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INDIVIDUALS WITH DISABILITIES EDUCATION IMPROVEMENT ACT OF 2004

NOVEMBER 17, 2004.—Ordered to be printed

Mr. BOEHNER, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany H.R. 1350]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 1350), an Act to reauthorize the Individuals with Disabilities Education Act, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Individuals with Disabilities Education Improvement Act of 2004".

SEC. 2. ORGANIZATION OF THE ACT.

This Act is organized into the following titles:

TITLE I—AMENDMENTS TO THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT

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

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

"PART A—GENERAL PROVISIONS

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

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

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

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

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

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

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

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

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

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

"(3) Since the enactment and implementation of the Education for All Handicapped Children Act of 1975, this title has been successful in ensuring children with disabilities and the

families of such children access to a free appropriate public education and in improving educational results for children with disabilities.

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

"(5) Almost 30 years of research and experience has demonstrated that the education of children with disabilities can be made more effective by—

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

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

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

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

"(C) coordinating this title with other local, educational service agency, State, and Federal school improvement efforts, including improvement efforts under the Elementary and Secondary Education Act of 1965, in order to ensure that such children benefit from such efforts and that special education can become a service for such children rather than a place where such children are sent;

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

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

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

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

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

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

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

"(8) Parents and schools should be given expanded opportunities to resolve their disagreements in positive and constructive ways.

"(9) Teachers, schools, local educational agencies, and States should be relieved of irrelevant and unnecessary paperwork burdens that do not lead to improved educational outcomes.

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

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

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

"(D) With such changing demographics, recruitment efforts for special education personnel should focus on increasing the participation of minorities in the teaching profession in order to provide appropriate role models with sufficient knowledge to address the special education needs of these students.

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

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

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

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

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

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

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

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

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

"(B) The opportunity for full participation by minority individuals, minority organizations, and Historically Black Colleges and Universities in awards for grants and contracts, boards of organizations receiving assistance under this title, peer review panels, and training of professionals in the area of special education is essential to obtain greater success in the education of minority children with disabilities.

"(14) As the graduation rates for children with disabilities continue to climb, providing effective transition services to promote successful post-school employment or education is an important measure of accountability for children with disabilities.

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

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

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

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

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

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

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

"SEC. 602. DEFINITIONS.

"Except as otherwise provided, in this title:

"(1) ASSISTIVE TECHNOLOGY DEVICE.—

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

"(B) EXCEPTION.—The term does not include a medical device that is surgically implanted, or the replacement of such device.

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

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

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

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

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

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

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

"(3) CHILD WITH A DISABILITY.—

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

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

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

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

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

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

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

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

"(A) means a regional public multiservice agency—

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

"(ii) recognized as an administrative agency for purposes of the provision of special education and re-

lated services provided within public elementary schools and secondary schools of the State; and

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

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

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

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

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

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

"(A) amounts received—

"(i) under part B;

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

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

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

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

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

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

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

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

"(10) HIGHLY QUALIFIED.—

"(A) IN GENERAL.—For any special education teacher, the term 'highly qualified' has the meaning given the term in section 9101 of the Elementary and Secondary Education Act of 1965, except that such term also—

"(i) includes the requirements described in subparagraph (B); and

"(ii) includes the option for teachers to meet the requirements of section 9101 of such Act by meeting the requirements of subparagraph (C) or (D).

"(B) REQUIREMENTS FOR SPECIAL EDUCATION TEACHERS.—When used with respect to any public elementary school or secondary school special education teacher teaching in a State, such term means that—

"(i) the teacher has obtained full State certification as a special education teacher (including certification obtained through alternative routes to certification), or passed the State special education teacher licensing examination, and holds a license to teach in the State as a special education teacher, except that when used with respect to any teacher teaching in a public charter school, the term means that the teacher meets the requirements set forth in the State's public charter school law;

"(ii) the teacher has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and

"(iii) the teacher holds at least a bachelor's degree.

"(C) SPECIAL EDUCATION TEACHERS TEACHING TO ALTERNATE ACHIEVEMENT STANDARDS.—When used with respect to a special education teacher who teaches core academic subjects exclusively to children who are assessed against alternate achievement standards established under the regulations promulgated under section 1111(b)(1) of the Elementary and Secondary Education Act of 1965, such term means the teacher, whether new or not new to the profession, may either—

"(i) meet the applicable requirements of section 9101 of such Act for any elementary, middle, or secondary school teacher who is new or not new to the profession; or

"(ii) meet the requirements of subparagraph (B) or (C) of section 9101(23) of such Act as applied to an elementary school teacher, or, in the case of instruction above the elementary level, has subject matter knowledge appropriate to the level of instruction being provided, as determined by the State, needed to effectively teach to those standards.

"(D) SPECIAL EDUCATION TEACHERS TEACHING MULTIPLE SUBJECTS.—When used with respect to a special education teacher who teaches 2 or more core academic subjects exclusively to children with disabilities, such term means that the teacher may either—

"(i) meet the applicable requirements of section 9101 of the Elementary and Secondary Education Act of 1965 for any elementary, middle, or secondary school teacher who is new or not new to the profession;

"(ii) in the case of a teacher who is not new to the profession, demonstrate competence in all the core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher who is not new to the profes-

sion under section 9101(23)(C)(ii) of such Act, which may include a single, high objective uniform State standard of evaluation covering multiple subjects; or

"(iii) in the case of a new special education teacher who teaches multiple subjects and who is highly qualified in mathematics, language arts, or science, demonstrate competence in the other core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher under section 9101(23)(C)(ii) of such Act, which may include a single, high objective uniform State standard of evaluation covering multiple subjects, not later than 2 years after the date of employment.

"(E) RULE OF CONSTRUCTION.—Notwithstanding any other individual right of action that a parent or student may maintain under this part, nothing in this section or part shall be construed to create a right of action on behalf of an individual student or class of students for the failure of a particular State educational agency or local educational agency employee to be highly qualified.

"(F) DEFINITION FOR PURPOSES OF THE ESEA.—A teacher who is highly qualified under this paragraph shall be considered highly qualified for purposes of the Elementary and Secondary Education Act of 1965.

"(11) HOMELESS CHILDREN.—The term 'homeless children' has the meaning given the term 'homeless children and youths' in section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a).

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

"(13) INDIAN TRIBE.—The term 'Indian tribe' means any Federal or State Indian tribe, band, rancheria, pueblo, colony, or community, including any Alaska Native village or regional village corporation (as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.)).

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

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

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

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

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

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

''(18) LIMITED ENGLISH PROFICIENT.—The term 'limited English proficient' has the meaning given the term in section 9101 of the Elementary and Secondary Education Act of 1965.

''(19) LOCAL EDUCATIONAL AGENCY.—

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

''(B) EDUCATIONAL SERVICE AGENCIES AND OTHER PUBLIC INSTITUTIONS OR AGENCIES.—The term includes—

''(i) an educational service agency; and

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

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

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

''(21) NONPROFIT.—The term 'nonprofit', as applied to a school, agency, organization, or institution, means a school, agency, organization, or institution owned and operated by 1 or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

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

''(23) PARENT.—The term 'parent' means—

''(A) a natural, adoptive, or foster parent of a child (unless a foster parent is prohibited by State law from serving as a parent);

''(B) a guardian (but not the State if the child is a ward of the State);

''(C) an individual acting in the place of a natural or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or

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

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

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

"(26) RELATED SERVICES.—

"(A) IN GENERAL.—The term 'related services' means transportation, and such developmental, corrective, and other supportive services (including speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, school nurse services designed to enable a child with a disability to receive a free appropriate public education as described in the individualized education program of the child, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions in children.

"(B) EXCEPTION.—The term does not include a medical device that is surgically implanted, or the replacement of such device.

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

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

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

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

"(B) instruction in physical education.

"(30) SPECIFIC LEARNING DISABILITY.—

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

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

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

of emotional disturbance, or of environmental, cultural, or economic disadvantage.

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

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

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

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

"(A) is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including post-secondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

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

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

"(35) UNIVERSAL DESIGN.—The term 'universal design' has the meaning given the term in section 3 of the Assistive Technology Act of 1998 (29 U.S.C. 3002).

"(36) WARD OF THE STATE.—

"(A) IN GENERAL.—The term 'ward of the State' means a child who, as determined by the State where the child resides, is a foster child, is a ward of the State, or is in the custody of a public child welfare agency.

"(B) EXCEPTION.—The term does not include a foster child who has a foster parent who meets the definition of a parent in paragraph (23).

"SEC. 603. OFFICE OF SPECIAL EDUCATION PROGRAMS.

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

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

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

"SEC. 604. ABROGATION OF STATE SOVEREIGN IMMUNITY.

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

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

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

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

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

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

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

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

"SEC. 606. EMPLOYMENT OF INDIVIDUALS WITH DISABILITIES.

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

"SEC. 607. REQUIREMENTS FOR PRESCRIBING REGULATIONS.

"(a) IN GENERAL.—In carrying out the provisions of this title, the Secretary shall issue regulations under this title only to the extent that such regulations are necessary to ensure that there is compliance with the specific requirements of this title.

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

"(1) violates or contradicts any provision of this title; or

"(2) procedurally or substantively lessens the protections provided to children with disabilities under this title, as embodied in regulations in effect on July 20, 1983 (particularly as

such protections related to parental consent to initial evaluation or initial placement in special education, least restrictive environment, related services, timelines, attendance of evaluation personnel at individualized education program meetings, or qualifications of personnel), except to the extent that such regulation reflects the clear and unequivocal intent of Congress in legislation.

"(c) PUBLIC COMMENT PERIOD.—The Secretary shall provide a public comment period of not less than 75 days on any regulation proposed under part B or part C on which an opportunity for public comment is otherwise required by law.

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

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

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

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

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

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

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

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

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

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

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

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

"SEC. 608. STATE ADMINISTRATION.

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

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

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

"(3) minimize the number of rules, regulations, and policies to which the local educational agencies and schools located in the State are subject under this title.

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

"SEC. 609. PAPERWORK REDUCTION.

"(a) PILOT PROGRAM.—

"(1) PURPOSE.—The purpose of this section is to provide an opportunity for States to identify ways to reduce paperwork burdens and other administrative duties that are directly associated with the requirements of this title, in order to increase the time and resources available for instruction and other activities aimed at improving educational and functional results for children with disabilities.

"(2) AUTHORIZATION.—

"(A) IN GENERAL.—In order to carry out the purpose of this section, the Secretary is authorized to grant waivers of statutory requirements of, or regulatory requirements relating to, part B for a period of time not to exceed 4 years with respect to not more than 15 States based on proposals submitted by States to reduce excessive paperwork and noninstructional time burdens that do not assist in improving educational and functional results for children with disabilities.

"(B) EXCEPTION.—The Secretary shall not waive under this section any statutory requirements of, or regulatory requirements relating to, applicable civil rights requirements.

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

"(i) affect the right of a child with a disability to receive a free appropriate public education under part B; and

"(ii) permit a State or local educational agency to waive procedural safeguards under section 615.

"(3) PROPOSAL.—

"(A) IN GENERAL.—A State desiring to participate in the program under this section shall submit a proposal to the Secretary at such time and in such manner as the Secretary may reasonably require.

"(B) CONTENT.—The proposal shall include—

"(i) a list of any statutory requirements of, or regulatory requirements relating to, part B that the State desires the Secretary to waive, in whole or in part; and

"(ii) a list of any State requirements that the State proposes to waive or change, in whole or in part, to carry out a waiver granted to the State by the Secretary.

"(4) TERMINATION OF WAIVER.—The Secretary shall terminate a State's waiver under this section if the Secretary determines that the State—

"(A) needs assistance under section 616(d)(2)(A)(ii) and that the waiver has contributed to or caused such need for assistance;

"(B) needs intervention under section 616(d)(2)(A)(iii) or needs substantial intervention under section 616(d)(2)(A)(iv); or

"(C) failed to appropriately implement its waiver.

"(b) REPORT.—Beginning 2 years after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2004, the Secretary shall include in the annual report to Congress submitted pursuant to section 426 of the Department of Education Organization Act information related to the effectiveness of waivers granted under subsection (a), including any specific recommendations for broader implementation of such waivers, in—

"(1) reducing—

"(A) the paperwork burden on teachers, principals, administrators, and related service providers; and

"(B) noninstructional time spent by teachers in complying with part B;

"(2) enhancing longer-term educational planning;

"(3) improving positive outcomes for children with disabilities;

"(4) promoting collaboration between IEP Team members; and

"(5) ensuring satisfaction of family members.

"SEC. 610. FREELY ASSOCIATED STATES.

"The Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau shall continue to be eligible for competitive grants administered by the Secretary under this title to the extent that such grants continue to be available to States and local educational agencies under this title.

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

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

"(a) GRANTS TO STATES.—

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

"(2) MAXIMUM AMOUNT.—The maximum amount of the grant a State may receive under this section—

"(A) for fiscal years 2005 and 2006 is—

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

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

"(II) aged 6 through 21; multiplied by

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

"(B) for fiscal year 2007 and subsequent fiscal years is—

"(i) the number of children with disabilities in the 2004–2005 school year in the State who received special education and related services—

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

"(II) aged 6 through 21; multiplied by

"(ii) 40 percent of the average per-pupil expenditure in public elementary schools and secondary schools in the United States; adjusted by

"(iii) the rate of annual change in the sum of—

"(I) 85 percent of such State's population described in subsection (d)(3)(A)(i)(II); and

"(II) 15 percent of such State's population described in subsection (d)(3)(A)(i)(III).

"(b) OUTLYING AREAS AND FREELY ASSOCIATED STATES; SECRETARY OF THE INTERIOR.—

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

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

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

"(ii) to provide each freely associated State a grant in the amount that such freely associated State received for fiscal year 2003 under this part, but only if the freely associated State meets the applicable requirements of this part, as well as the requirements of section 611(b)(2)(C) as such section was in effect on the day before the date of enactment of the Individuals with Disabilities Education Improvement Act of 2004.

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

"(C) DEFINITION.—In this paragraph, the term 'freely associated States' means the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

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

"(c) TECHNICAL ASSISTANCE.—

"(1) IN GENERAL.—The Secretary may reserve not more than ½ of 1 percent of the amounts appropriated under this part for each fiscal year to provide technical assistance activities authorized under section 616(i).

"(2) MAXIMUM AMOUNT.—The maximum amount the Secretary may reserve under paragraph (1) for any fiscal year is $25,000,000, cumulatively adjusted by the rate of inflation as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

"(d) ALLOCATIONS TO STATES.—

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

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

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

"(A) ALLOCATION OF INCREASE.—

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

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

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

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

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

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

"(i) PRECEDING YEAR ALLOCATION.—No State's allocation shall be less than its allocation under this section for the preceding fiscal year.

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

"(I) the sum of—

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

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

"(II) the sum of—

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

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

"(III) the sum of—

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

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

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

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

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

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

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

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

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

"(ii) an amount that bears the same relation to any remaining funds as the increase the State received under this section for the preceding fiscal year over fis-

cal year 1999 bears to the total of all such increases for all States.

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

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

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

"(e) STATE-LEVEL ACTIVITIES.—

"(1) STATE ADMINISTRATION.—

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

"(i) each State may reserve for each fiscal year not more than the maximum amount the State was eligible to reserve for State administration under this section for fiscal year 2004 or $800,000 (adjusted in accordance with subparagraph (B)), whichever is greater; and

"(ii) each outlying area may reserve for each fiscal year not more than 5 percent of the amount the outlying area receives under subsection (b)(1) for the fiscal year or $35,000, whichever is greater.

"(B) CUMULATIVE ANNUAL ADJUSTMENTS.—For each fiscal year beginning with fiscal year 2005, the Secretary shall cumulatively adjust—

"(i) the maximum amount the State was eligible to reserve for State administration under this part for fiscal year 2004; and

"(ii) $800,000,

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

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

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

"(2) OTHER STATE-LEVEL ACTIVITIES.—

"(A) STATE-LEVEL ACTIVITIES.—

"(i) IN GENERAL.—Except as provided in clause (iii), for the purpose of carrying out State-level activities, each State may reserve for each of the fiscal years 2005 and 2006 not more than 10 percent from the amount of the State's allocation under subsection (d)

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

''(ii) SMALL STATE ADJUSTMENT.—Notwithstanding clause (i) and except as provided in clause (iii), in the case of a State for which the maximum amount reserved for State administration is not greater than $850,000, the State may reserve for the purpose of carrying out State-level activities for each of the fiscal years 2005 and 2006, not more than 10.5 percent from the amount of the State's allocation under subsection (d) for each of the fiscal years 2005 and 2006, respectively. For fiscal year 2007 and each subsequent fiscal year, such State may reserve the maximum amount the State was eligible to reserve under the preceding sentence for fiscal year 2006 (cumulatively adjusted by the rate of inflation as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor).

''(iii) EXCEPTION.—If a State does not reserve funds under paragraph (3) for a fiscal year, then—

''(I) in the case of a State that is not described in clause (ii), for fiscal year 2005 or 2006, clause (i) shall be applied by substituting '9.0 percent' for '10 percent'; and

''(II) in the case of a State that is described in clause (ii), for fiscal year 2005 or 2006, clause (ii) shall be applied by substituting '9.5 percent' for '10.5 percent'.

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

''(i) For monitoring, enforcement, and complaint investigation.

''(ii) To establish and implement the mediation process required by section 615(e), including providing for the cost of mediators and support personnel.

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

''(i) For support and direct services, including technical assistance, personnel preparation, and professional development and training.

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

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

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

"(v) To support the use of technology, including technology with universal design principles and assistive technology devices, to maximize accessibility to the general education curriculum for children with disabilities.

"(vi) Development and implementation of transition programs, including coordination of services with agencies involved in supporting the transition of children with disabilities to postsecondary activities.

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

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

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

"(x) To support the development and provision of appropriate accommodations for children with disabilities, or the development and provision of alternate assessments that are valid and reliable for assessing the performance of children with disabilities, in accordance with sections 1111(b) and 6111 of the Elementary and Secondary Education Act of 1965.

"(xi) To provide technical assistance to schools and local educational agencies, and direct services, including supplemental educational services as defined in 1116(e) of the Elementary and Secondary Education Act of 1965 to children with disabilities, in schools or local educational agencies identified for improvement under section 1116 of the Elementary and Secondary Education Act of 1965 on the sole basis of the assessment results of the disaggregated subgroup of children with disabilities, including providing professional development to special and regular education teachers, who teach children with disabilities, based on scientifically based research to improve educational instruction, in order to improve academic achievement to meet or exceed the objectives established by the State under section 1111(b)(2)(G) the Elementary and Secondary Education Act of 1965.

"(3) LOCAL EDUCATIONAL AGENCY RISK POOL.—

"(A) IN GENERAL.—

"(i) RESERVATION OF FUNDS.—For the purpose of assisting local educational agencies (including a char-

ter school that is a local educational agency or a consortium of local educational agencies) in addressing the needs of high need children with disabilities, each State shall have the option to reserve for each fiscal year 10 percent of the amount of funds the State reserves for State-level activities under paragraph (2)(A)—

"(I) to establish and make disbursements from the high cost fund to local educational agencies in accordance with this paragraph during the first and succeeding fiscal years of the high cost fund; and

"(II) to support innovative and effective ways of cost sharing by the State, by a local educational agency, or among a consortium of local educational agencies, as determined by the State in coordination with representatives from local educational agencies, subject to subparagraph (B)(ii).

"(ii) DEFINITION OF LOCAL EDUCATIONAL AGENCY.—In this paragraph the term 'local educational agency' includes a charter school that is a local educational agency, or a consortium of local educational agencies.

"(B) LIMITATION ON USES OF FUNDS.—

"(i) ESTABLISHMENT OF HIGH COST FUND.—A State shall not use any of the funds the State reserves pursuant to subparagraph (A)(i), but may use the funds the State reserves under paragraph (1), to establish and support the high cost fund.

"(ii) INNOVATIVE AND EFFECTIVE COST SHARING.—A State shall not use more than 5 percent of the funds the State reserves pursuant to subparagraph (A)(i) for each fiscal year to support innovative and effective ways of cost sharing among consortia of local educational agencies.

"(C) STATE PLAN FOR HIGH COST FUND.—

"(i) DEFINITION.—The State educational agency shall establish the State's definition of a high need child with a disability, which definition shall be developed in consultation with local educational agencies.

"(ii) STATE PLAN.—The State educational agency shall develop, not later than 90 days after the State reserves funds under this paragraph, annually review, and amend as necessary, a State plan for the high cost fund. Such State plan shall—

"(I) establish, in coordination with representatives from local educational agencies, a definition of a high need child with a disability that, at a minimum—

"(aa) addresses the financial impact a high need child with a disability has on the budget of the child's local educational agency; and

"(bb) ensures that the cost of the high need child with a disability is greater than 3 times the average per pupil expenditure (as defined

in section 9101 of the Elementary and Secondary Education Act of 1965) in that State;

"(II) establish eligibility criteria for the participation of a local educational agency that, at a minimum, takes into account the number and percentage of high need children with disabilities served by a local educational agency;

"(III) develop a funding mechanism that provides distributions each fiscal year to local educational agencies that meet the criteria developed by the State under subclause (II); and

"(IV) establish an annual schedule by which the State educational agency shall make its distributions from the high cost fund each fiscal year.

"(iii) PUBLIC AVAILABILITY.—The State shall make its final State plan publicly available not less than 30 days before the beginning of the school year, including dissemination of such information on the State website.

"(D) DISBURSEMENTS FROM THE HIGH COST FUND.—

"(i) IN GENERAL.—Each State educational agency shall make all annual disbursements from the high cost fund established under subparagraph (A)(i) in accordance with the State plan published pursuant to subparagraph (C).

"(ii) USE OF DISBURSEMENTS.—Each State educational agency shall make annual disbursements to eligible local educational agencies in accordance with its State plan under subparagraph (C)(ii).

