and accessibility of curricula
20 and instructional materials, including print, soft-
21 ware, CD-ROM, video, and Internet, for use in ele-
22 mentary schools and secondary schools by children
23 with disabilities, including—

24 (A) the numbers of affected children with
25 disabilities, by grade, age, and type of disability;

1 (B) the technical and other means by which
2 such materials are made accessible, such as as-
3 sistive technologies, electronic versions, large
4 print, closed captioning, video description, and
5 Braille, and any conflicts between relevant tech-
6 nical standards by which instructional materials
7 are made accessible;

8 (C) the steps taken by State and local edu-
9 cational agencies to support accessibility, includ-
10 ing through State adoption and procurement
11 policies, the acquisition and integration of as-
12 sistive technology, and any State and local re-
13 quirements or standards;

14 (D) timeliness of receipt of such materials
15 by children with disabilities; and

16 (E) continued barriers to access to such ma-
17 terials; and

18 (4) the potential and likely effects of providing
19 accessible or universally designed materials for all
20 students in elementary schools and secondary schools,
21 with a particular focus on children with disabilities,
22 including—

23 (A) an analysis of the current and potential
24 costs to develop and provide accessible instruc-
25 tional materials, with and without specialized

- 1 *formats, to publishers, States, local educational*
2 *agencies, schools, and others, broken down by—*
- 3 *(i) type of disability, including phys-*
4 *ical, sensory, and cognitive disability;*
- 5 *(ii) type of instructional materials, in-*
6 *cluding by grade and by basal and supple-*
7 *mental materials; and*
- 8 *(iii) type of media, including print,*
9 *electronic, software, web-based, audio, and*
10 *video; and*
- 11 *(B) an analysis of the effects of any rec-*
12 *ommended definitions regarding—*
- 13 *(i) the availability and quality of in-*
14 *structional materials for nondisabled stu-*
15 *dents, and innovation in the development*
16 *and delivery of these materials;*
- 17 *(ii) State learning content standards*
18 *that are media-, skill-, or pedagogically-*
19 *based and may therefore be compromised;*
- 20 *(iii) prices of instructional materials*
21 *and the impact of the definitions on State*
22 *and local budgets; and*
- 23 *(iv) intellectual property rights in con-*
24 *nection with the development, distribution,*

1 *and use of curriculum and instructional*
2 *materials.*

3 (d) *PUBLIC HEARINGS.*—*As part of the study con-*
4 *ducted under this subsection, the Commission shall hold*
5 *public hearings, including through the use of the Internet*
6 *or other technologies, for the purposes referred to in sub-*
7 *section (a).*

8 (e) *REPORT.*—

9 (1) *INTERIM REPORT.*—*Not later than 12 months*
10 *after the establishment of the Commission, the Com-*
11 *mission shall provide to the Secretary and Congress*
12 *an interim report on the Commission's activities dur-*
13 *ing the Commission's first year and any preliminary*
14 *findings.*

15 (2) *FINAL REPORT.*—*Not later than 24 months*
16 *after the establishment of the Commission, the Com-*
17 *mission shall submit a report to the Secretary and*
18 *Congress that shall contain—*

19 (A) *recommendations determined necessary*
20 *regarding definitions of the terms described in*
21 *subsection (a)(2)(B);*

22 (B) *recommendations for additional re-*
23 *search; and*

24 (C) *a detailed statement of the findings and*
25 *conclusions of the Commission resulting from the*

1 *study of the issues identified in subsection*
2 *(a)(2)(C).*

3 *(f) POWERS OF THE COMMISSION.—*

4 *(1) AUTHORITY OF COMMISSION.—The Commis-*
5 *sion may hold such hearings, convene and act at such*
6 *times and places, take such testimony, and receive*
7 *such evidence, as the Commission considers necessary*
8 *to carry out the responsibilities of the Commission.*

9 *(2) USE OF MAIL.—The Commission may use the*
10 *United States mails in the same manner and under*
11 *the same conditions as other departments and agen-*
12 *cies of the Federal Government.*

13 *(3) GIFTS.—The Commission may accept, use,*
14 *and dispose of gifts or donations of services or prop-*
15 *erty.*

16 *(4) COMPENSATION.—Except as provided in*
17 *paragraph (5), each member of the Commission who*
18 *is not an officer or employee of the Federal Govern-*
19 *ment shall serve without compensation. All members*
20 *of the Commission who are officers or employees of the*
21 *United States shall serve without compensation in ad-*
22 *dition to that received for their services as officers or*
23 *employees of the United States.*

24 *(5) PER DIEM.—The members of the Commission*
25 *shall be allowed travel expenses, including per diem*

1 *in lieu of subsistence, at rates authorized for employ-*
2 *ees of agencies under subchapter I of chapter 57 of*
3 *title 5, United States Code, while away from their*
4 *homes or regular places of business in the perform-*
5 *ance of services for the Commission.*

6 (6) *EMPLOYMENT AND COMPENSATION OF EM-*
7 *PLOYEES.—Except as otherwise provided in this sec-*
8 *tion and consistent with section 3161 of title 5,*
9 *United States Code, the Chairperson may appoint, fix*
10 *the compensation of, and terminate an executive di-*
11 *rector and such additional employees as may be nec-*
12 *essary to enable the Commission to perform the Com-*
13 *mission’s duties.*

14 (7) *DETAILING OF FEDERAL EMPLOYEES.—Any*
15 *Federal Government employee may be detailed to the*
16 *Commission without reimbursement, and such detail*
17 *shall be without interruption or loss of civil service*
18 *status or privilege.*

19 (8) *TEMPORARY AND INTERMITTENT SERV-*
20 *ICES.—The Chairperson of the Commission may pro-*
21 *cure temporary and intermittent services under sec-*
22 *tion 3109(b) of title 5, United States Code, at rates*
23 *for individuals that do not exceed the daily equivalent*
24 *of the annual rate of basic pay prescribed for level V*

1 of the *Executive Schedule* under section 5316 of such
2 title.

3 (g) *TERMINATION OF THE COMMISSION.*—The Com-
4 mission shall terminate on the date that is 90 days after
5 the date on which the Commission submits its final report
6 under subsection (e)(2).

7 (h) *AUTHORIZATION OF APPROPRIATIONS.*—

8 (1) *AUTHORIZATION.*—There are authorized to be
9 appropriated \$750,000 for fiscal year 2004, and such
10 sums as necessary for fiscal year 2005 to carry out
11 the provisions of this section.

12 (2) *AVAILABILITY.*—Any sums appropriated
13 under the authorization contained in this subsection
14 shall remain available, without fiscal year limitation,
15 until expended.

Calendar No. 362

108TH CONGRESS
1ST SESSION

S. 1248

[Report No. 108-185]

A BILL

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

NOVEMBER 3, 2003

Reported with an amendment