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

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

"(F) ASSURANCE OF A FREE APPROPRIATE PUBLIC EDUCATION.—Nothing in this paragraph shall be construed—

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

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

"(G) SPECIAL RULE FOR RISK POOL AND HIGH NEED ASSISTANCE PROGRAMS IN EFFECT AS OF JANUARY 1, 2004.—Notwithstanding the provisions of subparagraphs (A) through (F), a State may use funds reserved pursuant to this paragraph for implementing a placement neutral cost

sharing and reimbursement program of high need, low incidence, catastrophic, or extraordinary aid to local educational agencies that provides services to high need students based on eligibility criteria for such programs that were created not later than January 1, 2004, and are currently in operation, if such program serves children that meet the requirement of the definition of a high need child with a disability as described in subparagraph (C)(ii)(I).

''(H) MEDICAID SERVICES NOT AFFECTED.—Disbursements provided under this paragraph shall not be used to pay costs that otherwise would be reimbursed as medical assistance for a child with a disability under the State medicaid program under title XIX of the Social Security Act.

''(I) REMAINING FUNDS.—Funds reserved under subparagraph (A) in any fiscal year but not expended in that fiscal year pursuant to subparagraph (D) shall be allocated to local educational agencies for the succeeding fiscal year in the same manner as funds are allocated to local educational agencies under subsection (f) for the succeeding fiscal year.

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

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

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

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

''(A) will be used to meet the requirements of this title; and

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

''(6) SPECIAL RULE FOR INCREASED FUNDS.—A State may use funds the State reserves under paragraph (1)(A) as a result of inflationary increases under paragraph (1)(B) to carry out activities authorized under clause (i), (iii), (vii), or (viii) of paragraph (2)(C).

''(7) FLEXIBILITY IN USING FUNDS FOR PART C.—Any State eligible to receive a grant under section 619 may use funds made available under paragraph (1)(A), subsection (f)(3), or section 619(f)(5) to develop and implement a State policy jointly with the lead agency under part C and the State educational agency to provide early intervention services (which shall include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills) in accordance with part C to children with disabilities who are eligible for services under section 619 and who previously received services under part C until such children enter, or are eligible under State law to enter, kindergarten, or elementary school as appropriate.

"(f) SUBGRANTS TO LOCAL EDUCATIONAL AGENCIES.—

"(1) SUBGRANTS REQUIRED.—Each State that receives a grant under this section for any fiscal year shall distribute any funds the State does not reserve under subsection (e) to local educational agencies (including public charter schools that operate as local educational agencies) in the State that have established their eligibility under section 613 for use in accordance with this part.

"(2) PROCEDURE FOR ALLOCATIONS TO LOCAL EDUCATIONAL AGENCIES.—For each fiscal year for which funds are allocated to States under subsection (d), each State shall allocate funds under paragraph (1) as follows:

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

"(B) ALLOCATION OF REMAINING FUNDS.—After making allocations under subparagraph (A), the State shall—

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

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

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

"(g) DEFINITIONS.—In this section:

"(1) AVERAGE PER-PUPIL EXPENDITURE IN PUBLIC ELEMENTARY SCHOOLS AND SECONDARY SCHOOLS IN THE UNITED STATES.—The term 'average per-pupil expenditure in public elementary schools and secondary schools in the United States' means—

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

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

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

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

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

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

"(1) PROVISION OF AMOUNTS FOR ASSISTANCE.—

"(A) IN GENERAL.—The Secretary of Education shall provide amounts to the Secretary of the Interior to meet the need for assistance for the education of children with disabilities on reservations aged 5 to 21, inclusive, enrolled in elementary schools and secondary schools for Indian children operated or funded by the Secretary of the Interior. The amount of such payment for any fiscal year shall be equal to 80 percent of the amount allotted under subsection (b)(2) for that fiscal year. Of the amount described in the preceding sentence—

"(i) 80 percent shall be allocated to such schools by July 1 of that fiscal year; and

"(ii) 20 percent shall be allocated to such schools by September 30 of that fiscal year.

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

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

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

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

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

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

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

"(E) includes an assurance that the Secretary of the Interior and the Secretary of Health and Human Services have entered into a memorandum of agreement, to be provided to the Secretary of Education, for the coordination of services, resources, and personnel between their respective Federal, State, and local offices and with State and local educational agencies and other entities to facilitate the provision of services to Indian children with disabilities residing on or near reservations (such agreement shall provide for the apportionment of responsibilities and costs, including child find, evaluation, diagnosis, remediation or therapeutic measures, and (where appropriate) equipment and medical or personal supplies as needed for a child to remain in school or a program); and

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

"(3) APPLICABILITY.—The Secretary shall withhold payments under this subsection with respect to the information described in paragraph (2) in the same manner as the Secretary withholds payments under section 616(e)(6).

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

"(A) IN GENERAL.—With funds appropriated under subsection (i), the Secretary of Education shall make payments to the Secretary of the Interior to be distributed to tribes or tribal organizations (as defined under section 4 of the Indian Self-Determination and Education Assistance Act) or consortia of tribes or tribal organizations to provide for the coordination of assistance for special education and related services for children with disabilities aged 3 through 5 on reservations served by elementary schools and secondary schools for Indian children operated or funded by the Department of the Interior. The amount of such payments under subparagraph (B) for any fiscal year shall be equal to 20 percent of the amount allotted under subsection (b)(2).

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

of those children served by all tribes or tribal organizations.

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

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

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

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

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

fants, toddlers, and children with disabilities, to tribes, and to other interested parties.

"(6) ESTABLISHMENT OF ADVISORY BOARD.—To meet the requirements of section 612(a)(21), the Secretary of the Interior shall establish, under the BIA, an advisory board composed of individuals involved in or concerned with the education and provision of services to Indian infants, toddlers, children, and youth with disabilities, including Indians with disabilities, Indian parents or guardians of such children, teachers, service providers, State and local educational officials, representatives of tribes or tribal organizations, representatives from State Interagency Coordinating Councils under section 641 in States having reservations, and other members representing the various divisions and entities of the BIA. The chairperson shall be selected by the Secretary of the Interior. The advisory board shall—

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

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

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

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

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

"(7) ANNUAL REPORTS.—

"(A) IN GENERAL.—The advisory board established under paragraph (6) shall prepare and submit to the Secretary of the Interior and to Congress an annual report containing a description of the activities of the advisory board for the preceding year.

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

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

"(1) $12,358,376,571 for fiscal year 2005;
"(2) $14,648,647,143 for fiscal year 2006;
"(3) $16,938,917,714 for fiscal year 2007;
"(4) $19,229,188,286 for fiscal year 2008;
"(5) $21,519,458,857 for fiscal year 2009;
"(6) $23,809,729,429 for fiscal year 2010;
"(7) $26,100,000,000 for fiscal year 2011; and
"(8) such sums as may be necessary for fiscal year 2012 and each succeeding fiscal year.

"SEC. 612. STATE ELIGIBILITY.

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

"(1) FREE APPROPRIATE PUBLIC EDUCATION.—

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

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

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

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

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

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

"(C) STATE FLEXIBILITY.—A State that provides early intervention services in accordance with part C to a child who is eligible for services under section 619, is not required to provide such child with a free appropriate public education.

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

"(3) CHILD FIND.—

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

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

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

"(5) LEAST RESTRICTIVE ENVIRONMENT.—

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

"(B) ADDITIONAL REQUIREMENT.—

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

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

"(6) PROCEDURAL SAFEGUARDS.—

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

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

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

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

"(9) TRANSITION FROM PART C TO PRESCHOOL PROGRAMS.—Children participating in early intervention programs assisted under part C, and who will participate in preschool programs

assisted under this part, experience a smooth and effective transition to those preschool programs in a manner consistent with section 637(a)(9). By the third birthday of such a child, an individualized education program or, if consistent with sections 614(d)(2)(B) and 636(d), an individualized family service plan, has been developed and is being implemented for the child. The local educational agency will participate in transition planning conferences arranged by the designated lead agency under section 635(a)(10).

"(10) CHILDREN IN PRIVATE SCHOOLS.—

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

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

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

"(II) In calculating the proportionate amount of Federal funds, the local educational agency, after timely and meaningful consultation with representatives of private schools as described in clause (iii), shall conduct a thorough and complete child find process to determine the number of parentally placed children with disabilities attending private schools located in the local educational agency.

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

"(IV) State and local funds may supplement and in no case shall supplant the proportionate amount of Federal funds required to be expended under this subparagraph.

"(V) Each local educational agency shall maintain in its records and provide to the State educational agency the number of children evaluated under this subparagraph, the number of children determined to be children with disabilities under this paragraph, and the number of children served under this paragraph.

"(ii) CHILD FIND REQUIREMENT.—

"(I) IN GENERAL.—The requirements of paragraph (3) (relating to child find) shall apply with respect to children with disabilities in the State who are enrolled in private, including religious, elementary schools and secondary schools.

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

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

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

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

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

"(I) the child find process and how parentally placed private school children suspected of having a disability can participate equitably, including how parents, teachers, and private school officials will be informed of the process;

"(II) the determination of the proportionate amount of Federal funds available to serve parentally placed private school children with disabilities under this subparagraph, including the determination of how the amount was calculated;

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

"(IV) how, where, and by whom special education and related services will be provided for parentally placed private school children with disabilities, including a discussion of types of serv-

ices, including direct services and alternate service delivery mechanisms, how such services will be apportioned if funds are insufficient to serve all children, and how and when these decisions will be made; and

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

"(iv) WRITTEN AFFIRMATION.—When timely and meaningful consultation as required by clause (iii) has occurred, the local educational agency shall obtain a written affirmation signed by the representatives of participating private schools, and if such representatives do not provide such affirmation within a reasonable period of time, the local educational agency shall forward the documentation of the consultation process to the State educational agency.

"(v) COMPLIANCE.—

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

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

"(vi) PROVISION OF EQUITABLE SERVICES.—

"(I) DIRECTLY OR THROUGH CONTRACTS.—The provision of services pursuant to this subparagraph shall be provided—

"(aa) by employees of a public agency; or

"(bb) through contract by the public agency with an individual, association, agency, organization, or other entity.

"(II) SECULAR, NEUTRAL, NONIDEOLOGICAL.—Special education and related services provided to parentally placed private school children with dis-

abilities, including materials and equipment, shall be secular, neutral, and nonideological.

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

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

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

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

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

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

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

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

"(I) if—

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

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

"(II) if, prior to the parents' removal of the child from the public school, the public agency informed the parents, through the notice requirements described in section 615(b)(3), of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for such evaluation; or

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

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

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

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

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

"(cc) compliance with clause (iii)(I) would likely result in physical harm to the child; and

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

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

"(bb) compliance with clause (iii)(I) would likely result in serious emotional harm to the child.

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

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

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

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

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

"(II) meet the educational standards of the State educational agency; and

"(iii) in carrying out this part with respect to homeless children, the requirements of subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.) are met.

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

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

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

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

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

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

"(iii) INTERAGENCY DISPUTES.—Procedures for resolving interagency disputes (including procedures under which local educational agencies may initiate proceedings) under the agreement or other mechanism

to secure reimbursement from other agencies or otherwise implement the provisions of the agreement or mechanism.

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

"(B) OBLIGATION OF PUBLIC AGENCY.—

"(i) IN GENERAL.—If any public agency other than an educational agency is otherwise obligated under Federal or State law, or assigned responsibility under State policy pursuant to subparagraph (A), to provide or pay for any services that are also considered special education or related services (such as, but not limited to, services described in section 602(1) relating to assistive technology devices, 602(2) relating to assistive technology services, 602(26) relating to related services, 602(33) relating to supplementary aids and services, and 602(34) relating to transition services) that are necessary for ensuring a free appropriate public education to children with disabilities within the State, such public agency shall fulfill that obligation or responsibility, either directly or through contract or other arrangement pursuant to subparagraph (A) or an agreement pursuant to subparagraph (C).

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

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

"(i) State statute or regulation;

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

"(iii) other appropriate written methods as determined by the Chief Executive Officer of the State or designee of the officer and approved by the Secretary.

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

affording that agency reasonable notice and an opportunity for a hearing.

"(14) PERSONNEL QUALIFICATIONS.—

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

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

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

"(ii) ensure that related services personnel who deliver services in their discipline or profession meet the requirements of clause (i) and have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis; and

"(iii) allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulation, or written policy, in meeting the requirements of this part to be used to assist in the provision of special education and related services under this part to children with disabilities.

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

"(D) RULE OF CONSTRUCTION.—Notwithstanding any other individual right of action that a parent or student may maintain under this part, nothing in this paragraph shall be construed to create a right of action on behalf of an individual student for the failure of a particular State educational agency or local educational agency staff person to be highly qualified, or to prevent a parent from filing a complaint about staff qualifications with the State educational agency as provided for under this part.

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

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

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

"(ii) are the same as the State's definition of adequate yearly progress, including the State's objectives for progress by children with disabilities, under section 1111(b)(2)(C) of the Elementary and Secondary Education Act of 1965;

"(iii) address graduation rates and dropout rates, as well as such other factors as the State may determine; and

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

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

"(C) will annually report to the Secretary and the public on the progress of the State, and of children with disabilities in the State, toward meeting the goals established under subparagraph (A), which may include elements of the reports required under section 1111(h) of the Elementary and Secondary Education Act of 1965.

"(16) PARTICIPATION IN ASSESSMENTS.—

"(A) IN GENERAL.—All children with disabilities are included in all general State and districtwide assessment programs, including assessments described under section 1111 of the Elementary and Secondary Education Act of 1965, with appropriate accommodations and alternate assessments where necessary and as indicated in their respective individualized education programs.

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

"(C) ALTERNATE ASSESSMENTS.—

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

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

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

"(II) if the State has adopted alternate academic achievement standards permitted under the regulations promulgated to carry out section 1111(b)(1) of the Elementary and Secondary Education Act of 1965, measure the achievement of children with disabilities against those standards.

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

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

"(i) The number of children with disabilities participating in regular assessments, and the number of those children who were provided accommodations in order to participate in those assessments.

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

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

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

"(E) UNIVERSAL DESIGN.—The State educational agency (or, in the case of a districtwide assessment, the local educational agency) shall, to the extent feasible, use universal design principles in developing and administering any assessments under this paragraph.

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

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

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

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

"(18) MAINTENANCE OF STATE FINANCIAL SUPPORT.—

"(A) IN GENERAL.—The State does not reduce the amount of State financial support for special education and

related services for children with disabilities, or otherwise made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year.

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

"(C) WAIVERS FOR EXCEPTIONAL OR UNCONTROLLABLE CIRCUMSTANCES.—The Secretary may waive the requirement of subparagraph (A) for a State, for 1 fiscal year at a time, if the Secretary determines that—

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

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

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

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

"(20) RULE OF CONSTRUCTION.—In complying with paragraphs (17) and (18), a State may not use funds paid to it under this part to satisfy State-law mandated funding obligations to local educational agencies, including funding based on student attendance or enrollment, or inflation.

"(21) STATE ADVISORY PANEL.—

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

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

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

"(ii) individuals with disabilities;

"(iii) teachers;

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

"(v) State and local education officials, including officials who carry out activities under subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.);

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

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

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

"(ix) not less than 1 representative of a vocational, community, or business organization concerned with the provision of transition services to children with disabilities;

"(x) a representative from the State child welfare agency responsible for foster care; and

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

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

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

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

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

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

"(iv) advise the State educational agency in developing corrective action plans to address findings identified in Federal monitoring reports under this part; and

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

"(22) SUSPENSION AND EXPULSION RATES.—

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

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

"(ii) compared to such rates for nondisabled children within such agencies.

"(B) REVIEW AND REVISION OF POLICIES.—If such discrepancies are occurring, the State educational agency reviews and, if appropriate, revises (or requires the affected

State or local educational agency to revise) its policies, procedures, and practices relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards, to ensure that such policies, procedures, and practices comply with this title.

"(23) ACCESS TO INSTRUCTIONAL MATERIALS.—

"(A) IN GENERAL.—The State adopts the National Instructional Materials Accessibility Standard for the purposes of providing instructional materials to blind persons or other persons with print disabilities, in a timely manner after the publication of the National Instructional Materials Accessibility Standard in the Federal Register.

"(B) RIGHTS OF STATE EDUCATIONAL AGENCY.—Nothing in this paragraph shall be construed to require any State educational agency to coordinate with the National Instructional Materials Access Center. If a State educational agency chooses not to coordinate with the National Instructional Materials Access Center, such agency shall provide an assurance to the Secretary that the agency will provide instructional materials to blind persons or other persons with print disabilities in a timely manner.

"(C) PREPARATION AND DELIVERY OF FILES.—If a State educational agency chooses to coordinate with the National Instructional Materials Access Center, not later than 2 years after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2004, the agency, as part of any print instructional materials adoption process, procurement contract, or other practice or instrument used for purchase of print instructional materials, shall enter into a written contract with the publisher of the print instructional materials to—

"(i) require the publisher to prepare and, on or before delivery of the print instructional materials, provide to the National Instructional Materials Access Center electronic files containing the contents of the print instructional materials using the National Instructional Materials Accessibility Standard; or

"(ii) purchase instructional materials from the publisher that are produced in, or may be rendered in, specialized formats.

"(D) ASSISTIVE TECHNOLOGY.—In carrying out this paragraph, the State educational agency, to the maximum extent possible, shall work collaboratively with the State agency responsible for assistive technology programs.

"(E) DEFINITIONS.—In this paragraph:

"(i) NATIONAL INSTRUCTIONAL MATERIALS ACCESS CENTER.—The term 'National Instructional Materials Access Center' means the center established pursuant to section 674(e).

"(ii) NATIONAL INSTRUCTIONAL MATERIALS ACCESSIBILITY STANDARD.—The term 'National Instructional Materials Accessibility Standard' has the meaning given the term in section 674(e)(3)(A).

"(iii) SPECIALIZED FORMATS.—The term 'specialized formats' has the meaning given the term in section 674(e)(3)(D).

"(24) OVERIDENTIFICATION AND DISPROPORTIONALITY.—The State has in effect, consistent with the purposes of this title and with section 618(d), policies and procedures designed to prevent the inappropriate overidentification or disproportionate representation by race and ethnicity of children as children with disabilities, including children with disabilities with a particular impairment described in section 602.

"(25) PROHIBITION ON MANDATORY MEDICATION.—

"(A) IN GENERAL.—The State educational agency shall prohibit State and local educational agency personnel from requiring a child to obtain a prescription for a substance covered by the Controlled Substances Act (21 U.S.C. 801 et seq.) as a condition of attending school, receiving an evaluation under subsection (a) or (c) of section 614, or receiving services under this title.

"(B) RULE OF CONSTRUCTION.—Nothing in subparagraph (A) shall be construed to create a Federal prohibition against teachers and other school personnel consulting or sharing classroom-based observations with parents or guardians regarding a student's academic and functional performance, or behavior in the classroom or school, or regarding the need for evaluation for special education or related services under paragraph (3).

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

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

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

"(c) EXCEPTION FOR PRIOR STATE PLANS.—

"(1) IN GENERAL.—If a State has on file with the Secretary policies and procedures that demonstrate that such State meets any requirement of subsection (a), including any policies and procedures filed under this part as in effect before the effective date of the Individuals with Disabilities Education Improvement Act of 2004, the Secretary shall consider such State to have met such requirement for purposes of receiving a grant under this part.

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

"(3) MODIFICATIONS REQUIRED BY THE SECRETARY.—If, after the effective date of the Individuals with Disabilities Edu-

cation Improvement Act of 2004, the provisions of this title are amended (or the regulations developed to carry out this title are amended), there is a new interpretation of this title by a Federal court or a State's highest court, or there is an official finding of noncompliance with Federal law or regulations, then the Secretary may require a State to modify its application only to the extent necessary to ensure the State's compliance with this part.

"(d) APPROVAL BY THE SECRETARY.—

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

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

"(A) with reasonable notice; and

"(B) with an opportunity for a hearing.

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

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

"(1) IN GENERAL.—If, on the date of enactment of the Education of the Handicapped Act Amendments of 1983, a State educational agency was prohibited by law from providing for the equitable participation in special programs of children with disabilities enrolled in private elementary schools and secondary schools as required by subsection (a)(10)(A), or if the Secretary determines that a State educational agency, local educational agency, or other entity has substantially failed or is unwilling to provide for such equitable participation, then the Secretary shall, notwithstanding such provision of law, arrange for the provision of services to such children through arrangements that shall be subject to the requirements of such subsection.

"(2) PAYMENTS.—

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

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

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

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

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

"(3) NOTICE AND HEARING.—

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

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

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

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

"SEC. 613. LOCAL EDUCATIONAL AGENCY ELIGIBILITY.

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

"(1) CONSISTENCY WITH STATE POLICIES.—The local educational agency, in providing for the education of children with disabilities within its jurisdiction, has in effect policies, procedures, and programs that are consistent with the State policies and procedures established under section 612.

"(2) USE OF AMOUNTS.—

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

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

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

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

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

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

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

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

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

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

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

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

"(C) ADJUSTMENT TO LOCAL FISCAL EFFORT IN CERTAIN FISCAL YEARS.—

"(i) AMOUNTS IN EXCESS.—Notwithstanding clauses (ii) and (iii) of subparagraph (A), for any fiscal year for which the allocation received by a local educational agency under section 611(f) exceeds the amount the local educational agency received for the previous fiscal year, the local educational agency may reduce the level of expenditures otherwise required by subparagraph (A)(iii) by not more than 50 percent of the amount of such excess.

"(ii) USE OF AMOUNTS TO CARRY OUT ACTIVITIES UNDER ESEA.—If a local educational agency exercises the authority under clause (i), the agency shall use an amount of local funds equal to the reduction in expenditures under clause (i) to carry out activities authorized

under the Elementary and Secondary Education Act of 1965.

"(iii) STATE PROHIBITION.—Notwithstanding clause (i), if a State educational agency determines that a local educational agency is unable to establish and maintain programs of free appropriate public education that meet the requirements of subsection (a) or the State educational agency has taken action against the local educational agency under section 616, the State educational agency shall prohibit the local educational agency from reducing the level of expenditures under clause (i) for that fiscal year.

"(iv) SPECIAL RULE.—The amount of funds expended by a local educational agency under subsection (f) shall count toward the maximum amount of expenditures such local educational agency may reduce under clause (i).

"(D) SCHOOLWIDE PROGRAMS UNDER TITLE I OF THE ESEA.—Notwithstanding subparagraph (A) or any other provision of this part, a local educational agency may use funds received under this part for any fiscal year to carry out a schoolwide program under section 1114 of the Elementary and Secondary Education Act of 1965, except that the amount so used in any such program shall not exceed—

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

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

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

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

"(4) PERMISSIVE USE OF FUNDS.—

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

"(i) SERVICES AND AIDS THAT ALSO BENEFIT NONDISABLED CHILDREN.—For the costs of special education and related services, and supplementary aids and services, provided in a regular class or other education-related setting to a child with a disability in accordance with the individualized education program of the child, even if 1 or more nondisabled children benefit from such services.

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

"(iii) HIGH COST EDUCATION AND RELATED SERVICES.—To establish and implement cost or risk sharing funds, consortia, or cooperatives for the local educational agency itself, or for local educational agencies

working in a consortium of which the local educational agency is a part, to pay for high cost special education and related services.

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

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

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

"(B) provides funds under this part to those charter schools—

"(i) on the same basis as the local educational agency provides funds to the local educational agency's other public schools, including proportional distribution based on relative enrollment of children with disabilities; and

"(ii) at the same time as the agency distributes other Federal funds to the agency's other public schools, consistent with the State's charter school law.

"(6) PURCHASE OF INSTRUCTIONAL MATERIALS.—

"(A) IN GENERAL.—Not later than 2 years after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2004, a local educational agency that chooses to coordinate with the National Instructional Materials Access Center, when purchasing print instructional materials, shall acquire the print instructional materials in the same manner and subject to the same conditions as a State educational agency acquires print instructional materials under section 612(a)(23).

"(B) RIGHTS OF LOCAL EDUCATIONAL AGENCY.—Nothing in this paragraph shall be construed to require a local educational agency to coordinate with the National Instructional Materials Access Center. If a local educational agency chooses not to coordinate with the National Instructional Materials Access Center, the local educational agency shall provide an assurance to the State educational agency that the local educational agency will provide instructional materials to blind persons or other persons with print disabilities in a timely manner.

"(7) INFORMATION FOR STATE EDUCATIONAL AGENCY.—The local educational agency shall provide the State educational

agency with information necessary to enable the State educational agency to carry out its duties under this part, including, with respect to paragraphs (15) and (16) of section 612(a), information relating to the performance of children with disabilities participating in programs carried out under this part.

"(8) PUBLIC INFORMATION.—The local educational agency shall make available to parents of children with disabilities and to the general public all documents relating to the eligibility of such agency under this part.

"(9) RECORDS REGARDING MIGRATORY CHILDREN WITH DISABILITIES.—The local educational agency shall cooperate in the Secretary's efforts under section 1308 of the Elementary and Secondary Education Act of 1965 to ensure the linkage of records pertaining to migratory children with a disability for the purpose of electronically exchanging, among the States, health and educational information regarding such children.

"(b) EXCEPTION FOR PRIOR LOCAL PLANS.—

"(1) IN GENERAL.—If a local educational agency or State agency has on file with the State educational agency policies and procedures that demonstrate that such local educational agency, or such State agency, as the case may be, meets any requirement of subsection (a), including any policies and procedures filed under this part as in effect before the effective date of the Individuals with Disabilities Education Improvement Act of 2004, the State educational agency shall consider such local educational agency or State agency, as the case may be, to have met such requirement for purposes of receiving assistance under this part.

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

"(3) MODIFICATIONS REQUIRED BY STATE EDUCATIONAL AGENCY.—If, after the effective date of the Individuals with Disabilities Education Improvement Act of 2004, the provisions of this title are amended (or the regulations developed to carry out this title are amended), there is a new interpretation of this title by Federal or State courts, or there is an official finding of noncompliance with Federal or State law or regulations, then the State educational agency may require a local educational agency to modify its application only to the extent necessary to ensure the local educational agency's compliance with this part or State law.

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

"(d) LOCAL EDUCATIONAL AGENCY COMPLIANCE.—

"(1) IN GENERAL.—If the State educational agency, after reasonable notice and an opportunity for a hearing, finds that a local educational agency or State agency that has been determined to be eligible under this section is failing to comply with any requirement described in subsection (a), the State educational agency shall reduce or shall not provide any further payments to the local educational agency or State agency until the State educational agency is satisfied that the local educational agency or State agency, as the case may be, is complying with that requirement.

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

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

"(e) JOINT ESTABLISHMENT OF ELIGIBILITY.—

"(1) JOINT ESTABLISHMENT.—

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

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

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

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

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

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

"(4) REQUIREMENTS FOR EDUCATIONAL SERVICE AGENCIES.—

"(A) IN GENERAL.—If an educational service agency is required by State law to carry out programs under this

part, the joint responsibilities given to local educational agencies under this subsection shall—

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

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

"(B) ADDITIONAL REQUIREMENT.—Notwithstanding any other provision of this subsection, an educational service agency shall provide for the education of children with disabilities in the least restrictive environment, as required by section 612(a)(5).

"(f) EARLY INTERVENING SERVICES.—

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

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

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

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

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

"(4) REPORTING.—Each local educational agency that develops and maintains coordinated, early intervening services under this subsection shall annually report to the State educational agency on—

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

"(B) the number of students served under this subsection who subsequently receive special education and related services under this title during the preceding 2-year period.

"(5) COORDINATION WITH ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965.—Funds made available to carry out this subsection may be used to carry out coordinated, early in-

tervening services aligned with activities funded by, and carried out under, the Elementary and Secondary Education Act of 1965 if such funds are used to supplement, and not supplant, funds made available under the Elementary and Secondary Education Act of 1965 for the activities and services assisted under this subsection.

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

"(1) IN GENERAL.—A State educational agency shall use the payments that would otherwise have been available to a local educational agency or to a State agency to provide special education and related services directly to children with disabilities residing in the area served by that local educational agency, or for whom that State agency is responsible, if the State educational agency determines that the local educational agency or State agency, as the case may be—

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

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

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

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

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

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

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

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

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

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

"(j) STATE AGENCY FLEXIBILITY.—

"(1) ADJUSTMENT TO STATE FISCAL EFFORT IN CERTAIN FISCAL YEARS.—For any fiscal year for which the allotment received by a State under section 611 exceeds the amount the State received for the previous fiscal year and if the State in school year 2003–2004 or any subsequent school year pays or reimburses all local educational agencies within the State from State revenue 100 percent of the non-Federal share of the costs of special education and related services, the State educational agency, notwithstanding paragraphs (17) and (18) of section 612(a) and section 612(b), may reduce the level of expenditures from State sources for the education of children with disabilities by not more than 50 percent of the amount of such excess.

"(2) PROHIBITION.—Notwithstanding paragraph (1), if the Secretary determines that a State educational agency is unable to establish, maintain, or oversee programs of free appropriate public education that meet the requirements of this part, or that the State needs assistance, intervention, or substantial intervention under section 616(d)(2)(A), the Secretary shall prohibit the State educational agency from exercising the authority in paragraph (1).

"(3) EDUCATION ACTIVITIES.—If a State educational agency exercises the authority under paragraph (1), the agency shall use funds from State sources, in an amount equal to the amount of the reduction under paragraph (1), to support activities authorized under the Elementary and Secondary Education Act of 1965 or to support need based student or teacher higher education programs.

"(4) REPORT.—For each fiscal year for which a State educational agency exercises the authority under paragraph (1), the State educational agency shall report to the Secretary the amount of expenditures reduced pursuant to such paragraph and the activities that were funded pursuant to paragraph (3).

"(5) LIMITATION.—Notwithstanding paragraph (1), a State educational agency may not reduce the level of expenditures described in paragraph (1) if any local educational agency in the State would, as a result of such reduction, receive less than 100 percent of the amount necessary to ensure that all children with disabilities served by the local educational agency receive a free appropriate public education from the combination of Federal funds received under this title and State funds received from the State educational agency.

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

"(a) EVALUATIONS, PARENTAL CONSENT, AND REEVALUATIONS.—

"(1) INITIAL EVALUATIONS.—

"(A) IN GENERAL.—A State educational agency, other State agency, or local educational agency shall conduct a full and individual initial evaluation in accordance with

this paragraph and subsection (b), before the initial provision of special education and related services to a child with a disability under this part.

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

"(C) PROCEDURES.—

"(i) IN GENERAL.—Such initial evaluation shall consist of procedures—

"(I) to determine whether a child is a child with a disability (as defined in section 602) within 60 days of receiving parental consent for the evaluation, or, if the State establishes a timeframe within which the evaluation must be conducted, within such timeframe; and

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

"(ii) EXCEPTION.—The relevant timeframe in clause (i)(I) shall not apply to a local educational agency if—

"(I) a child enrolls in a school served by the local educational agency after the relevant timeframe in clause (i)(I) has begun and prior to a determination by the child's previous local educational agency as to whether the child is a child with a disability (as defined in section 602), but only if the subsequent local educational agency is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent local educational agency agree to a specific time when the evaluation will be completed; or

"(II) the parent of a child repeatedly fails or refuses to produce the child for the evaluation.

"(D) PARENTAL CONSENT.—

"(i) IN GENERAL.—

"(I) CONSENT FOR INITIAL EVALUATION.—The agency proposing to conduct an initial evaluation to determine if the child qualifies as a child with a disability as defined in section 602 shall obtain informed consent from the parent of such child before conducting the evaluation. Parental consent for evaluation shall not be construed as consent for placement for receipt of special education and related services.

"(II) CONSENT FOR SERVICES.—An agency that is responsible for making a free appropriate public education available to a child with a disability under this part shall seek to obtain informed consent from the parent of such child before providing special education and related services to the child.

"(ii) ABSENCE OF CONSENT.—

"(I) FOR INITIAL EVALUATION.—If the parent of such child does not provide consent for an initial evaluation under clause (i)(I), or the parent fails to

respond to a request to provide the consent, the local educational agency may pursue the initial evaluation of the child by utilizing the procedures described in section 615, except to the extent inconsistent with State law relating to such parental consent.

"(II) FOR SERVICES.—If the parent of such child refuses to consent to services under clause (i)(II), the local educational agency shall not provide special education and related services to the child by utilizing the procedures described in section 615.

"(III) EFFECT ON AGENCY OBLIGATIONS.—If the parent of such child refuses to consent to the receipt of special education and related services, or the parent fails to respond to a request to provide such consent—

"(aa) the local educational agency shall not be considered to be in violation of the requirement to make available a free appropriate public education to the child for the failure to provide such child with the special education and related services for which the local educational agency requests such consent; and

"(bb) the local educational agency shall not be required to convene an IEP meeting or develop an IEP under this section for the child for the special education and related services for which the local educational agency requests such consent.

"(iii) CONSENT FOR WARDS OF THE STATE.—

"(I) IN GENERAL.—If the child is a ward of the State and is not residing with the child's parent, the agency shall make reasonable efforts to obtain the informed consent from the parent (as defined in section 602) of the child for an initial evaluation to determine whether the child is a child with a disability.

"(II) EXCEPTION.—The agency shall not be required to obtain informed consent from the parent of a child for an initial evaluation to determine whether the child is a child with a disability if—

"(aa) despite reasonable efforts to do so, the agency cannot discover the whereabouts of the parent of the child;

"(bb) the rights of the parents of the child have been terminated in accordance with State law; or

"(cc) the rights of the parent to make educational decisions have been subrogated by a judge in accordance with State law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.

"(E) RULE OF CONSTRUCTION.—The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.

"(2) REEVALUATIONS.—

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

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

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

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

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

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

"(b) EVALUATION PROCEDURES.—

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

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

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

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

"(ii) the content of the child's individualized education program, including information related to enabling the child to be involved in and progress in the general education curriculum, or, for preschool children, to participate in appropriate activities;

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

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

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

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

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

"(ii) are provided and administered in the language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is not feasible to so provide or administer;

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

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

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

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

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

"(D) assessments of children with disabilities who transfer from 1 school district to another school district in the same academic year are coordinated with such children's prior and subsequent schools, as necessary and as expeditiously as possible, to ensure prompt completion of full evaluations.

"(4) DETERMINATION OF ELIGIBILITY AND EDUCATIONAL NEED.—Upon completion of the administration of assessments and other evaluation measures—

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

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

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

"(A) lack of appropriate instruction in reading, including in the essential components of reading instruction (as defined in section 1208(3) of the Elementary and Secondary Education Act of 1965);

"(B) lack of instruction in math; or

"(C) limited English proficiency.

"(6) SPECIFIC LEARNING DISABILITIES.—

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

"(B) ADDITIONAL AUTHORITY.—In determining whether a child has a specific learning disability, a local educational agency may use a process that determines if the child responds to scientific, research-based intervention as a part of the evaluation procedures described in paragraphs (2) and (3).

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

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

"(A) review existing evaluation data on the child, including—

"(i) evaluations and information provided by the parents of the child;

"(ii) current classroom-based, local, or State assessments, and classroom-based observations; and

"(iii) observations by teachers and related services providers; and

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

"(i) whether the child is a child with a disability as defined in section 602(3), and the educational needs of the child, or, in case of a reevaluation of a child, whether the child continues to have such a disability and such educational needs;

"(ii) the present levels of academic achievement and related developmental needs of the child;

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

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

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

"(3) PARENTAL CONSENT.—Each local educational agency shall obtain informed parental consent, in accordance with subsection (a)(1)(D), prior to conducting any reevaluation of a child with a disability, except that such informed parental consent need not be obtained if the local educational agency can demonstrate that it had taken reasonable measures to obtain such consent and the child's parent has failed to respond.

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

ability and to determine the child's educational needs, the local educational agency—

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

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

"(ii) the right of such parents to request an assessment to determine whether the child continues to be a child with a disability and to determine the child's educational needs; and

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

"(5) EVALUATIONS BEFORE CHANGE IN ELIGIBILITY.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), a local educational agency shall evaluate a child with a disability in accordance with this section before determining that the child is no longer a child with a disability.

"(B) EXCEPTION.—

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

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

"(d) INDIVIDUALIZED EDUCATION PROGRAMS.—

"(1) DEFINITIONS.—In this title:

"(A) INDIVIDUALIZED EDUCATION PROGRAM.—

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

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

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

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

"(cc) for children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;

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

"(aa) meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and

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

"(III) a description of how the child's progress toward meeting the annual goals described in subclause (II) will be measured and when periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;

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

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

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

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

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

"(VI)(aa) a statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments consistent with section 612(a)(16)(A); and

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

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

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

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

"(VIII) beginning not later than the first IEP to be in effect when the child is 16, and updated annually thereafter—

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

"(bb) the transition services (including courses of study) needed to assist the child in reaching those goals; and

"(cc) beginning not later than 1 year before the child reaches the age of majority under State law, a statement that the child has been informed of the child's rights under this title, if any, that will transfer to the child on reaching the age of majority under section 615(m).

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

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

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

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

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

"(ii) not less than 1 regular education teacher of such child (if the child is, or may be, participating in the regular education environment);

"(iii) not less than 1 special education teacher, or where appropriate, not less than 1 special education provider of such child;

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

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

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

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

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

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

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

"(C) IEP TEAM ATTENDANCE.—

"(i) ATTENDANCE NOT NECESSARY.—A member of the IEP Team shall not be required to attend an IEP meeting, in whole or in part, if the parent of a child with a disability and the local educational agency agree that the attendance of such member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.

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

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

"(II) the member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior to the meeting.

"(iii) WRITTEN AGREEMENT AND CONSENT REQUIRED.—A parent's agreement under clause (i) and consent under clause (ii) shall be in writing.

"(D) IEP TEAM TRANSITION.—In the case of a child who was previously served under part C, an invitation to the initial IEP meeting shall, at the request of the parent, be sent to the part C service coordinator or other representatives of the part C system to assist with the smooth transition of services.

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

"(A) IN GENERAL.—At the beginning of each school year, each local educational agency, State educational agency, or other State agency, as the case may be, shall have in effect, for each child with a disability in the agency's jurisdiction, an individualized education program, as defined in paragraph (1)(A).

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

"(i) consistent with State policy; and

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

"(C) PROGRAM FOR CHILDREN WHO TRANSFER SCHOOL DISTRICTS.—

"(i) IN GENERAL.—

"(I) TRANSFER WITHIN THE SAME STATE.—In the case of a child with a disability who transfers school districts within the same academic year, who enrolls in a new school, and who had an IEP

that was in effect in the same State, the local educational agency shall provide such child with a free appropriate public education, including services comparable to those described in the previously held IEP, in consultation with the parents until such time as the local educational agency adopts the previously held IEP or develops, adopts, and implements a new IEP that is consistent with Federal and State law.

"(II) TRANSFER OUTSIDE STATE.—In the case of a child with a disability who transfers school districts within the same academic year, who enrolls in a new school, and who had an IEP that was in effect in another State, the local educational agency shall provide such child with a free appropriate public education, including services comparable to those described in the previously held IEP, in consultation with the parents until such time as the local educational agency conducts an evaluation pursuant to subsection (a)(1), if determined to be necessary by such agency, and develops a new IEP, if appropriate, that is consistent with Federal and State law.

"(ii) TRANSMITTAL OF RECORDS.—To facilitate the transition for a child described in clause (i)—

"(I) the new school in which the child enrolls shall take reasonable steps to promptly obtain the child's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous school in which the child was enrolled, pursuant to section 99.31(a)(2) of title 34, Code of Federal Regulations; and

"(II) the previous school in which the child was enrolled shall take reasonable steps to promptly respond to such request from the new school.

"(3) DEVELOPMENT OF IEP.—

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

"(i) the strengths of the child;

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

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

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

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

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

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

"(iii) in the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP Team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child;

"(iv) consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and

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

"(C) REQUIREMENT WITH RESPECT TO REGULAR EDUCATION TEACHER.—A regular education teacher of the child, as a member of the IEP Team, shall, to the extent appropriate, participate in the development of the IEP of the child, including the determination of appropriate positive behavioral interventions and supports, and other strategies, and the determination of supplementary aids and services, program modifications, and support for school personnel consistent with paragraph (1)(A)(i)(IV).

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

"(E) CONSOLIDATION OF IEP TEAM MEETINGS.—To the extent possible, the local educational agency shall encourage the consolidation of reevaluation meetings for the child and other IEP Team meetings for the child.

"(F) AMENDMENTS.—Changes to the IEP may be made either by the entire IEP Team or, as provided in subparagraph (D), by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent shall be provided with a revised copy of the IEP with the amendments incorporated.

"(4) REVIEW AND REVISION OF IEP.—

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

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

"(ii) revises the IEP as appropriate to address—

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

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

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

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

"(V) other matters.

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

"(5) MULTI-YEAR IEP DEMONSTRATION.—

"(A) PILOT PROGRAM.—

"(i) PURPOSE.—The purpose of this paragraph is to provide an opportunity for States to allow parents and local educational agencies the opportunity for long-term planning by offering the option of developing a comprehensive multi-year IEP, not to exceed 3 years, that is designed to coincide with the natural transition points for the child.

"(ii) AUTHORIZATION.—In order to carry out the purpose of this paragraph, the Secretary is authorized to approve not more than 15 proposals from States to carry out the activity described in clause (i).

"(iii) PROPOSAL.—

"(I) IN GENERAL.—A State desiring to participate in the program under this paragraph shall submit a proposal to the Secretary at such time and in such manner as the Secretary may reasonably require.

"(II) CONTENT.—The proposal shall include—

"(aa) assurances that the development of a multi-year IEP under this paragraph is optional for parents;

"(bb) assurances that the parent is required to provide informed consent before a comprehensive multi-year IEP is developed;

"(cc) a list of required elements for each multi-year IEP, including—

"(AA) measurable goals pursuant to paragraph (1)(A)(i)(II), coinciding with natural transition points for the child, that will enable the child to be involved in and make progress in the general education curriculum and that will meet the child's other needs that result from the child's disability; and

"(BB) measurable annual goals for determining progress toward meeting the goals described in subitem (AA); and

"(dd) a description of the process for the review and revision of each multi-year IEP, including—

"(AA) a review by the IEP Team of the child's multi-year IEP at each of the child's natural transition points;

"(BB) in years other than a child's natural transition points, an annual review of the child's IEP to determine the child's current levels of progress and whether the annual goals for the child are being achieved, and a requirement to amend the IEP, as appropriate, to enable the child to continue to meet the measurable goals set out in the IEP;

"(CC) if the IEP Team determines on the basis of a review that the child is not making sufficient progress toward the goals described in the multi-year IEP, a requirement that the local educational agency shall ensure that the IEP Team carries out a more thorough review of the IEP in accordance with paragraph (4) within 30 calendar days; and

"(DD) at the request of the parent, a requirement that the IEP Team shall conduct a review of the child's multi-year IEP rather than or subsequent to an annual review.

"(B) REPORT.—Beginning 2 years after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2004, the Secretary shall submit an annual report to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate regarding the effectiveness of the program under this paragraph and any specific recommendations for broader implementation of such program, including—

"(i) reducing—

"(I) the paperwork burden on teachers, principals, administrators, and related service providers; and

"(II) noninstructional time spent by teachers in complying with this part;

"(ii) enhancing longer-term educational planning;

"(iii) improving positive outcomes for children with disabilities;

"(iv) promoting collaboration between IEP Team members; and

"(v) ensuring satisfaction of family members.

"(C) DEFINITION.—In this paragraph, the term 'natural transition points' means those periods that are close in time to the transition of a child with a disability from preschool to elementary grades, from elementary grades to middle or junior high school grades, from middle or junior high school grades to secondary school grades, and from secondary school grades to post-secondary activities, but in no case a period longer than 3 years.

"(6) FAILURE TO MEET TRANSITION OBJECTIVES.—If a participating agency, other than the local educational agency, fails to provide the transition services described in the IEP in accordance with paragraph (1)(A)(i)(VIII), the local educational agency shall reconvene the IEP Team to identify alternative strategies to meet the transition objectives for the child set out in the IEP.

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

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

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

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

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

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

"(f) ALTERNATIVE MEANS OF MEETING PARTICIPATION.—When conducting IEP team meetings and placement meetings pursuant to this section, section 615(e), and section 615(f)(1)(B), and carrying out administrative matters under section 615 (such as scheduling, exchange of witness lists, and status conferences), the parent of a child with a disability and a local educational agency may agree to use alternative means of meeting participation, such as video conferences and conference calls.

"SEC. 615. PROCEDURAL SAFEGUARDS.

"(a) ESTABLISHMENT OF PROCEDURES.—Any State educational agency, State agency, or local educational agency that receives assistance under this part shall establish and maintain procedures in accordance with this section to ensure that children with disabilities and their parents are guaranteed procedural safeguards with respect to the provision of a free appropriate public education by such agencies.

"(b) TYPES OF PROCEDURES.—The procedures required by this section shall include the following:

"(1) An opportunity for the parents of a child with a disability to examine all records relating to such child and to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision

of a free appropriate public education to such child, and to obtain an independent educational evaluation of the child.

"(2)(A) Procedures to protect the rights of the child whenever the parents of the child are not known, the agency cannot, after reasonable efforts, locate the parents, or the child is a ward of the State, including the assignment of an individual to act as a surrogate for the parents, which surrogate shall not be an employee of the State educational agency, the local educational agency, or any other agency that is involved in the education or care of the child. In the case of—

"(i) a child who is a ward of the State, such surrogate may alternatively be appointed by the judge overseeing the child's care provided that the surrogate meets the requirements of this paragraph; and

"(ii) an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(6)), the local educational agency shall appoint a surrogate in accordance with this paragraph.

"(B) The State shall make reasonable efforts to ensure the assignment of a surrogate not more than 30 days after there is a determination by the agency that the child needs a surrogate.

"(3) Written prior notice to the parents of the child, in accordance with subsection (c)(1), whenever the local educational agency—

"(A) proposes to initiate or change; or

"(B) refuses to initiate or change,

the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child.

"(4) Procedures designed to ensure that the notice required by paragraph (3) is in the native language of the parents, unless it clearly is not feasible to do so.

"(5) An opportunity for mediation, in accordance with subsection (e).

"(6) An opportunity for any party to present a complaint—

"(A) with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child; and

"(B) which sets forth an alleged violation that occurred not more than 2 years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the complaint, or, if the State has an explicit time limitation for presenting such a complaint under this part, in such time as the State law allows, except that the exceptions to the timeline described in subsection (f)(3)(D) shall apply to the timeline described in this subparagraph.

"(7)(A) Procedures that require either party, or the attorney representing a party, to provide due process complaint notice in accordance with subsection (c)(2) (which shall remain confidential)—

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

"(ii) that shall include—

"(I) the name of the child, the address of the residence of the child (or available contact information in the case of a homeless child), and the name of the school the child is attending;

"(II) in the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the child and the name of the school the child is attending;

"(III) a description of the nature of the problem of the child relating to such proposed initiation or change, including facts relating to such problem; and

"(IV) a proposed resolution of the problem to the extent known and available to the party at the time.

"(B) A requirement that a party may not have a due process hearing until the party, or the attorney representing the party, files a notice that meets the requirements of subparagraph (A)(ii).

"(8) Procedures that require the State educational agency to develop a model form to assist parents in filing a complaint and due process complaint notice in accordance with paragraphs (6) and (7), respectively.

"(c) NOTIFICATION REQUIREMENTS.—

"(1) CONTENT OF PRIOR WRITTEN NOTICE.—The notice required by subsection (b)(3) shall include—

"(A) a description of the action proposed or refused by the agency;

"(B) an explanation of why the agency proposes or refuses to take the action and a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;

"(C) a statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;

"(D) sources for parents to contact to obtain assistance in understanding the provisions of this part;

"(E) a description of other options considered by the IEP Team and the reason why those options were rejected; and

"(F) a description of the factors that are relevant to the agency's proposal or refusal.

"(2) DUE PROCESS COMPLAINT NOTICE.—

"(A) COMPLAINT.—The due process complaint notice required under subsection (b)(7)(A) shall be deemed to be sufficient unless the party receiving the notice notifies the hearing officer and the other party in writing that the receiving party believes the notice has not met the requirements of subsection (b)(7)(A).

"(B) RESPONSE TO COMPLAINT.—

"(i) LOCAL EDUCATIONAL AGENCY RESPONSE.—

"(I) IN GENERAL.—If the local educational agency has not sent a prior written notice to the parent regarding the subject matter contained in the parent's due process complaint notice, such local educational agency shall, within 10 days of receiving the complaint, send to the parent a response that shall include—

"(aa) an explanation of why the agency proposed or refused to take the action raised in the complaint;

"(bb) a description of other options that the IEP Team considered and the reasons why those options were rejected;

"(cc) a description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and

"(dd) a description of the factors that are relevant to the agency's proposal or refusal.

"(II) SUFFICIENCY.— A response filed by a local educational agency pursuant to subclause (I) shall not be construed to preclude such local educational agency from asserting that the parent's due process complaint notice was insufficient where appropriate.

"(ii) OTHER PARTY RESPONSE.—Except as provided in clause (i), the non-complaining party shall, within 10 days of receiving the complaint, send to the complaint a response that specifically addresses the issues raised in the complaint.

"(C) TIMING.—The party providing a hearing officer notification under subparagraph (A) shall provide the notification within 15 days of receiving the complaint.

"(D) DETERMINATION.—Within 5 days of receipt of the notification provided under subparagraph (C), the hearing officer shall make a determination on the face of the notice of whether the notification meets the requirements of subsection (b)(7)(A), and shall immediately notify the parties in writing of such determination.

"(E) AMENDED COMPLAINT NOTICE.—

"(i) IN GENERAL.—A party may amend its due process complaint notice only if—

"(I) the other party consents in writing to such amendment and is given the opportunity to resolve the complaint through a meeting held pursuant to subsection (f)(1)(B); or

"(II) the hearing officer grants permission, except that the hearing officer may only grant such permission at any time not later than 5 days before a due process hearing occurs.

"(ii) APPLICABLE TIMELINE.—The applicable timeline for a due process hearing under this part shall recommence at the time the party files an amended notice, including the timeline under subsection (f)(1)(B).

"(d) PROCEDURAL SAFEGUARDS NOTICE.—

"(1) IN GENERAL.—

"(A) COPY TO PARENTS.—A copy of the procedural safeguards available to the parents of a child with a disability shall be given to the parents only 1 time a year, except that a copy also shall be given to the parents—

"(i) upon initial referral or parental request for evaluation;

"(ii) upon the first occurrence of the filing of a complaint under subsection (b)(6); and

"(iii) upon request by a parent.

"(B) INTERNET WEBSITE.—A local educational agency may place a current copy of the procedural safeguards notice on its Internet website if such website exists.

"(2) CONTENTS.—The procedural safeguards notice shall include a full explanation of the procedural safeguards, written in the native language of the parents (unless it clearly is not feasible to do so) and written in an easily understandable manner, available under this section and under regulations promulgated by the Secretary relating to—

"(A) independent educational evaluation;

"(B) prior written notice;

"(C) parental consent;

"(D) access to educational records;

"(E) the opportunity to present and resolve complaints, including—

"(i) the time period in which to make a complaint;

"(ii) the opportunity for the agency to resolve the complaint; and

"(iii) the availability of mediation;

"(F) the child's placement during pendency of due process proceedings;

"(G) procedures for students who are subject to placement in an interim alternative educational setting;

"(H) requirements for unilateral placement by parents of children in private schools at public expense;

"(I) due process hearings, including requirements for disclosure of evaluation results and recommendations;

"(J) State-level appeals (if applicable in that State);

"(K) civil actions, including the time period in which to file such actions; and

"(L) attorneys' fees.

"(e) MEDIATION.—

"(1) IN GENERAL.—Any State educational agency or local educational agency that receives assistance under this part shall ensure that procedures are established and implemented to allow parties to disputes involving any matter, including matters arising prior to the filing of a complaint pursuant to subsection (b)(6), to resolve such disputes through a mediation process.

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

"(A) The procedures shall ensure that the mediation process—

"(i) is voluntary on the part of the parties;

"(ii) is not used to deny or delay a parent's right to a due process hearing under subsection (f), or to deny any other rights afforded under this part; and

"(iii) is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

"(B) OPPORTUNITY TO MEET WITH A DISINTERESTED PARTY.—A local educational agency or a State agency may establish procedures to offer to parents and schools that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to the parents, with a disinterested party who is under contract with—

"(i) a parent training and information center or community parent resource center in the State established under section 671 or 672; or

"(ii) an appropriate alternative dispute resolution entity,

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

"(C) LIST OF QUALIFIED MEDIATORS.—The State shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.

"(D) COSTS.—The State shall bear the cost of the mediation process, including the costs of meetings described in subparagraph (B).

"(E) SCHEDULING AND LOCATION.—Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute.

"(F) WRITTEN AGREEMENT.—In the case that a resolution is reached to resolve the complaint through the mediation process, the parties shall execute a legally binding agreement that sets forth such resolution and that—

"(i) states that all discussions that occurred during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding;

"(ii) is signed by both the parent and a representative of the agency who has the authority to bind such agency; and

"(iii) is enforceable in any State court of competent jurisdiction or in a district court of the United States.

"(G) MEDIATION DISCUSSIONS.—Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding.

"(f) IMPARTIAL DUE PROCESS HEARING.—

"(1) IN GENERAL.—

"(A) HEARING.—Whenever a complaint has been received under subsection (b)(6) or (k), the parents or the local educational agency involved in such complaint shall have an opportunity for an impartial due process hearing, which shall be conducted by the State educational agency or by the local educational agency, as determined by State law or by the State educational agency.

"(B) RESOLUTION SESSION.—

"(i) PRELIMINARY MEETING.—Prior to the opportunity for an impartial due process hearing under subparagraph (A), the local educational agency shall convene a meeting with the parents and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the complaint—

"(I) within 15 days of receiving notice of the parents' complaint;

"(II) which shall include a representative of the agency who has decisionmaking authority on behalf of such agency;

"(III) which may not include an attorney of the local educational agency unless the parent is accompanied by an attorney; and

"(IV) where the parents of the child discuss their complaint, and the facts that form the basis of the complaint, and the local educational agency is provided the opportunity to resolve the complaint,

unless the parents and the local educational agency agree in writing to waive such meeting, or agree to use the mediation process described in subsection (e).

"(ii) HEARING.—If the local educational agency has not resolved the complaint to the satisfaction of the parents within 30 days of the receipt of the complaint, the due process hearing may occur, and all of the applicable timelines for a due process hearing under this part shall commence.

"(iii) WRITTEN SETTLEMENT AGREEMENT.—In the case that a resolution is reached to resolve the complaint at a meeting described in clause (i), the parties shall execute a legally binding agreement that is—

"(I) signed by both the parent and a representative of the agency who has the authority to bind such agency; and

"(II) enforceable in any State court of competent jurisdiction or in a district court of the United States.

"(iv) REVIEW PERIOD.—If the parties execute an agreement pursuant to clause (iii), a party may void such agreement within 3 business days of the agreement's execution.

"(2) DISCLOSURE OF EVALUATIONS AND RECOMMENDATIONS.—

"(A) IN GENERAL.—Not less than 5 business days prior to a hearing conducted pursuant to paragraph (1), each party shall disclose to all other parties all evaluations completed by that date, and recommendations based on the offering party's evaluations, that the party intends to use at the hearing.

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

"(3) LIMITATIONS ON HEARING.—

"(A) PERSON CONDUCTING HEARING.—A hearing officer conducting a hearing pursuant to paragraph (1)(A) shall, at a minimum—

"(i) not be—

"(I) an employee of the State educational agency or the local educational agency involved in the education or care of the child; or

"(II) a person having a personal or professional interest that conflicts with the person's objectivity in the hearing;

"(ii) possess knowledge of, and the ability to understand, the provisions of this title, Federal and State regulations pertaining to this title, and legal interpretations of this title by Federal and State courts;

"(iii) possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and

"(iv) possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

"(B) SUBJECT MATTER OF HEARING.—The party requesting the due process hearing shall not be allowed to raise issues at the due process hearing that were not raised in the notice filed under subsection (b)(7), unless the other party agrees otherwise.

"(C) TIMELINE FOR REQUESTING HEARING.—A parent or agency shall request an impartial due process hearing within 2 years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the complaint, or, if the State has an explicit time limitation for requesting such a hearing under this part, in such time as the State law allows.

"(D) EXCEPTIONS TO THE TIMELINE.—The timeline described in subparagraph (C) shall not apply to a parent if the parent was prevented from requesting the hearing due to—

"(i) specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint; or

"(ii) the local educational agency's withholding of information from the parent that was required under this part to be provided to the parent.

"(E) DECISION OF HEARING OFFICER.—

"(i) IN GENERAL.—Subject to clause (ii), a decision made by a hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education.

"(ii) PROCEDURAL ISSUES.—In matters alleging a procedural violation, a hearing officer may find that a child did not receive a free appropriate public education only if the procedural inadequacies—

"(I) impeded the child's right to a free appropriate public education;

"(II) significantly impeded the parents' opportunity to participate in the decisionmaking process regarding the provision of a free appropriate public education to the parents' child; or

"(III) caused a deprivation of educational benefits.

"(iii) RULE OF CONSTRUCTION.—Nothing in this subparagraph shall be construed to preclude a hearing officer from ordering a local educational agency to comply with procedural requirements under this section.

"(F) RULE OF CONSTRUCTION.—Nothing in this paragraph shall be construed to affect the right of a parent to file a complaint with the State educational agency.

"(g) APPEAL.—

"(1) IN GENERAL.—If the hearing required by subsection (f) is conducted by a local educational agency, any party aggrieved by the findings and decision rendered in such a hearing may appeal such findings and decision to the State educational agency.

"(2) IMPARTIAL REVIEW AND INDEPENDENT DECISION.—The State educational agency shall conduct an impartial review of the findings and decision appealed under paragraph (1). The officer conducting such review shall make an independent decision upon completion of such review.

"(h) SAFEGUARDS.—Any party to a hearing conducted pursuant to subsection (f) or (k), or an appeal conducted pursuant to subsection (g), shall be accorded—

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

"(2) the right to present evidence and confront, cross-examine, and compel the attendance of witnesses;

"(3) the right to a written, or, at the option of the parents, electronic verbatim record of such hearing; and

"(4) the right to written, or, at the option of the parents, electronic findings of fact and decisions, which findings and decisions—

"(A) shall be made available to the public consistent with the requirements of section 617(b) (relating to the confidentiality of data, information, and records); and

"(B) shall be transmitted to the advisory panel established pursuant to section 612(a)(21).

"(i) ADMINISTRATIVE PROCEDURES.—

"(1) IN GENERAL.—

"(A) DECISION MADE IN HEARING.—A decision made in a hearing conducted pursuant to subsection (f) or (k) shall be final, except that any party involved in such hearing may appeal such decision under the provisions of subsection (g) and paragraph (2).

"(B) DECISION MADE AT APPEAL.—A decision made under subsection (g) shall be final, except that any party may bring an action under paragraph (2).

"(2) RIGHT TO BRING CIVIL ACTION.—

"(A) IN GENERAL.—Any party aggrieved by the findings and decision made under subsection (f) or (k) who does not have the right to an appeal under subsection (g), and any party aggrieved by the findings and decision made under this subsection, shall have the right to bring a civil action with respect to the complaint presented pursuant to this section, which action may be brought in any State court of competent jurisdiction or in a district court of the United States, without regard to the amount in controversy.

"(B) LIMITATION.—The party bringing the action shall have 90 days from the date of the decision of the hearing officer to bring such an action, or, if the State has an explicit time limitation for bringing such action under this part, in such time as the State law allows.

"(C) ADDITIONAL REQUIREMENTS.—In any action brought under this paragraph, the court—

"(i) shall receive the records of the administrative proceedings;

"(ii) shall hear additional evidence at the request of a party; and

"(iii) basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.

"(3) JURISDICTION OF DISTRICT COURTS; ATTORNEYS' FEES.—

"(A) IN GENERAL.—The district courts of the United States shall have jurisdiction of actions brought under this section without regard to the amount in controversy.

"(B) AWARD OF ATTORNEYS' FEES.—

"(i) IN GENERAL.—In any action or proceeding brought under this section, the court, in its discretion, may award reasonable attorneys' fees as part of the costs—

"(I) to a prevailing party who is the parent of a child with a disability;

"(II) to a prevailing party who is a State educational agency or local educational agency against the attorney of a parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or

"(III) to a prevailing State educational agency or local educational agency against the attorney of a parent, or against the parent, if the parent's complaint or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

"(ii) RULE OF CONSTRUCTION.—Nothing in this subparagraph shall be construed to affect section 327 of the District of Columbia Appropriations Act, 2005.

"(C) DETERMINATION OF AMOUNT OF ATTORNEYS' FEES.—Fees awarded under this paragraph shall be based

on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this subsection.

"(D) PROHIBITION OF ATTORNEYS' FEES AND RELATED COSTS FOR CERTAIN SERVICES.—

"(i) IN GENERAL.—Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under this section for services performed subsequent to the time of a written offer of settlement to a parent if—

"(I) the offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than 10 days before the proceeding begins;

"(II) the offer is not accepted within 10 days; and

"(III) the court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.

"(ii) IEP TEAM MEETINGS.—Attorneys' fees may not be awarded relating to any meeting of the IEP Team unless such meeting is convened as a result of an administrative proceeding or judicial action, or, at the discretion of the State, for a mediation described in subsection (e).

"(iii) OPPORTUNITY TO RESOLVE COMPLAINTS.—A meeting conducted pursuant to subsection (f)(1)(B)(i) shall not be considered—

"(I) a meeting convened as a result of an administrative hearing or judicial action; or

"(II) an administrative hearing or judicial action for purposes of this paragraph.

"(E) EXCEPTION TO PROHIBITION ON ATTORNEYS' FEES AND RELATED COSTS.—Notwithstanding subparagraph (D), an award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.

"(F) REDUCTION IN AMOUNT OF ATTORNEYS' FEES.—Except as provided in subparagraph (G), whenever the court finds that—

"(i) the parent, or the parent's attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;

"(ii) the amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;

"(iii) the time spent and legal services furnished were excessive considering the nature of the action or proceeding; or

"(iv) the attorney representing the parent did not provide to the local educational agency the appropriate information in the notice of the complaint described in subsection (b)(7)(A),

the court shall reduce, accordingly, the amount of the attorneys' fees awarded under this section.

"(G) EXCEPTION TO REDUCTION IN AMOUNT OF ATTORNEYS' FEES.—The provisions of subparagraph (F) shall not apply in any action or proceeding if the court finds that the State or local educational agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of this section.

"(j) MAINTENANCE OF CURRENT EDUCATIONAL PLACEMENT.—Except as provided in subsection (k)(4), during the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents otherwise agree, the child shall remain in the then-current educational placement of the child, or, if applying for initial admission to a public school, shall, with the consent of the parents, be placed in the public school program until all such proceedings have been completed.

"(k) PLACEMENT IN ALTERNATIVE EDUCATIONAL SETTING.—

"(1) AUTHORITY OF SCHOOL PERSONNEL.—

"(A) CASE-BY-CASE DETERMINATION.—School personnel may consider any unique circumstances on a case-by-case basis when determining whether to order a change in placement for a child with a disability who violates a code of student conduct.

"(B) AUTHORITY.—School personnel under this subsection may remove a child with a disability who violates a code of student conduct from their current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 school days (to the extent such alternatives are applied to children without disabilities).

"(C) ADDITIONAL AUTHORITY.—If school personnel seek to order a change in placement that would exceed 10 school days and the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to subparagraph (E), the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner and for the same duration in which the procedures would be applied to children without disabilities, except as provided in section 612(a)(1) although it may be provided in an interim alternative educational setting.

"(D) SERVICES.—A child with a disability who is removed from the child's current placement under subparagraph (G) (irrespective of whether the behavior is determined to be a manifestation of the child's disability) or subparagraph (C) shall—

"(i) continue to receive educational services, as provided in section 612(a)(1), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress

toward meeting the goals set out in the child's IEP; and

"(ii) receive, as appropriate, a functional behavioral assessment, behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

"(E) MANIFESTATION DETERMINATION.—

"(i) IN GENERAL.—Except as provided in subparagraph (B), within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the local educational agency, the parent, and relevant members of the IEP Team (as determined by the parent and the local educational agency) shall review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine—

"(I) if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or

"(II) if the conduct in question was the direct result of the local educational agency's failure to implement the IEP.

"(ii) MANIFESTATION.—If the local educational agency, the parent, and relevant members of the IEP Team determine that either subclause (I) or (II) of clause (i) is applicable for the child, the conduct shall be determined to be a manifestation of the child's disability.

"(F) DETERMINATION THAT BEHAVIOR WAS A MANIFESTATION.—If the local educational agency, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team shall—

"(i) conduct a functional behavioral assessment, and implement a behavioral intervention plan for such child, provided that the local educational agency had not conducted such assessment prior to such determination before the behavior that resulted in a change in placement described in subparagraph (C) or (G);

"(ii) in the situation where a behavioral intervention plan has been developed, review the behavioral intervention plan if the child already has such a behavioral intervention plan, and modify it, as necessary, to address the behavior; and

"(iii) except as provided in subparagraph (G), return the child to the placement from which the child was removed, unless the parent and the local educational agency agree to a change of placement as part of the modification of the behavioral intervention plan.

"(G) SPECIAL CIRCUMSTANCES.—School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, in cases where a child—

"(i) carries or possesses a weapon to or at school, on school premises, or to or at a school function under the jurisdiction of a State or local educational agency;

"(ii) knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of a State or local educational agency; or

"(iii) has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of a State or local educational agency.

"(H) NOTIFICATION.—Not later than the date on which the decision to take disciplinary action is made, the local educational agency shall notify the parents of that decision, and of all procedural safeguards accorded under this section.

"(2) DETERMINATION OF SETTING.—The interim alternative educational setting in subparagraphs (C) and (G) of paragraph (1) shall be determined by the IEP Team.

"(3) APPEAL.—

"(A) IN GENERAL.—The parent of a child with a disability who disagrees with any decision regarding placement, or the manifestation determination under this subsection, or a local educational agency that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others, may request a hearing.

"(B) AUTHORITY OF HEARING OFFICER.—

"(i) IN GENERAL.—A hearing officer shall hear, and make a determination regarding, an appeal requested under subparagraph (A).

"(ii) CHANGE OF PLACEMENT ORDER.—In making the determination under clause (i), the hearing officer may order a change in placement of a child with a disability. In such situations, the hearing officer may—

"(I) return a child with a disability to the placement from which the child was removed; or

"(II) order a change in placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of such child is substantially likely to result in injury to the child or to others.

"(4) PLACEMENT DURING APPEALS.—When an appeal under paragraph (3) has been requested by either the parent or the local educational agency—

"(A) the child shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period provided for in paragraph (1)(C), whichever occurs first, unless the parent and the State or local educational agency agree otherwise; and

"(B) the State or local educational agency shall arrange for an expedited hearing, which shall occur within 20 school days of the date the hearing is requested and shall result in a determination within 10 school days after the hearing.

"(5) PROTECTIONS FOR CHILDREN NOT YET ELIGIBLE FOR SPECIAL EDUCATION AND RELATED SERVICES.—

"(A) IN GENERAL.—A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violates a code of student conduct, may assert any of the protections provided for in this part if the local educational agency had knowledge (as determined in accordance with this paragraph) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

"(B) BASIS OF KNOWLEDGE.—A local educational agency shall be deemed to have knowledge that a child is a child with a disability if, before the behavior that precipitated the disciplinary action occurred—

"(i) the parent of the child has expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services;

"(ii) the parent of the child has requested an evaluation of the child pursuant to section 614(a)(1)(B); or

"(iii) the teacher of the child, or other personnel of the local educational agency, has expressed specific concerns about a pattern of behavior demonstrated by the child, directly to the director of special education of such agency or to other supervisory personnel of the agency.

"(C) EXCEPTION.—A local educational agency shall not be deemed to have knowledge that the child is a child with a disability if the parent of the child has not allowed an evaluation of the child pursuant to section 614 or has refused services under this part or the child has been evaluated and it was determined that the child was not a child with a disability under this part.

"(D) CONDITIONS THAT APPLY IF NO BASIS OF KNOWLEDGE.—

"(i) IN GENERAL.—If a local educational agency does not have knowledge that a child is a child with a disability (in accordance with subparagraph (B) or (C)) prior to taking disciplinary measures against the child, the child may be subjected to disciplinary measures applied to children without disabilities who engaged in comparable behaviors consistent with clause (ii).

"(ii) LIMITATIONS.—If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under this subsection, the evaluation shall be conducted in an expedited manner. If the child is determined to be a

child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency shall provide special education and related services in accordance with this part, except that, pending the results of the evaluation, the child shall remain in the educational placement determined by school authorities.

"(6) REFERRAL TO AND ACTION BY LAW ENFORCEMENT AND JUDICIAL AUTHORITIES.—

"(A) RULE OF CONSTRUCTION.—Nothing in this part shall be construed to prohibit an agency from reporting a crime committed by a child with a disability to appropriate authorities or to prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.

"(B) TRANSMITTAL OF RECORDS.—An agency reporting a crime committed by a child with a disability shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime.

"(7) DEFINITIONS.—In this subsection:

"(A) CONTROLLED SUBSTANCE.—The term 'controlled substance' means a drug or other substance identified under schedule I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

"(B) ILLEGAL DRUG.—The term 'illegal drug' means a controlled substance but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.

"(C) WEAPON.—The term 'weapon' has the meaning given the term 'dangerous weapon' under section 930(g)(2) of title 18, United States Code.

"(D) SERIOUS BODILY INJURY.—The term 'serious bodily injury' has the meaning given the term 'serious bodily injury' under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code.

"(l) RULE OF CONSTRUCTION.—Nothing in this title shall be construed to restrict or limit the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under such laws seeking relief that is also available under this part, the procedures under subsections (f) and (g) shall be exhausted to the same extent as would be required had the action been brought under this part.

"(m) TRANSFER OF PARENTAL RIGHTS AT AGE OF MAJORITY.—

"(1) IN GENERAL.—A State that receives amounts from a grant under this part may provide that, when a child with a disability reaches the age of majority under State law (except for a child with a disability who has been determined to be incompetent under State law)—

"(A) the agency shall provide any notice required by this section to both the individual and the parents;

"(B) all other rights accorded to parents under this part transfer to the child;

"(C) the agency shall notify the individual and the parents of the transfer of rights; and

"(D) all rights accorded to parents under this part transfer to children who are incarcerated in an adult or juvenile Federal, State, or local correctional institution.

"(2) SPECIAL RULE.—If, under State law, a child with a disability who has reached the age of majority under State law, who has not been determined to be incompetent, but who is determined not to have the ability to provide informed consent with respect to the educational program of the child, the State shall establish procedures for appointing the parent of the child, or if the parent is not available, another appropriate individual, to represent the educational interests of the child throughout the period of eligibility of the child under this part.

"(n) ELECTRONIC MAIL.—A parent of a child with a disability may elect to receive notices required under this section by an electronic mail (e-mail) communication, if the agency makes such option available.

"(o) SEPARATE COMPLAINT.—Nothing in this section shall be construed to preclude a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed.

"SEC. 616. MONITORING, TECHNICAL ASSISTANCE, AND ENFORCEMENT.

"(a) FEDERAL AND STATE MONITORING.—

"(1) IN GENERAL.—The Secretary shall—

"(A) monitor implementation of this part through—

"(i) oversight of the exercise of general supervision by the States, as required in section 612(a)(11); and

"(ii) the State performance plans, described in subsection (b);

"(B) enforce this part in accordance with subsection (e); and

"(C) require States to—

"(i) monitor implementation of this part by local educational agencies; and

"(ii) enforce this part in accordance with paragraph (3) and subsection (e).

"(2) FOCUSED MONITORING.—The primary focus of Federal and State monitoring activities described in paragraph (1) shall be on—

"(A) improving educational results and functional outcomes for all children with disabilities; and

"(B) ensuring that States meet the program requirements under this part, with a particular emphasis on those requirements that are most closely related to improving educational results for children with disabilities.

"(3) MONITORING PRIORITIES.—The Secretary shall monitor the States, and shall require each State to monitor the local educational agencies located in the State (except the State exercise of general supervisory responsibility), using quantifiable in-

dicators in each of the following priority areas, and using such qualitative indicators as are needed to adequately measure performance in the following priority areas:

"(A) Provision of a free appropriate public education in the least restrictive environment.

"(B) State exercise of general supervisory authority, including child find, effective monitoring, the use of resolution sessions, mediation, voluntary binding arbitration, and a system of transition services as defined in sections 602(34) and 637(a)(9).

"(C) Disproportionate representation of racial and ethnic groups in special education and related services, to the extent the representation is the result of inappropriate identification.

"(4) PERMISSIVE AREAS OF REVIEW.—The Secretary shall consider other relevant information and data, including data provided by States under section 618.

"(b) STATE PERFORMANCE PLANS.—

"(1) PLAN.—

"(A) IN GENERAL.—Not later than 1 year after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2004, each State shall have in place a performance plan that evaluates that State's efforts to implement the requirements and purposes of this part and describes how the State will improve such implementation.

"(B) SUBMISSION FOR APPROVAL.—Each State shall submit the State's performance plan to the Secretary for approval in accordance with the approval process described in subsection (c).

"(C) REVIEW.—Each State shall review its State performance plan at least once every 6 years and submit any amendments to the Secretary.

"(2) TARGETS.—

"(A) IN GENERAL.—As a part of the State performance plan described under paragraph (1), each State shall establish measurable and rigorous targets for the indicators established under the priority areas described in subsection (a)(3).

"(B) DATA COLLECTION.—

"(i) IN GENERAL.—Each State shall collect valid and reliable information as needed to report annually to the Secretary on the priority areas described in subsection (a)(3).

"(ii) RULE OF CONSTRUCTION.—Nothing in this title shall be construed to authorize the development of a nationwide database of personally identifiable information on individuals involved in studies or other collections of data under this part.

"(C) PUBLIC REPORTING AND PRIVACY.—

"(i) IN GENERAL.—The State shall use the targets established in the plan and priority areas described in subsection (a)(3) to analyze the performance of each local educational agency in the State in implementing this part.

"(ii) REPORT.—

"(I) PUBLIC REPORT.—The State shall report annually to the public on the performance of each local educational agency located in the State on the targets in the State's performance plan. The State shall make the State's performance plan available through public means, including by posting on the website of the State educational agency, distribution to the media, and distribution through public agencies.

"(II) STATE PERFORMANCE REPORT.—The State shall report annually to the Secretary on the performance of the State under the State's performance plan.

"(iii) PRIVACY.—The State shall not report to the public or the Secretary any information on performance that would result in the disclosure of personally identifiable information about individual children or where the available data is insufficient to yield statistically reliable information.

"(c) APPROVAL PROCESS.—

"(1) DEEMED APPROVAL.—The Secretary shall review (including the specific provisions described in subsection (b)) each performance plan submitted by a State pursuant to subsection (b)(1)(B) and the plan shall be deemed to be approved by the Secretary unless the Secretary makes a written determination, prior to the expiration of the 120-day period beginning on the date on which the Secretary received the plan, that the plan does not meet the requirements of this section, including the specific provisions described in subsection (b).

"(2) DISAPPROVAL.—The Secretary shall not finally disapprove a performance plan, except after giving the State notice and an opportunity for a hearing.

"(3) NOTIFICATION.—If the Secretary finds that the plan does not meet the requirements, in whole or in part, of this section, the Secretary shall—

"(A) give the State notice and an opportunity for a hearing; and

"(B) notify the State of the finding, and in such notification shall—

"(i) cite the specific provisions in the plan that do not meet the requirements; and

"(ii) request additional information, only as to the provisions not meeting the requirements, needed for the plan to meet the requirements of this section.

"(4) RESPONSE.—If the State responds to the Secretary's notification described in paragraph (3)(B) during the 30-day period beginning on the date on which the State received the notification, and resubmits the plan with the requested information described in paragraph (3)(B)(ii), the Secretary shall approve or disapprove such plan prior to the later of—

"(A) the expiration of the 30-day period beginning on the date on which the plan is resubmitted; or

"(B) the expiration of the 120-day period described in paragraph (1).

"(5) FAILURE TO RESPOND.—If the State does not respond to the Secretary's notification described in paragraph (3)(B) during the 30-day period beginning on the date on which the State received the notification, such plan shall be deemed to be disapproved.

"(d) SECRETARY'S REVIEW AND DETERMINATION.—

"(1) REVIEW.—The Secretary shall annually review the State performance report submitted pursuant to subsection (b)(2)(C)(ii)(II) in accordance with this section.

"(2) DETERMINATION.—

"(A) IN GENERAL.—Based on the information provided by the State in the State performance report, information obtained through monitoring visits, and any other public information made available, the Secretary shall determine if the State—

"(i) meets the requirements and purposes of this part;

"(ii) needs assistance in implementing the requirements of this part;

"(iii) needs intervention in implementing the requirements of this part; or

"(iv) needs substantial intervention in implementing the requirements of this part.

"(B) NOTICE AND OPPORTUNITY FOR A HEARING.—For determinations made under clause (iii) or (iv) of subparagraph (A), the Secretary shall provide reasonable notice and an opportunity for a hearing on such determination.

"(e) ENFORCEMENT.—

"(1) NEEDS ASSISTANCE.—If the Secretary determines, for 2 consecutive years, that a State needs assistance under subsection (d)(2)(A)(ii) in implementing the requirements of this part, the Secretary shall take 1 or more of the following actions:

"(A) Advise the State of available sources of technical assistance that may help the State address the areas in which the State needs assistance, which may include assistance from the Office of Special Education Programs, other offices of the Department of Education, other Federal agencies, technical assistance providers approved by the Secretary, and other federally funded nonprofit agencies, and require the State to work with appropriate entities. Such technical assistance may include—

"(i) the provision of advice by experts to address the areas in which the State needs assistance, including explicit plans for addressing the area for concern within a specified period of time;

"(ii) assistance in identifying and implementing professional development, instructional strategies, and methods of instruction that are based on scientifically based research;

"(iii) designating and using distinguished superintendents, principals, special education administrators, special education teachers, and other teachers to provide advice, technical assistance, and support; and

"(iv) devising additional approaches to providing technical assistance, such as collaborating with institu-

tions of higher education, educational service agencies, national centers of technical assistance supported under part D, and private providers of scientifically based technical assistance.

"(B) Direct the use of State-level funds under section 611(e) on the area or areas in which the State needs assistance.

"(C) Identify the State as a high-risk grantee and impose special conditions on the State's grant under this part.

"(2) NEEDS INTERVENTION.—If the Secretary determines, for 3 or more consecutive years, that a State needs intervention under subsection (d)(2)(A)(iii) in implementing the requirements of this part, the following shall apply:

"(A) The Secretary may take any of the actions described in paragraph (1).

"(B) The Secretary shall take 1 or more of the following actions:

"(i) Require the State to prepare a corrective action plan or improvement plan if the Secretary determines that the State should be able to correct the problem within 1 year.

"(ii) Require the State to enter into a compliance agreement under section 457 of the General Education Provisions Act, if the Secretary has reason to believe that the State cannot correct the problem within 1 year.

"(iii) For each year of the determination, withhold not less than 20 percent and not more than 50 percent of the State's funds under section 611(e), until the Secretary determines the State has sufficiently addressed the areas in which the State needs intervention.

"(iv) Seek to recover funds under section 452 of the General Education Provisions Act.

"(v) Withhold, in whole or in part, any further payments to the State under this part pursuant to paragraph (5).

"(vi) Refer the matter for appropriate enforcement action, which may include referral to the Department of Justice.

"(3) NEEDS SUBSTANTIAL INTERVENTION.—Notwithstanding paragraph (1) or (2), at any time that the Secretary determines that a State needs substantial intervention in implementing the requirements of this part or that there is a substantial failure to comply with any condition of a State educational agency's or local educational agency's eligibility under this part, the Secretary shall take 1 or more of the following actions:

"(A) Recover funds under section 452 of the General Education Provisions Act.

"(B) Withhold, in whole or in part, any further payments to the State under this part.

"(C) Refer the case to the Office of the Inspector General at the Department of Education.

"(D) Refer the matter for appropriate enforcement action, which may include referral to the Department of Justice.

"(4) OPPORTUNITY FOR HEARING.—

"(A) WITHHOLDING FUNDS.—Prior to withholding any funds under this section, the Secretary shall provide reasonable notice and an opportunity for a hearing to the State educational agency involved.

"(B) SUSPENSION.—Pending the outcome of any hearing to withhold payments under subsection (b), the Secretary may suspend payments to a recipient, suspend the authority of the recipient to obligate funds under this part, or both, after such recipient has been given reasonable notice and an opportunity to show cause why future payments or authority to obligate funds under this part should not be suspended.

"(5) REPORT TO CONGRESS.—The Secretary shall report to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate within 30 days of taking enforcement action pursuant to paragraph (1), (2), or (3), on the specific action taken and the reasons why enforcement action was taken.

"(6) NATURE OF WITHHOLDING.—

"(A) LIMITATION.—If the Secretary withholds further payments pursuant to paragraph (2) or (3), the Secretary may determine—

"(i) that such withholding will be limited to programs or projects, or portions of programs or projects, that affected the Secretary's determination under subsection (d)(2); or

"(ii) that the State educational agency shall not make further payments under this part to specified State agencies or local educational agencies that caused or were involved in the Secretary's determination under subsection (d)(2).

"(B) WITHHOLDING UNTIL RECTIFIED.—Until the Secretary is satisfied that the condition that caused the initial withholding has been substantially rectified—

"(i) payments to the State under this part shall be withheld in whole or in part; and

"(ii) payments by the State educational agency under this part shall be limited to State agencies and local educational agencies whose actions did not cause or were not involved in the Secretary's determination under subsection (d)(2), as the case may be.

"(7) PUBLIC ATTENTION.—Any State that has received notice under subsection (d)(2) shall, by means of a public notice, take such measures as may be necessary to bring the pendency of an action pursuant to this subsection to the attention of the public within the State.

"(8) JUDICIAL REVIEW.—

"(A) IN GENERAL.—If any State is dissatisfied with the Secretary's action with respect to the eligibility of the State under section 612, such State may, not later than 60 days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be transmitted by the clerk of the court to the Sec-

retary. The Secretary thereupon shall file in the court the record of the proceedings upon which the Secretary's action was based, as provided in section 2112 of title 28, United States Code.

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

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

"(f) STATE ENFORCEMENT.—If a State educational agency determines that a local educational agency is not meeting the requirements of this part, including the targets in the State's performance plan, the State educational agency shall prohibit the local educational agency from reducing the local educational agency's maintenance of effort under section 613(a)(2)(C) for any fiscal year.

"(g) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to restrict the Secretary from utilizing any authority under the General Education Provisions Act to monitor and enforce the requirements of this title.

"(h) DIVIDED STATE AGENCY RESPONSIBILITY.—For purposes of this section, where responsibility for ensuring that the requirements of this part are met with respect to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons is assigned to a public agency other than the State educational agency pursuant to section 612(a)(11)(C), the Secretary, in instances where the Secretary finds that the failure to comply substantially with the provisions of this part are related to a failure by the public agency, shall take appropriate corrective action to ensure compliance with this part, except that—

"(1) any reduction or withholding of payments to the State shall be proportionate to the total funds allotted under section 611 to the State as the number of eligible children with disabilities in adult prisons under the supervision of the other public agency is proportionate to the number of eligible individuals with disabilities in the State under the supervision of the State educational agency; and

"(2) any withholding of funds under paragraph (1) shall be limited to the specific agency responsible for the failure to comply with this part.

"(i) DATA CAPACITY AND TECHNICAL ASSISTANCE REVIEW.—The Secretary shall—

"(1) review the data collection and analysis capacity of States to ensure that data and information determined nec-

essary for implementation of this section is collected, analyzed, and accurately reported to the Secretary; and

"(2) provide technical assistance (from funds reserved under section 611(c)), where needed, to improve the capacity of States to meet the data collection requirements.

"SEC. 617. ADMINISTRATION.

"(a) RESPONSIBILITIES OF SECRETARY.—The Secretary shall—

"(1) cooperate with, and (directly or by grant or contract) furnish technical assistance necessary to, a State in matters relating to—

"(A) the education of children with disabilities; and

"(B) carrying out this part; and

"(2) provide short-term training programs and institutes.

"(b) PROHIBITION AGAINST FEDERAL MANDATES, DIRECTION, OR CONTROL.—Nothing in this title shall be construed to authorize an officer or employee of the Federal Government to mandate, direct, or control a State, local educational agency, or school's specific instructional content, academic achievement standards and assessments, curriculum, or program of instruction.

"(c) CONFIDENTIALITY.—The Secretary shall take appropriate action, in accordance with section 444 of the General Education Provisions Act, to ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by the Secretary and by State educational agencies and local educational agencies pursuant to this part.

"(d) PERSONNEL.—The Secretary is authorized to hire qualified personnel necessary to carry out the Secretary's duties under subsection (a), under section 618, and under subpart 4 of part D, without regard to the provisions of title 5, United States Code, relating to appointments in the competitive service and without regard to chapter 51 and subchapter III of chapter 53 of such title relating to classification and general schedule pay rates, except that no more than 20 such personnel shall be employed at any time.

"(e) MODEL FORMS.—Not later than the date that the Secretary publishes final regulations under this title, to implement amendments made by the Individuals with Disabilities Education Improvement Act of 2004, the Secretary shall publish and disseminate widely to States, local educational agencies, and parent and community training and information centers—

"(1) a model IEP form;

"(2) a model individualized family service plan (IFSP) form;

"(3) a model form of the notice of procedural safeguards described in section 615(d); and

"(4) a model form of the prior written notice described in subsections (b)(3) and (c)(1) of section 615 that is consistent with the requirements of this part and is sufficient to meet such requirements.

"SEC. 618. PROGRAM INFORMATION.

"(a) IN GENERAL.—Each State that receives assistance under this part, and the Secretary of the Interior, shall provide data each year to the Secretary of Education and the public on the following:

"(1)(A) The number and percentage of children with disabilities, by race, ethnicity, limited English proficiency status,

gender, and disability category, who are in each of the following separate categories:

"(i) Receiving a free appropriate public education.

"(ii) Participating in regular education.

"(iii) In separate classes, separate schools or facilities, or public or private residential facilities.

"(iv) For each year of age from age 14 through 21, stopped receiving special education and related services because of program completion (including graduation with a regular secondary school diploma), or other reasons, and the reasons why those children stopped receiving special education and related services.

"(v)(I) Removed to an interim alternative educational setting under section 615(k)(1).

"(II) The acts or items precipitating those removals.

"(III) The number of children with disabilities who are subject to long-term suspensions or expulsions.

"(B) The number and percentage of children with disabilities, by race, gender, and ethnicity, who are receiving early intervention services.

"(C) The number and percentage of children with disabilities, by race, gender, and ethnicity, who, from birth through age 2, stopped receiving early intervention services because of program completion or for other reasons.

"(D) The incidence and duration of disciplinary actions by race, ethnicity, limited English proficiency status, gender, and disability category, of children with disabilities, including suspensions of 1 day or more.

"(E) The number and percentage of children with disabilities who are removed to alternative educational settings or expelled as compared to children without disabilities who are removed to alternative educational settings or expelled.

"(F) The number of due process complaints filed under section 615 and the number of hearings conducted.

"(G) The number of hearings requested under section 615(k) and the number of changes in placements ordered as a result of those hearings.

"(H) The number of mediations held and the number of settlement agreements reached through such mediations.

"(2) The number and percentage of infants and toddlers, by race, and ethnicity, who are at risk of having substantial developmental delays (as defined in section 632), and who are receiving early intervention services under part C.

"(3) Any other information that may be required by the Secretary.

"(b) DATA REPORTING.—

"(1) PROTECTION OF IDENTIFIABLE DATA.—The data described in subsection (a) shall be publicly reported by each State in a manner that does not result in the disclosure of data identifiable to individual children.

"(2) SAMPLING.—The Secretary may permit States and the Secretary of the Interior to obtain the data described in subsection (a) through sampling.

"(c) TECHNICAL ASSISTANCE.—The Secretary may provide technical assistance to States to ensure compliance with the data collection and reporting requirements under this title.

"(d) DISPROPORTIONALITY.—

"(1) IN GENERAL.—Each State that receives assistance under this part, and the Secretary of the Interior, shall provide for the collection and examination of data to determine if significant disproportionality based on race and ethnicity is occurring in the State and the local educational agencies of the State with respect to—

"(A) the identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment described in section 602(3);

"(B) the placement in particular educational settings of such children; and

"(C) the incidence, duration, and type of disciplinary actions, including suspensions and expulsions.

"(2) REVIEW AND REVISION OF POLICIES, PRACTICES, AND PROCEDURES.—In the case of a determination of significant disproportionality with respect to the identification of children as children with disabilities, or the placement in particular educational settings of such children, in accordance with paragraph (1), the State or the Secretary of the Interior, as the case may be, shall—

"(A) provide for the review and, if appropriate, revision of the policies, procedures, and practices used in such identification or placement to ensure that such policies, procedures, and practices comply with the requirements of this title;

"(B) require any local educational agency identified under paragraph (1) to reserve the maximum amount of funds under section 613(f) to provide comprehensive coordinated early intervening services to serve children in the local educational agency, particularly children in those groups that were significantly overidentified under paragraph (1); and

"(C) require the local educational agency to publicly report on the revision of policies, practices, and procedures described under subparagraph (A).

"SEC. 619. PRESCHOOL GRANTS.

"(a) IN GENERAL.—The Secretary shall provide grants under this section to assist States to provide special education and related services, in accordance with this part—

"(1) to children with disabilities aged 3 through 5, inclusive; and

"(2) at the State's discretion, to 2-year-old children with disabilities who will turn 3 during the school year.

"(b) ELIGIBILITY.—A State shall be eligible for a grant under this section if such State—

"(1) is eligible under section 612 to receive a grant under this part; and

"(2) makes a free appropriate public education available to all children with disabilities, aged 3 through 5, residing in the State.

"(c) ALLOCATIONS TO STATES.—

"(1) IN GENERAL.—The Secretary shall allocate the amount made available to carry out this section for a fiscal year among the States in accordance with paragraph (2) or (3), as the case may be.

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

"(A) ALLOCATION.—

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

"(I) allocate to each State the amount the State received under this section for fiscal year 1997;

"(II) allocate 85 percent of any remaining funds to States on the basis of the States' relative populations of children aged 3 through 5; and

"(III) allocate 15 percent of those remaining funds to States on the basis of the States' relative populations of all children aged 3 through 5 who are living in poverty.

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

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

"(i) PRECEDING YEARS.—No State's allocation shall be less than its allocation under this section for the preceding fiscal year.

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

"(I) the sum of—

"(aa) the amount the State received under this section for fiscal year 1997; and

"(bb) ⅓ of 1 percent of the amount by which the amount appropriated under subsection (j) for the fiscal year exceeds the amount appropriated for this section for fiscal year 1997;

"(II) the sum of—

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

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

"(III) the sum of—

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

"(bb) that amount multiplied by 90 percent of the percentage increase in the amount

appropriated under this section from the preceding fiscal year.

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

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

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

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

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

"(A) ALLOCATIONS.—If the amount available for allocations is greater than the amount allocated to the States for fiscal year 1997, each State shall be allocated the sum of—

"(i) the amount the State received under this section for fiscal year 1997; and

"(ii) an amount that bears the same relation to any remaining funds as the increase the State received under this section for the preceding fiscal year over fiscal year 1997 bears to the total of all such increases for all States.

"(B) RATABLE REDUCTIONS.—If the amount available for allocations is equal to or less than the amount allocated to the States for fiscal year 1997, each State shall be allocated the amount the State received for fiscal year 1997, ratably reduced, if necessary.

"(d) RESERVATION FOR STATE ACTIVITIES.—

"(1) IN GENERAL.—Each State may reserve not more than the amount described in paragraph (2) for administration and other State-level activities in accordance with subsections (e) and (f).

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

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

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

"(e) STATE ADMINISTRATION.—

"(1) IN GENERAL.—For the purpose of administering this section (including the coordination of activities under this part

with, and providing technical assistance to, other programs that provide services to children with disabilities) a State may use not more than 20 percent of the maximum amount the State may reserve under subsection (d) for any fiscal year.

"(2) ADMINISTRATION OF PART C.—Funds described in paragraph (1) may also be used for the administration of part C.

"(f) OTHER STATE-LEVEL ACTIVITIES.—Each State shall use any funds the State reserves under subsection (d) and does not use for administration under subsection (e)—

"(1) for support services (including establishing and implementing the mediation process required by section 615(e)), which may benefit children with disabilities younger than 3 or older than 5 as long as those services also benefit children with disabilities aged 3 through 5;

"(2) for direct services for children eligible for services under this section;

"(3) for activities at the State and local levels to meet the performance goals established by the State under section 612(a)(15);

"(4) to supplement other funds used to develop and implement a statewide coordinated services system designed to improve results for children and families, including children with disabilities and their families, but not more than 1 percent of the amount received by the State under this section for a fiscal year;

"(5) to provide early intervention services (which shall include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills) in accordance with part C to children with disabilities who are eligible for services under this section and who previously received services under part C until such children enter, or are eligible under State law to enter, kindergarten; or

"(6) at the State's discretion, to continue service coordination or case management for families who receive services under part C.

"(g) SUBGRANTS TO LOCAL EDUCATIONAL AGENCIES.—

"(1) SUBGRANTS REQUIRED.—Each State that receives a grant under this section for any fiscal year shall distribute all of the grant funds that the State does not reserve under subsection (d) to local educational agencies in the State that have established their eligibility under section 613, as follows:

"(A) BASE PAYMENTS.—The State shall first award each local educational agency described in paragraph (1) the amount that agency would have received under this section for fiscal year 1997 if the State had distributed 75 percent of its grant for that year under section 619(c)(3), as such section was then in effect.

"(B) ALLOCATION OF REMAINING FUNDS.—After making allocations under subparagraph (A), the State shall—

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

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

"(2) REALLOCATION OF FUNDS.—If a State educational agency determines that a local educational agency is adequately providing a free appropriate public education to all children with disabilities aged 3 through 5 residing in the area served by the local educational agency with State and local funds, the State educational agency may reallocate any portion of the funds under this section that are not needed by that local educational agency to provide a free appropriate public education to other local educational agencies in the State that are not adequately providing special education and related services to all children with disabilities aged 3 through 5 residing in the areas the other local educational agencies serve.

"(h) PART C INAPPLICABLE.—Part C does not apply to any child with a disability receiving a free appropriate public education, in accordance with this part, with funds received under this section.

"(i) STATE DEFINED.—In this section, the term 'State' means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

"(j) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary.

"PART C—INFANTS AND TODDLERS WITH DISABILITIES

"SEC. 631. FINDINGS AND POLICY.

"(a) FINDINGS.—Congress finds that there is an urgent and substantial need—

"(1) to enhance the development of infants and toddlers with disabilities, to minimize their potential for developmental delay, and to recognize the significant brain development that occurs during a child's first 3 years of life;

"(2) to reduce the educational costs to our society, including our Nation's schools, by minimizing the need for special education and related services after infants and toddlers with disabilities reach school age;

"(3) to maximize the potential for individuals with disabilities to live independently in society;

"(4) to enhance the capacity of families to meet the special needs of their infants and toddlers with disabilities; and

"(5) to enhance the capacity of State and local agencies and service providers to identify, evaluate, and meet the needs of all children, particularly minority, low-income, inner city, and rural children, and infants and toddlers in foster care.

"(b) POLICY.—It is the policy of the United States to provide financial assistance to States—

"(1) to develop and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system that provides early intervention services for infants and toddlers with disabilities and their families;

"(2) to facilitate the coordination of payment for early intervention services from Federal, State, local, and private sources (including public and private insurance coverage);

"(3) to enhance State capacity to provide quality early intervention services and expand and improve existing early intervention services being provided to infants and toddlers with disabilities and their families; and

"(4) to encourage States to expand opportunities for children under 3 years of age who would be at risk of having substantial developmental delay if they did not receive early intervention services.

"SEC. 632. DEFINITIONS.

"In this part:

"(1) AT-RISK INFANT OR TODDLER.—The term 'at-risk infant or toddler' means an individual under 3 years of age who would be at risk of experiencing a substantial developmental delay if early intervention services were not provided to the individual.

"(2) COUNCIL.—The term 'council' means a State interagency coordinating council established under section 641.

"(3) DEVELOPMENTAL DELAY.—The term 'developmental delay', when used with respect to an individual residing in a State, has the meaning given such term by the State under section 635(a)(1).

"(4) EARLY INTERVENTION SERVICES.—The term 'early intervention services' means developmental services that—

"(A) are provided under public supervision;

"(B) are provided at no cost except where Federal or State law provides for a system of payments by families, including a schedule of sliding fees;

"(C) are designed to meet the developmental needs of an infant or toddler with a disability, as identified by the individualized family service plan team, in any 1 or more of the following areas:

"(i) physical development;

"(ii) cognitive development;

"(iii) communication development;

"(iv) social or emotional development; or

"(v) adaptive development;

"(D) meet the standards of the State in which the services are provided, including the requirements of this part;

"(E) include—

"(i) family training, counseling, and home visits;

"(ii) special instruction;

"(iii) speech-language pathology and audiology services, and sign language and cued language services;

"(iv) occupational therapy;

"(v) physical therapy;

"(vi) psychological services;

"(vii) service coordination services;

"(viii) medical services only for diagnostic or evaluation purposes;

"(ix) early identification, screening, and assessment services;

"(x) health services necessary to enable the infant or toddler to benefit from the other early intervention services;

"(xi) social work services;

"(xii) vision services;

"(xiii) assistive technology devices and assistive technology services; and

"(xiv) transportation and related costs that are necessary to enable an infant or toddler and the infant's or toddler's family to receive another service described in this paragraph;

"(F) are provided by qualified personnel, including—

"(i) special educators;

"(ii) speech-language pathologists and audiologists;

"(iii) occupational therapists;

"(iv) physical therapists;

"(v) psychologists;

"(vi) social workers;

"(vii) nurses;

"(viii) registered dietitians;

"(ix) family therapists;

"(x) vision specialists, including ophthalmologists and optometrists;

"(xi) orientation and mobility specialists; and

"(xii) pediatricians and other physicians;

"(G) to the maximum extent appropriate, are provided in natural environments, including the home, and community settings in which children without disabilities participate; and

"(H) are provided in conformity with an individualized family service plan adopted in accordance with section 636.

"(5) INFANT OR TODDLER WITH A DISABILITY.—The term 'infant or toddler with a disability'—

"(A) means an individual under 3 years of age who needs early intervention services because the individual—

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

"(ii) has a diagnosed physical or mental condition that has a high probability of resulting in developmental delay; and

"(B) may also include, at a State's discretion—

"(i) at-risk infants and toddlers; and

"(ii) children with disabilities who are eligible for services under section 619 and who previously received services under this part until such children enter, or are eligible under State law to enter, kindergarten or elementary school, as appropriate, provided that any programs under this part serving such children shall include—

"(I) an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills; and

"(II) a written notification to parents of their rights and responsibilities in determining whether their child will continue to receive services under this part or participate in preschool programs under section 619.

"SEC. 633. GENERAL AUTHORITY.

"The Secretary shall, in accordance with this part, make grants to States (from their allotments under section 643) to assist each State to maintain and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system to provide early intervention services for infants and toddlers with disabilities and their families.

"SEC. 634. ELIGIBILITY.

"In order to be eligible for a grant under section 633, a State shall provide assurances to the Secretary that the State—

"(1) has adopted a policy that appropriate early intervention services are available to all infants and toddlers with disabilities in the State and their families, including Indian infants and toddlers with disabilities and their families residing on a reservation geographically located in the State, infants and toddlers with disabilities who are homeless children and their families, and infants and toddlers with disabilities who are wards of the State; and

"(2) has in effect a statewide system that meets the requirements of section 635.

"SEC. 635. REQUIREMENTS FOR STATEWIDE SYSTEM.

"(a) IN GENERAL.—A statewide system described in section 633 shall include, at a minimum, the following components:

"(1) A rigorous definition of the term 'developmental delay' that will be used by the State in carrying out programs under this part in order to appropriately identify infants and toddlers with disabilities that are in need of services under this part.

"(2) A State policy that is in effect and that ensures that appropriate early intervention services based on scientifically based research, to the extent practicable, are available to all infants and toddlers with disabilities and their families, including Indian infants and toddlers with disabilities and their families residing on a reservation geographically located in the State and infants and toddlers with disabilities who are homeless children and their families.

"(3) A timely, comprehensive, multidisciplinary evaluation of the functioning of each infant or toddler with a disability in the State, and a family-directed identification of the needs of each family of such an infant or toddler, to assist appropriately in the development of the infant or toddler.

"(4) For each infant or toddler with a disability in the State, an individualized family service plan in accordance with section 636, including service coordination services in accordance with such service plan.

"(5) A comprehensive child find system, consistent with part B, including a system for making referrals to service providers

that includes timelines and provides for participation by primary referral sources and that ensures rigorous standards for appropriately identifying infants and toddlers with disabilities for services under this part that will reduce the need for future services.

"(6) A public awareness program focusing on early identification of infants and toddlers with disabilities, including the preparation and dissemination by the lead agency designated or established under paragraph (10) to all primary referral sources, especially hospitals and physicians, of information to be given to parents, especially to inform parents with premature infants, or infants with other physical risk factors associated with learning or developmental complications, on the availability of early intervention services under this part and of services under section 619, and procedures for assisting such sources in disseminating such information to parents of infants and toddlers with disabilities.

"(7) A central directory that includes information on early intervention services, resources, and experts available in the State and research and demonstration projects being conducted in the State.

"(8) A comprehensive system of personnel development, including the training of paraprofessionals and the training of primary referral sources with respect to the basic components of early intervention services available in the State that—

"(A) shall include—

"(i) implementing innovative strategies and activities for the recruitment and retention of early education service providers;

"(ii) promoting the preparation of early intervention providers who are fully and appropriately qualified to provide early intervention services under this part; and

"(iii) training personnel to coordinate transition services for infants and toddlers served under this part from a program providing early intervention services under this part and under part B (other than section 619), to a preschool program receiving funds under section 619, or another appropriate program; and

"(B) may include—

"(i) training personnel to work in rural and inner-city areas; and

"(ii) training personnel in the emotional and social development of young children.

"(9) Policies and procedures relating to the establishment and maintenance of qualifications to ensure that personnel necessary to carry out this part are appropriately and adequately prepared and trained, including the establishment and maintenance of qualifications that are consistent with any State-approved or recognized certification, licensing, registration, or other comparable requirements that apply to the area in which such personnel are providing early intervention services, except that nothing in this part (including this paragraph) shall be construed to prohibit the use of paraprofessionals and assistants who are appropriately trained and supervised in accord-

ance with State law, regulation, or written policy, to assist in the provision of early intervention services under this part to infants and toddlers with disabilities.

"(10) A single line of responsibility in a lead agency designated or established by the Governor for carrying out—

"(A) the general administration and supervision of programs and activities receiving assistance under section 633, and the monitoring of programs and activities used by the State to carry out this part, whether or not such programs or activities are receiving assistance made available under section 633, to ensure that the State complies with this part;

"(B) the identification and coordination of all available resources within the State from Federal, State, local, and private sources;

"(C) the assignment of financial responsibility in accordance with section 637(a)(2) to the appropriate agencies;

"(D) the development of procedures to ensure that services are provided to infants and toddlers with disabilities and their families under this part in a timely manner pending the resolution of any disputes among public agencies or service providers;

"(E) the resolution of intra- and interagency disputes; and

"(F) the entry into formal interagency agreements that define the financial responsibility of each agency for paying for early intervention services (consistent with State law) and procedures for resolving disputes and that include all additional components necessary to ensure meaningful cooperation and coordination.

"(11) A policy pertaining to the contracting or making of other arrangements with service providers to provide early intervention services in the State, consistent with the provisions of this part, including the contents of the application used and the conditions of the contract or other arrangements.

"(12) A procedure for securing timely reimbursements of funds used under this part in accordance with section 640(a).

"(13) Procedural safeguards with respect to programs under this part, as required by section 639.

"(14) A system for compiling data requested by the Secretary under section 618 that relates to this part.

"(15) A State interagency coordinating council that meets the requirements of section 641.

"(16) Policies and procedures to ensure that, consistent with section 636(d)(5)—

"(A) to the maximum extent appropriate, early intervention services are provided in natural environments; and

"(B) the provision of early intervention services for any infant or toddler with a disability occurs in a setting other than a natural environment that is most appropriate, as determined by the parent and the individualized family service plan team, only when early intervention cannot be achieved satisfactorily for the infant or toddler in a natural environment.

"(b) POLICY.—In implementing subsection (a)(9), a State may adopt a policy that includes making ongoing good-faith efforts to recruit and hire appropriately and adequately trained personnel to provide early intervention services to infants and toddlers with disabilities, including, in a geographic area of the State where there is a shortage of such personnel, the most qualified individuals available who are making satisfactory progress toward completing applicable course work necessary to meet the standards described in subsection (a)(9).

"(c) FLEXIBILITY TO SERVE CHILDREN 3 YEARS OF AGE UNTIL ENTRANCE INTO ELEMENTARY SCHOOL.—

"(1) IN GENERAL.—A statewide system described in section 633 may include a State policy, developed and implemented jointly by the lead agency and the State educational agency, under which parents of children with disabilities who are eligible for services under section 619 and previously received services under this part, may choose the continuation of early intervention services (which shall include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills) for such children under this part until such children enter, or are eligible under State law to enter, kindergarten.

"(2) REQUIREMENTS.—If a statewide system includes a State policy described in paragraph (1), the statewide system shall ensure that—

"(A) parents of children with disabilities served pursuant to this subsection are provided annual notice that contains—

"(i) a description of the rights of such parents to elect to receive services pursuant to this subsection or under part B; and

"(ii) an explanation of the differences between services provided pursuant to this subsection and services provided under part B, including—

"(I) types of services and the locations at which the services are provided;

"(II) applicable procedural safeguards; and

"(III) possible costs (including any fees to be charged to families as described in section 632(4)(B)), if any, to parents of infants or toddlers with disabilities;

"(B) services provided pursuant to this subsection include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills;

"(C) the State policy will not affect the right of any child served pursuant to this subsection to instead receive a free appropriate public education under part B;

"(D) all early intervention services outlined in the child's individualized family service plan under section 636 are continued while any eligibility determination is being made for services under this subsection;

"(E) the parents of infants or toddlers with disabilities (as defined in section 632(5)(A)) provide informed written consent to the State, before such infants or toddlers reach

3 years of age, as to whether such parents intend to choose the continuation of early intervention services pursuant to this subsection for such infants or toddlers;

"(F) the requirements under section 637(a)(9) shall not apply with respect to a child who is receiving services in accordance with this subsection until not less than 90 days (and at the discretion of the parties to the conference, not more than 9 months) before the time the child will no longer receive those services; and

"(G) there will be a referral for evaluation for early intervention services of a child who experiences a substantiated case of trauma due to exposure to family violence (as defined in section 320 of the Family Violence Prevention and Services Act).

"(3) REPORTING REQUIREMENT.—If a statewide system includes a State policy described in paragraph (1), the State shall submit to the Secretary, in the State's report under section 637(b)(4)(A), a report on the number and percentage of children with disabilities who are eligible for services under section 619 but whose parents choose for such children to continue to receive early intervention services under this part.

"(4) AVAILABLE FUNDS.—If a statewide system includes a State policy described in paragraph (1), the policy shall describe the funds (including an identification as Federal, State, or local funds) that will be used to ensure that the option described in paragraph (1) is available to eligible children and families who provide the consent described in paragraph (2)(E), including fees (if any) to be charged to families as described in section 632(4)(B).

"(5) RULES OF CONSTRUCTION.—

"(A) SERVICES UNDER PART B.—If a statewide system includes a State policy described in paragraph (1), a State that provides services in accordance with this subsection to a child with a disability who is eligible for services under section 619 shall not be required to provide the child with a free appropriate public education under part B for the period of time in which the child is receiving services under this part.

"(B) SERVICES UNDER THIS PART.—Nothing in this subsection shall be construed to require a provider of services under this part to provide a child served under this part with a free appropriate public education.

"SEC. 636. INDIVIDUALIZED FAMILY SERVICE PLAN.

"(a) ASSESSMENT AND PROGRAM DEVELOPMENT.—A statewide system described in section 633 shall provide, at a minimum, for each infant or toddler with a disability, and the infant's or toddler's family, to receive—

"(1) a multidisciplinary assessment of the unique strengths and needs of the infant or toddler and the identification of services appropriate to meet such needs;

"(2) a family-directed assessment of the resources, priorities, and concerns of the family and the identification of the supports and services necessary to enhance the family's capacity to meet the developmental needs of the infant or toddler; and

"(3) a written individualized family service plan developed by a multidisciplinary team, including the parents, as required by subsection (e), including a description of the appropriate transition services for the infant or toddler.

"(b) PERIODIC REVIEW.—The individualized family service plan shall be evaluated once a year and the family shall be provided a review of the plan at 6-month intervals (or more often where appropriate based on infant or toddler and family needs).

"(c) PROMPTNESS AFTER ASSESSMENT.—The individualized family service plan shall be developed within a reasonable time after the assessment required by subsection (a)(1) is completed. With the parents' consent, early intervention services may commence prior to the completion of the assessment.

"(d) CONTENT OF PLAN.—The individualized family service plan shall be in writing and contain—

"(1) a statement of the infant's or toddler's present levels of physical development, cognitive development, communication development, social or emotional development, and adaptive development, based on objective criteria;

"(2) a statement of the family's resources, priorities, and concerns relating to enhancing the development of the family's infant or toddler with a disability;

"(3) a statement of the measurable results or outcomes expected to be achieved for the infant or toddler and the family, including pre-literacy and language skills, as developmentally appropriate for the child, and the criteria, procedures, and timelines used to determine the degree to which progress toward achieving the results or outcomes is being made and whether modifications or revisions of the results or outcomes or services are necessary;

"(4) a statement of specific early intervention services based on peer-reviewed research, to the extent practicable, necessary to meet the unique needs of the infant or toddler and the family, including the frequency, intensity, and method of delivering services;

"(5) a statement of the natural environments in which early intervention services will appropriately be provided, including a justification of the extent, if any, to which the services will not be provided in a natural environment;

"(6) the projected dates for initiation of services and the anticipated length, duration, and frequency of the services;

"(7) the identification of the service coordinator from the profession most immediately relevant to the infant's or toddler's or family's needs (or who is otherwise qualified to carry out all applicable responsibilities under this part) who will be responsible for the implementation of the plan and coordination with other agencies and persons, including transition services; and

"(8) the steps to be taken to support the transition of the toddler with a disability to preschool or other appropriate services.

"(e) PARENTAL CONSENT.—The contents of the individualized family service plan shall be fully explained to the parents and informed written consent from the parents shall be obtained prior to the provision of early intervention services described in such plan. If the parents do not provide consent with respect to a particular

early intervention service, then only the early intervention services to which consent is obtained shall be provided.

"SEC. 637. STATE APPLICATION AND ASSURANCES.

"(a) APPLICATION.—A State desiring to receive a grant under section 633 shall submit an application to the Secretary at such time and in such manner as the Secretary may reasonably require. The application shall contain—

"(1) a designation of the lead agency in the State that will be responsible for the administration of funds provided under section 633;

"(2) a certification to the Secretary that the arrangements to establish financial responsibility for services provided under this part pursuant to section 640(b) are current as of the date of submission of the certification;

"(3) information demonstrating eligibility of the State under section 634, including—

"(A) information demonstrating to the Secretary's satisfaction that the State has in effect the statewide system required by section 633; and

"(B) a description of services to be provided to infants and toddlers with disabilities and their families through the system;

"(4) if the State provides services to at-risk infants and toddlers through the statewide system, a description of such services;

"(5) a description of the uses for which funds will be expended in accordance with this part;

"(6) a description of the State policies and procedures that require the referral for early intervention services under this part of a child under the age of 3 who—

"(A) is involved in a substantiated case of child abuse or neglect; or

"(B) is identified as affected by illegal substance abuse, or withdrawal symptoms resulting from prenatal drug exposure;

"(7) a description of the procedure used to ensure that resources are made available under this part for all geographic areas within the State;

"(8) a description of State policies and procedures that ensure that, prior to the adoption by the State of any other policy or procedure necessary to meet the requirements of this part, there are public hearings, adequate notice of the hearings, and an opportunity for comment available to the general public, including individuals with disabilities and parents of infants and toddlers with disabilities;

"(9) a description of the policies and procedures to be used—

"(A) to ensure a smooth transition for toddlers receiving early intervention services under this part (and children receiving those services under section 635(c)) to preschool, school, other appropriate services, or exiting the program, including a description of how—

"(i) the families of such toddlers and children will be included in the transition plans required by subparagraph (C); and

"(ii) the lead agency designated or established under section 635(a)(10) will—

"(I) notify the local educational agency for the area in which such a child resides that the child will shortly reach the age of eligibility for preschool services under part B, as determined in accordance with State law;

"(II) in the case of a child who may be eligible for such preschool services, with the approval of the family of the child, convene a conference among the lead agency, the family, and the local educational agency not less than 90 days (and at the discretion of all such parties, not more than 9 months) before the child is eligible for the preschool services, to discuss any such services that the child may receive; and

"(III) in the case of a child who may not be eligible for such preschool services, with the approval of the family, make reasonable efforts to convene a conference among the lead agency, the family, and providers of other appropriate services for children who are not eligible for preschool services under part B, to discuss the appropriate services that the child may receive;

"(B) to review the child's program options for the period from the child's third birthday through the remainder of the school year; and

"(C) to establish a transition plan, including, as appropriate, steps to exit from the program;

"(10) a description of State efforts to promote collaboration among Early Head Start programs under section 645A of the Head Start Act, early education and child care programs, and services under part C; and

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

"(b) ASSURANCES.—The application described in subsection (a)—

"(1) shall provide satisfactory assurance that Federal funds made available under section 643 to the State will be expended in accordance with this part;

"(2) shall contain an assurance that the State will comply with the requirements of section 640;

"(3) shall provide satisfactory assurance that the control of funds provided under section 643, and title to property derived from those funds, will be in a public agency for the uses and purposes provided in this part and that a public agency will administer such funds and property;

"(4) shall provide for—

"(A) making such reports in such form and containing such information as the Secretary may require to carry out the Secretary's functions under this part; and

"(B) keeping such reports and affording such access to the reports as the Secretary may find necessary to ensure the correctness and verification of those reports and proper disbursement of Federal funds under this part;

"(5) provide satisfactory assurance that Federal funds made available under section 643 to the State—

"(A) will not be commingled with State funds; and

"(B) will be used so as to supplement the level of State and local funds expended for infants and toddlers with disabilities and their families and in no case to supplant those State and local funds;

"(6) shall provide satisfactory assurance that such fiscal control and fund accounting procedures will be adopted as may be necessary to ensure proper disbursement of, and accounting for, Federal funds paid under section 643 to the State;

"(7) shall provide satisfactory assurance that policies and procedures have been adopted to ensure meaningful involvement of underserved groups, including minority, low-income, homeless, and rural families and children with disabilities who are wards of the State, in the planning and implementation of all the requirements of this part; and

"(8) shall contain such other information and assurances as the Secretary may reasonably require by regulation.

"(c) STANDARD FOR DISAPPROVAL OF APPLICATION.—The Secretary may not disapprove such an application unless the Secretary determines, after notice and opportunity for a hearing, that the application fails to comply with the requirements of this section.

"(d) SUBSEQUENT STATE APPLICATION.—If a State has on file with the Secretary a policy, procedure, or assurance that demonstrates that the State meets a requirement of this section, including any policy or procedure filed under this part (as in effect before the date of enactment of the Individuals with Disabilities Education Improvement Act of 2004), the Secretary shall consider the State to have met the requirement for purposes of receiving a grant under this part.

"(e) MODIFICATION OF APPLICATION.—An application submitted by a State in accordance with this section shall remain in effect until the State submits to the Secretary such modifications as the State determines necessary. This section shall apply to a modification of an application to the same extent and in the same manner as this section applies to the original application.

"(f) MODIFICATIONS REQUIRED BY THE SECRETARY.—The Secretary may require a State to modify its application under this section, but only to the extent necessary to ensure the State's compliance with this part, if—

"(1) an amendment is made to this title, or a Federal regulation issued under this title;

"(2) a new interpretation of this title is made by a Federal court or the State's highest court; or

"(3) an official finding of noncompliance with Federal law or regulations is made with respect to the State.

"SEC. 638. USES OF FUNDS.

"In addition to using funds provided under section 633 to maintain and implement the statewide system required by such section, a State may use such funds—

"(1) for direct early intervention services for infants and toddlers with disabilities, and their families, under this part that are not otherwise funded through other public or private sources;

"(2) to expand and improve on services for infants and toddlers and their families under this part that are otherwise available;

"(3) to provide a free appropriate public education, in accordance with part B, to children with disabilities from their third birthday to the beginning of the following school year;

"(4) with the written consent of the parents, to continue to provide early intervention services under this part to children with disabilities from their 3rd birthday until such children enter, or are eligible under State law to enter, kindergarten, in lieu of a free appropriate public education provided in accordance with part B; and

"(5) in any State that does not provide services for at-risk infants and toddlers under section 637(a)(4), to strengthen the statewide system by initiating, expanding, or improving collaborative efforts related to at-risk infants and toddlers, including establishing linkages with appropriate public or private community-based organizations, services, and personnel for the purposes of—

"(A) identifying and evaluating at-risk infants and toddlers;

"(B) making referrals of the infants and toddlers identified and evaluated under subparagraph (A); and

"(C) conducting periodic follow-up on each such referral to determine if the status of the infant or toddler involved has changed with respect to the eligibility of the infant or toddler for services under this part.

"SEC. 639. PROCEDURAL SAFEGUARDS.

"(a) MINIMUM PROCEDURES.—The procedural safeguards required to be included in a statewide system under section 635(a)(13) shall provide, at a minimum, the following:

"(1) The timely administrative resolution of complaints by parents. Any party aggrieved by the findings and decision regarding an administrative complaint shall have the right to bring a civil action with respect to the complaint in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy. In any action brought under this paragraph, the court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and, basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.

"(2) The right to confidentiality of personally identifiable information, including the right of parents to written notice of and written consent to the exchange of such information among agencies consistent with Federal and State law.

"(3) The right of the parents to determine whether they, their infant or toddler, or other family members will accept or decline any early intervention service under this part in accordance with State law without jeopardizing other early intervention services under this part.

"(4) The opportunity for parents to examine records relating to assessment, screening, eligibility determinations, and the development and implementation of the individualized family service plan.

"(5) Procedures to protect the rights of the infant or toddler whenever the parents of the infant or toddler are not known or cannot be found or the infant or toddler is a ward of the State, including the assignment of an individual (who shall not be an employee of the State lead agency, or other State agency, and who shall not be any person, or any employee of a person, providing early intervention services to the infant or toddler or any family member of the infant or toddler) to act as a surrogate for the parents.

"(6) Written prior notice to the parents of the infant or toddler with a disability whenever the State agency or service provider proposes to initiate or change, or refuses to initiate or change, the identification, evaluation, or placement of the infant or toddler with a disability, or the provision of appropriate early intervention services to the infant or toddler.

"(7) Procedures designed to ensure that the notice required by paragraph (6) fully informs the parents, in the parents' native language, unless it clearly is not feasible to do so, of all procedures available pursuant to this section.

"(8) The right of parents to use mediation in accordance with section 615, except that—

"(A) any reference in the section to a State educational agency shall be considered to be a reference to a State's lead agency established or designated under section 635(a)(10);

"(B) any reference in the section to a local educational agency shall be considered to be a reference to a local service provider or the State's lead agency under this part, as the case may be; and

"(C) any reference in the section to the provision of a free appropriate public education to children with disabilities shall be considered to be a reference to the provision of appropriate early intervention services to infants and toddlers with disabilities.

"(b) SERVICES DURING PENDENCY OF PROCEEDINGS.—During the pendency of any proceeding or action involving a complaint by the parents of an infant or toddler with a disability, unless the State agency and the parents otherwise agree, the infant or toddler shall continue to receive the appropriate early intervention services currently being provided or, if applying for initial services, shall receive the services not in dispute.

"SEC. 640. PAYOR OF LAST RESORT.

"(a) NONSUBSTITUTION.—Funds provided under section 643 may not be used to satisfy a financial commitment for services that would have been paid for from another public or private source, including any medical program administered by the Secretary of Defense, but for the enactment of this part, except that whenever considered necessary to prevent a delay in the receipt of appropriate early intervention services by an infant, toddler, or family in a timely fashion, funds provided under section 643 may be used to pay the provider of services pending reimbursement from the agency that has ultimate responsibility for the payment.

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

"(1) ESTABLISHING FINANCIAL RESPONSIBILITY FOR SERVICES.—

"(A) IN GENERAL.—The Chief Executive Officer of a State or designee of the officer shall ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each public agency and the designated lead agency, in order to ensure—

"(i) the provision of, and financial responsibility for, services provided under this part; and

"(ii) such services are consistent with the requirements of section 635 and the State's application pursuant to section 637, including the provision of such services during the pendency of any such dispute.

"(B) CONSISTENCY BETWEEN AGREEMENTS OR MECHANISMS UNDER PART B.—The Chief Executive Officer of a State or designee of the officer shall ensure that the terms and conditions of such agreement or mechanism are consistent with the terms and conditions of the State's agreement or mechanism under section 612(a)(12), where appropriate.

"(2) REIMBURSEMENT FOR SERVICES BY PUBLIC AGENCY.—

"(A) IN GENERAL.—If a public agency other than an educational agency fails to provide or pay for the services pursuant to an agreement required under paragraph (1), the local educational agency or State agency (as determined by the Chief Executive Officer or designee) shall provide or pay for the provision of such services to the child.

"(B) REIMBURSEMENT.—Such local educational agency or State agency is authorized to claim reimbursement for the services from the public agency that failed to provide or pay for such services and such public agency shall reimburse the local educational agency or State agency pursuant to the terms of the interagency agreement or other mechanism required under paragraph (1).

"(3) SPECIAL RULE.—The requirements of paragraph (1) may be met through—

"(A) State statute or regulation;

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

"(C) other appropriate written methods as determined by the Chief Executive Officer of the State or designee of the officer and approved by the Secretary through the review and approval of the State's application pursuant to section 637.

"(c) REDUCTION OF OTHER BENEFITS.—Nothing in this part shall be construed to permit the State to reduce medical or other assistance available or to alter eligibility under title V of the Social Security Act (relating to maternal and child health) or title XIX of the Social Security Act (relating to medicaid for infants or toddlers with disabilities) within the State.

"SEC. 641. STATE INTERAGENCY COORDINATING COUNCIL.

"(a) ESTABLISHMENT.—

"(1) IN GENERAL.—A State that desires to receive financial assistance under this part shall establish a State interagency coordinating council.

"(2) APPOINTMENT.—The council shall be appointed by the Governor. In making appointments to the council, the Governor shall ensure that the membership of the council reasonably represents the population of the State.

"(3) CHAIRPERSON.—The Governor shall designate a member of the council to serve as the chairperson of the council, or shall require the council to so designate such a member. Any member of the council who is a representative of the lead agency designated under section 635(a)(10) may not serve as the chairperson of the council.

"(b) COMPOSITION.—

"(1) IN GENERAL.—The council shall be composed as follows:

"(A) PARENTS.—Not less than 20 percent of the members shall be parents of infants or toddlers with disabilities or children with disabilities aged 12 or younger, with knowledge of, or experience with, programs for infants and toddlers with disabilities. Not less than 1 such member shall be a parent of an infant or toddler with a disability or a child with a disability aged 6 or younger.

"(B) SERVICE PROVIDERS.—Not less than 20 percent of the members shall be public or private providers of early intervention services.

"(C) STATE LEGISLATURE.—Not less than 1 member shall be from the State legislature.

"(D) PERSONNEL PREPARATION.—Not less than 1 member shall be involved in personnel preparation.

"(E) AGENCY FOR EARLY INTERVENTION SERVICES.—Not less than 1 member shall be from each of the State agencies involved in the provision of, or payment for, early intervention services to infants and toddlers with disabilities and their families and shall have sufficient authority to engage in policy planning and implementation on behalf of such agencies.

"(F) AGENCY FOR PRESCHOOL SERVICES.—Not less than 1 member shall be from the State educational agency responsible for preschool services to children with disabilities and shall have sufficient authority to engage in policy planning and implementation on behalf of such agency.

"(G) STATE MEDICAID AGENCY.—Not less than 1 member shall be from the agency responsible for the State medicaid program.

"(H) HEAD START AGENCY.—Not less than 1 member shall be a representative from a Head Start agency or program in the State.

"(I) CHILD CARE AGENCY.—Not less than 1 member shall be a representative from a State agency responsible for child care.

"(J) AGENCY FOR HEALTH INSURANCE.—Not less than 1 member shall be from the agency responsible for the State regulation of health insurance.

"(K) OFFICE OF THE COORDINATOR OF EDUCATION OF HOMELESS CHILDREN AND YOUTH.—Not less than 1 member shall be a representative designated by the Office of Coordinator for Education of Homeless Children and Youths.

"(L) STATE FOSTER CARE REPRESENTATIVE.—Not less than 1 member shall be a representative from the State child welfare agency responsible for foster care.

"(M) MENTAL HEALTH AGENCY.—Not less than 1 member shall be a representative from the State agency responsible for children's mental health.

"(2) OTHER MEMBERS.—The council may include other members selected by the Governor, including a representative from the Bureau of Indian Affairs (BIA), or where there is no BIA-operated or BIA-funded school, from the Indian Health Service or the tribe or tribal council.

"(c) MEETINGS.—The council shall meet, at a minimum, on a quarterly basis, and in such places as the council determines necessary. The meetings shall be publicly announced, and, to the extent appropriate, open and accessible to the general public.

"(d) MANAGEMENT AUTHORITY.—Subject to the approval of the Governor, the council may prepare and approve a budget using funds under this part to conduct hearings and forums, to reimburse members of the council for reasonable and necessary expenses for attending council meetings and performing council duties (including child care for parent representatives), to pay compensation to a member of the council if the member is not employed or must forfeit wages from other employment when performing official council business, to hire staff, and to obtain the services of such professional, technical, and clerical personnel as may be necessary to carry out its functions under this part.

"(e) FUNCTIONS OF COUNCIL.—

"(1) DUTIES.—The council shall—

"(A) advise and assist the lead agency designated or established under section 635(a)(10) in the performance of the responsibilities set forth in such section, particularly the identification of the sources of fiscal and other support for services for early intervention programs, assignment of financial responsibility to the appropriate agency, and the promotion of the interagency agreements;

"(B) advise and assist the lead agency in the preparation of applications and amendments thereto;

"(C) advise and assist the State educational agency regarding the transition of toddlers with disabilities to preschool and other appropriate services; and

"(D) prepare and submit an annual report to the Governor and to the Secretary on the status of early intervention programs for infants and toddlers with disabilities and their families operated within the State.

"(2) AUTHORIZED ACTIVITY.—The council may advise and assist the lead agency and the State educational agency regarding the provision of appropriate services for children from birth through age 5. The council may advise appropriate agencies in the State with respect to the integration of services for infants and toddlers with disabilities and at-risk infants and toddlers

and their families, regardless of whether at-risk infants and toddlers are eligible for early intervention services in the State.

"(f) CONFLICT OF INTEREST.—No member of the council shall cast a vote on any matter that is likely to provide a direct financial benefit to that member or otherwise give the appearance of a conflict of interest under State law.

"SEC. 642. FEDERAL ADMINISTRATION.

"Sections 616, 617, and 618 shall, to the extent not inconsistent with this part, apply to the program authorized by this part, except that—

"(1) any reference in such sections to a State educational agency shall be considered to be a reference to a State's lead agency established or designated under section 635(a)(10);

"(2) any reference in such sections to a local educational agency, educational service agency, or a State agency shall be considered to be a reference to an early intervention service provider under this part; and

"(3) any reference to the education of children with disabilities or the education of all children with disabilities shall be considered to be a reference to the provision of appropriate early intervention services to infants and toddlers with disabilities.

"SEC. 643. ALLOCATION OF FUNDS.

"(a) RESERVATION OF FUNDS FOR OUTLYING AREAS.—

"(1) IN GENERAL.—From the sums appropriated to carry out this part for any fiscal year, the Secretary may reserve not more than 1 percent for payments to Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands in accordance with their respective needs for assistance under this part.

"(2) CONSOLIDATION OF FUNDS.—The provisions of Public Law 95–134, permitting the consolidation of grants to the outlying areas, shall not apply to funds those areas receive under this part.

"(b) PAYMENTS TO INDIANS.—

"(1) IN GENERAL.—The Secretary shall, subject to this subsection, make payments to the Secretary of the Interior to be distributed to tribes, tribal organizations (as defined under section 4 of the Indian Self-Determination and Education Assistance Act), or consortia of the above entities for the coordination of assistance in the provision of early intervention services by the States to infants and toddlers with disabilities and their families on reservations served by elementary schools and secondary schools for Indian children operated or funded by the Department of the Interior. The amount of such payment for any fiscal year shall be 1.25 percent of the aggregate of the amount available to all States under this part for such fiscal year.

"(2) ALLOCATION.—For each fiscal year, the Secretary of the Interior shall distribute the entire payment received under paragraph (1) by providing to each tribe, tribal organization, or consortium an amount based on the number of infants and toddlers residing on the reservation, as determined annually, divided by the total of such children served by all tribes, tribal organizations, or consortia.

"(3) INFORMATION.—To receive a payment under this subsection, the tribe, tribal organization, or consortium shall submit such information to the Secretary of the Interior as is needed to determine the amounts to be distributed under paragraph (2).

"(4) USE OF FUNDS.—The funds received by a tribe, tribal organization, or consortium shall be used to assist States in child find, screening, and other procedures for the early identification of Indian children under 3 years of age and for parent training. Such funds may also be used to provide early intervention services in accordance with this part. Such activities may be carried out directly or through contracts or cooperative agreements with the Bureau of Indian Affairs, local educational agencies, and other public or private nonprofit organizations. The tribe, tribal organization, or consortium is encouraged to involve Indian parents in the development and implementation of these activities. The above entities shall, as appropriate, make referrals to local, State, or Federal entities for the provision of services or further diagnosis.

"(5) REPORTS.—To be eligible to receive a payment under paragraph (2), a tribe, tribal organization, or consortium shall make a biennial report to the Secretary of the Interior of activities undertaken under this subsection, including the number of contracts and cooperative agreements entered into, the number of infants and toddlers contacted and receiving services for each year, and the estimated number of infants and toddlers needing services during the 2 years following the year in which the report is made. The Secretary of the Interior shall include a summary of this information on a biennial basis to the Secretary of Education along with such other information as required under section 611(h)(3)(E). The Secretary of Education may require any additional information from the Secretary of the Interior.

"(6) PROHIBITED USES OF FUNDS.—None of the funds under this subsection may be used by the Secretary of the Interior for administrative purposes, including child count, and the provision of technical assistance.

"(c) STATE ALLOTMENTS.—

"(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), from the funds remaining for each fiscal year after the reservation and payments under subsections (a), (b), and (e), the Secretary shall first allot to each State an amount that bears the same ratio to the amount of such remainder as the number of infants and toddlers in the State bears to the number of infants and toddlers in all States.

"(2) MINIMUM ALLOTMENTS.—Except as provided in paragraph (3), no State shall receive an amount under this section for any fiscal year that is less than the greater of—

"(A) ½ of 1 percent of the remaining amount described in paragraph (1); or

"(B) $500,000.

"(3) RATABLE REDUCTION.—

"(A) IN GENERAL.—If the sums made available under this part for any fiscal year are insufficient to pay the full amounts that all States are eligible to receive under this

subsection for such year, the Secretary shall ratably reduce the allotments to such States for such year.

"(B) ADDITIONAL FUNDS.—If additional funds become available for making payments under this subsection for a fiscal year, allotments that were reduced under subparagraph (A) shall be increased on the same basis the allotments were reduced.

"(4) DEFINITIONS.—In this subsection—

"(A) the terms 'infants' and 'toddlers' mean children under 3 years of age; and

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

"(d) REALLOTMENT OF FUNDS.—If a State elects not to receive its allotment under subsection (c), the Secretary shall reallot, among the remaining States, amounts from such State in accordance with such subsection.

"(e) RESERVATION FOR STATE INCENTIVE GRANTS.—

"(1) IN GENERAL.—For any fiscal year for which the amount appropriated pursuant to the authorization of appropriations under section 644 exceeds $460,000,000, the Secretary shall reserve 15 percent of such appropriated amount to provide grants to States that are carrying out the policy described in section 635(c) in order to facilitate the implementation of such policy.

"(2) AMOUNT OF GRANT.—

"(A) IN GENERAL.—Notwithstanding paragraphs (2) and (3) of subsection (c), the Secretary shall provide a grant to each State under paragraph (1) in an amount that bears the same ratio to the amount reserved under such paragraph as the number of infants and toddlers in the State bears to the number of infants and toddlers in all States receiving grants under such paragraph.

"(B) MAXIMUM AMOUNT.—No State shall receive a grant under paragraph (1) for any fiscal year in an amount that is greater than 20 percent of the amount reserved under such paragraph for the fiscal year.

"(3) CARRYOVER OF AMOUNTS.—

"(A) 1ST SUCCEEDING FISCAL YEAR.—Pursuant to section 421(b) of the General Education Provisions Act, amounts under a grant provided under paragraph (1) that are not obligated and expended prior to the beginning of the first fiscal year succeeding the fiscal year for which such amounts were appropriated shall remain available for obligation and expenditure during such first succeeding fiscal year.

"(B) 2D SUCCEEDING FISCAL YEAR.—Amounts under a grant provided under paragraph (1) that are not obligated and expended prior to the beginning of the second fiscal year succeeding the fiscal year for which such amounts were appropriated shall be returned to the Secretary and used to make grants to States under section 633 (from their allotments under this section) during such second succeeding fiscal year.

"SEC. 644. AUTHORIZATION OF APPROPRIATIONS.

"For the purpose of carrying out this part, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2005 through 2010.

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

"SEC. 650. FINDINGS.

"Congress finds the following:

"(1) The Federal Government has an ongoing obligation to support activities that contribute to positive results for children with disabilities, enabling those children to lead productive and independent adult lives.

"(2) Systemic change benefiting all students, including children with disabilities, requires the involvement of States, local educational agencies, parents, individuals with disabilities and their families, teachers and other service providers, and other interested individuals and organizations to develop and implement comprehensive strategies that improve educational results for children with disabilities.

"(3) State educational agencies, in partnership with local educational agencies, parents of children with disabilities, and other individuals and organizations, are in the best position to improve education for children with disabilities and to address their special needs.

"(4) An effective educational system serving students with disabilities should—

"(A) maintain high academic achievement standards and clear performance goals for children with disabilities, consistent with the standards and expectations for all students in the educational system, and provide for appropriate and effective strategies and methods to ensure that all children with disabilities have the opportunity to achieve those standards and goals;

"(B) clearly define, in objective, measurable terms, the school and post-school results that children with disabilities are expected to achieve; and

"(C) promote transition services and coordinate State and local education, social, health, mental health, and other services, in addressing the full range of student needs, particularly the needs of children with disabilities who need significant levels of support to participate and learn in school and the community.

"(5) The availability of an adequate number of qualified personnel is critical—

"(A) to serve effectively children with disabilities;

"(B) to assume leadership positions in administration and direct services;

"(C) to provide teacher training; and

"(D) to conduct high quality research to improve special education.

"(6) High quality, comprehensive professional development programs are essential to ensure that the persons responsible for the education or transition of children with disabilities pos-

sess the skills and knowledge necessary to address the educational and related needs of those children.

"(7) Models of professional development should be scientifically based and reflect successful practices, including strategies for recruiting, preparing, and retaining personnel.

"(8) Continued support is essential for the development and maintenance of a coordinated and high quality program of research to inform successful teaching practices and model curricula for educating children with disabilities.

"(9) Training, technical assistance, support, and dissemination activities are necessary to ensure that parts B and C are fully implemented and achieve high quality early intervention, educational, and transitional results for children with disabilities and their families.

"(10) Parents, teachers, administrators, and related services personnel need technical assistance and information in a timely, coordinated, and accessible manner in order to improve early intervention, educational, and transitional services and results at the State and local levels for children with disabilities and their families.

"(11) Parent training and information activities assist parents of a child with a disability in dealing with the multiple pressures of parenting such a child and are of particular importance in—

"(A) playing a vital role in creating and preserving constructive relationships between parents of children with disabilities and schools by facilitating open communication between the parents and schools; encouraging dispute resolution at the earliest possible point in time; and discouraging the escalation of an adversarial process between the parents and schools;

"(B) ensuring the involvement of parents in planning and decisionmaking with respect to early intervention, educational, and transitional services;

"(C) achieving high quality early intervention, educational, and transitional results for children with disabilities;

"(D) providing such parents information on their rights, protections, and responsibilities under this title to ensure improved early intervention, educational, and transitional results for children with disabilities;

"(E) assisting such parents in the development of skills to participate effectively in the education and development of their children and in the transitions described in section 673(b)(6);

"(F) supporting the roles of such parents as participants within partnerships seeking to improve early intervention, educational, and transitional services and results for children with disabilities and their families; and

"(G) supporting such parents who may have limited access to services and supports, due to economic, cultural, or linguistic barriers.

"(12) Support is needed to improve technological resources and integrate technology, including universally designed technologies, into the lives of children with disabilities, parents of

children with disabilities, school personnel, and others through curricula, services, and assistive technologies.

"Subpart 1—State Personnel Development Grants

"SEC. 651. PURPOSE; DEFINITION OF PERSONNEL; PROGRAM AUTHORITY.

"(a) PURPOSE.—The purpose of this subpart is to assist State educational agencies in reforming and improving their systems for personnel preparation and professional development in early intervention, educational, and transition services in order to improve results for children with disabilities.

"(b) DEFINITION OF PERSONNEL.—In this subpart the term 'personnel' means special education teachers, regular education teachers, principals, administrators, related services personnel, paraprofessionals, and early intervention personnel serving infants, toddlers, preschoolers, or children with disabilities, except where a particular category of personnel, such as related services personnel, is identified.

"(c) COMPETITIVE GRANTS.—

"(1) IN GENERAL.—Except as provided in subsection (d), for any fiscal year for which the amount appropriated under section 655, that remains after the Secretary reserves funds under subsection (e) for the fiscal year, is less than $100,000,000, the Secretary shall award grants, on a competitive basis, to State educational agencies to carry out the activities described in the State plan submitted under section 653.

"(2) PRIORITY.—In awarding grants under paragraph (1), the Secretary may give priority to State educational agencies that—

"(A) are in States with the greatest personnel shortages; or

"(B) demonstrate the greatest difficulty meeting the requirements of section 612(a)(14).

"(3) MINIMUM AMOUNT.—The Secretary shall make a grant to each State educational agency selected under paragraph (1) in an amount for each fiscal year that is—

"(A) not less than $500,000, nor more than $4,000,000, in the case of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico; and

"(B) not less than $80,000 in the case of an outlying area.

"(4) INCREASE IN AMOUNT.—The Secretary may increase the amounts of grants under paragraph (4) to account for inflation.

"(5) FACTORS.—The Secretary shall determine the amount of a grant under paragraph (1) after considering—

"(A) the amount of funds available for making the grants;

"(B) the relative population of the State or outlying area;

"(C) the types of activities proposed by the State or outlying area;

"(D) the alignment of proposed activities with section 612(a)(14);

"(E) the alignment of proposed activities with the State plans and applications submitted under sections 1111 and 2112, respectively, of the Elementary and Secondary Education Act of 1965; and

"(F) the use, as appropriate, of scientifically based research activities.

"(d) FORMULA GRANTS.—

"(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), for the first fiscal year for which the amount appropriated under section 655, that remains after the Secretary reserves funds under subsection (e) for the fiscal year, is equal to or greater than $100,000,000, and for each fiscal year thereafter, the Secretary shall allot to each State educational agency, whose application meets the requirements of this subpart, an amount that bears the same relation to the amount remaining as the amount the State received under section 611(d) for that fiscal year bears to the amount of funds received by all States (whose applications meet the requirements of this subpart) under section 611(d) for that fiscal year.

"(2) MINIMUM ALLOTMENTS FOR STATES THAT RECEIVED COMPETITIVE GRANTS.—

"(A) IN GENERAL.—The amount allotted under this subsection to any State educational agency that received a competitive multi-year grant under subsection (c) for which the grant period has not expired shall be not less than the amount specified for that fiscal year in the State educational agency's grant award document under that subsection.

"(B) SPECIAL RULE.—Each such State educational agency shall use the minimum amount described in subparagraph (A) for the activities described in the State educational agency's competitive grant award document for that year, unless the Secretary approves a request from the State educational agency to spend the funds on other activities.

"(3) MINIMUM ALLOTMENT.—The amount of any State educational agency's allotment under this subsection for any fiscal year shall not be less than—

"(A) the greater of $500,000 or ½ of 1 percent of the total amount available under this subsection for that year, in the case of each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico; and

"(B) $80,000, in the case of an outlying area.

"(4) DIRECT BENEFIT.—In using grant funds allotted under paragraph (1), a State educational agency shall, through grants, contracts, or cooperative agreements, undertake activities that significantly and directly benefit the local educational agencies in the State.

"(e) CONTINUATION AWARDS.—

"(1) IN GENERAL.—Notwithstanding any other provision of this subpart, from funds appropriated under section 655 for each fiscal year, the Secretary shall reserve the amount that is necessary to make a continuation award to any State educational agency (at the request of the State educational agency) that received a multi-year award under this part (as this part

was in effect on the day before the date of enactment of the Individuals with Disabilities Education Improvement Act of 2004), to enable the State educational agency to carry out activities in accordance with the terms of the multi-year award.

"(2) PROHIBITION.—A State educational agency that receives a continuation award under paragraph (1) for any fiscal year may not receive any other award under this subpart for that fiscal year.

"SEC. 652. ELIGIBILITY AND COLLABORATIVE PROCESS.

"(a) ELIGIBLE APPLICANTS.—A State educational agency may apply for a grant under this subpart for a grant period of not less than 1 year and not more than 5 years.

"(b) PARTNERS.—

"(1) IN GENERAL.—In order to be considered for a grant under this subpart, a State educational agency shall establish a partnership with local educational agencies and other State agencies involved in, or concerned with, the education of children with disabilities, including—

"(A) not less than 1 institution of higher education; and

"(B) the State agencies responsible for administering part C, early education, child care, and vocational rehabilitation programs.

"(2) OTHER PARTNERS.—In order to be considered for a grant under this subpart, a State educational agency shall work in partnership with other persons and organizations involved in, and concerned with, the education of children with disabilities, which may include—

"(A) the Governor;

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

"(C) parents of nondisabled children ages birth through 26;

"(D) individuals with disabilities;

"(E) parent training and information centers or community parent resource centers funded under sections 671 and 672, respectively;

"(F) community based and other nonprofit organizations involved in the education and employment of individuals with disabilities;

"(G) personnel as defined in section 651(b);

"(H) the State advisory panel established under part B;

"(I) the State interagency coordinating council established under part C;

"(J) individuals knowledgeable about vocational education;

"(K) the State agency for higher education;

"(L) public agencies with jurisdiction in the areas of health, mental health, social services, and juvenile justice;

"(M) other providers of professional development that work with infants, toddlers, preschoolers, and children with disabilities; and

"(N) other individuals.

"(3) REQUIRED PARTNER.—If State law assigns responsibility for teacher preparation and certification to an individual,

entity, or agency other than the State educational agency, the State educational agency shall—

"(A) include that individual, entity, or agency as a partner in the partnership under this subsection; and

"(B) ensure that any activities the State educational agency will carry out under this subpart that are within that partner's jurisdiction (which may include activities described in section 654(b)) are carried out by that partner.

"SEC. 653. APPLICATIONS.

"(a) IN GENERAL.—

"(1) SUBMISSION.—A State educational agency that desires to receive a grant under this subpart shall submit to the Secretary an application at such time, in such manner, and including such information as the Secretary may require.

"(2) STATE PLAN.—The application shall include a plan that identifies and addresses the State and local needs for the personnel preparation and professional development of personnel, as well as individuals who provide direct supplementary aids and services to children with disabilities, and that—

"(A) is designed to enable the State to meet the requirements of section 612(a)(14) and section 635(a)(8) and (9);

"(B) is based on an assessment of State and local needs that identifies critical aspects and areas in need of improvement related to the preparation, ongoing training, and professional development of personnel who serve infants, toddlers, preschoolers, and children with disabilities within the State, including—

"(i) current and anticipated personnel vacancies and shortages; and

"(ii) the number of preservice and inservice programs; and

"(C) is integrated and aligned, to the maximum extent possible, with State plans and activities under the Elementary and Secondary Education Act of 1965, the Rehabilitation Act of 1973, and the Higher Education Act of 1965.

"(3) REQUIREMENT.—The State application shall contain an assurance that the State educational agency will carry out each of the strategies described in subsection (b)(4).

"(b) ELEMENTS OF STATE PERSONNEL DEVELOPMENT PLAN.—Each State personnel development plan under subsection (a)(2) shall—

"(1) describe a partnership agreement that is in effect for the period of the grant, which agreement shall specify—

"(A) the nature and extent of the partnership described in section 652(b) and the respective roles of each member of the partnership, including the partner described in section 652(b)(3) if applicable; and

"(B) how the State educational agency will work with other persons and organizations involved in, and concerned with, the education of children with disabilities, including the respective roles of each of the persons and organizations;

"(2) describe how the strategies and activities described in paragraph (4) will be coordinated with activities supported with

other public resources (including part B and part C funds retained for use at the State level for personnel and professional development purposes) and private resources;

"(3) describe how the State educational agency will align its personnel development plan under this subpart with the plan and application submitted under sections 1111 and 2112, respectively, of the Elementary and Secondary Education Act of 1965;

"(4) describe those strategies the State educational agency will use to address the professional development and personnel needs identified under subsection (a)(2) and how such strategies will be implemented, including—

"(A) a description of the programs and activities to be supported under this subpart that will provide personnel with the knowledge and skills to meet the needs of, and improve the performance and achievement of, infants, toddlers, preschoolers, and children with disabilities; and

"(B) how such strategies will be integrated, to the maximum extent possible, with other activities supported by grants funded under section 662;

"(5) provide an assurance that the State educational agency will provide technical assistance to local educational agencies to improve the quality of professional development available to meet the needs of personnel who serve children with disabilities;

"(6) provide an assurance that the State educational agency will provide technical assistance to entities that provide services to infants and toddlers with disabilities to improve the quality of professional development available to meet the needs of personnel serving such children;

"(7) describe how the State educational agency will recruit and retain highly qualified teachers and other qualified personnel in geographic areas of greatest need;

"(8) describe the steps the State educational agency will take to ensure that poor and minority children are not taught at higher rates by teachers who are not highly qualified; and

"(9) describe how the State educational agency will assess, on a regular basis, the extent to which the strategies implemented under this subpart have been effective in meeting the performance goals described in section 612(a)(15).

"(c) PEER REVIEW.—

"(1) IN GENERAL.—The Secretary shall use a panel of experts who are competent, by virtue of their training, expertise, or experience, to evaluate applications for grants under section 651(c)(1).

"(2) COMPOSITION OF PANEL.—A majority of a panel described in paragraph (1) shall be composed of individuals who are not employees of the Federal Government.

"(3) PAYMENT OF FEES AND EXPENSES OF CERTAIN MEMBERS.—The Secretary may use available funds appropriated to carry out this subpart to pay the expenses and fees of panel members who are not employees of the Federal Government.

"(d) REPORTING PROCEDURES.—Each State educational agency that receives a grant under this subpart shall submit annual performance reports to the Secretary. The reports shall—

"(1) describe the progress of the State educational agency in implementing its plan;

"(2) analyze the effectiveness of the State educational agency's activities under this subpart and of the State educational agency's strategies for meeting its goals under section 612(a)(15); and

"(3) identify changes in the strategies used by the State educational agency and described in subsection (b)(4), if any, to improve the State educational agency's performance.

"SEC. 654. USE OF FUNDS.

"(a) PROFESSIONAL DEVELOPMENT ACTIVITIES.—A State educational agency that receives a grant under this subpart shall use the grant funds to support activities in accordance with the State's plan described in section 653, including 1 or more of the following:

"(1) Carrying out programs that provide support to both special education and regular education teachers of children with disabilities and principals, such as programs that—

"(A) provide teacher mentoring, team teaching, reduced class schedules and case loads, and intensive professional development;

"(B) use standards or assessments for guiding beginning teachers that are consistent with challenging State student academic achievement and functional standards and with the requirements for professional development, as defined in section 9101 of the Elementary and Secondary Education Act of 1965; and

"(C) encourage collaborative and consultative models of providing early intervention, special education, and related services.

"(2) Encouraging and supporting the training of special education and regular education teachers and administrators to effectively use and integrate technology—

"(A) into curricula and instruction, including training to improve the ability to collect, manage, and analyze data to improve teaching, decisionmaking, school improvement efforts, and accountability;

"(B) to enhance learning by children with disabilities; and

"(C) to effectively communicate with parents.

"(3) Providing professional development activities that—

"(A) improve the knowledge of special education and regular education teachers concerning—

"(i) the academic and developmental or functional needs of students with disabilities; or

"(ii) effective instructional strategies, methods, and skills, and the use of State academic content standards and student academic achievement and functional standards, and State assessments, to improve teaching practices and student academic achievement;

"(B) improve the knowledge of special education and regular education teachers and principals and, in appropriate cases, paraprofessionals, concerning effective instructional practices, and that—

"(i) provide training in how to teach and address the needs of children with different learning styles and children who are limited English proficient;

"(ii) involve collaborative groups of teachers, administrators, and, in appropriate cases, related services personnel;

"(iii) provide training in methods of—

"(I) positive behavioral interventions and supports to improve student behavior in the classroom;

"(II) scientifically based reading instruction, including early literacy instruction;

"(III) early and appropriate interventions to identify and help children with disabilities;

"(IV) effective instruction for children with low incidence disabilities;

"(V) successful transitioning to postsecondary opportunities; and

"(VI) using classroom-based techniques to assist children prior to referral for special education;

"(iv) provide training to enable personnel to work with and involve parents in their child's education, including parents of low income and limited English proficient children with disabilities;

"(v) provide training for special education personnel and regular education personnel in planning, developing, and implementing effective and appropriate IEPs; and

"(vi) provide training to meet the needs of students with significant health, mobility, or behavioral needs prior to serving such students;

"(C) train administrators, principals, and other relevant school personnel in conducting effective IEP meetings; and

"(D) train early intervention, preschool, and related services providers, and other relevant school personnel, in conducting effective individualized family service plan (IFSP) meetings.

"(4) Developing and implementing initiatives to promote the recruitment and retention of highly qualified special education teachers, particularly initiatives that have been proven effective in recruiting and retaining highly qualified teachers, including programs that provide—

"(A) teacher mentoring from exemplary special education teachers, principals, or superintendents;

"(B) induction and support for special education teachers during their first 3 years of employment as teachers; or

"(C) incentives, including financial incentives, to retain special education teachers who have a record of success in helping students with disabilities.

"(5) Carrying out programs and activities that are designed to improve the quality of personnel who serve children with disabilities, such as—

"(A) innovative professional development programs (which may be provided through partnerships that include institutions of higher education), including programs that

train teachers and principals to integrate technology into curricula and instruction to improve teaching, learning, and technology literacy, which professional development shall be consistent with the definition of professional development in section 9101 of the Elementary and Secondary Education Act of 1965; and

''(B) the development and use of proven, cost effective strategies for the implementation of professional development activities, such as through the use of technology and distance learning.

''(6) Carrying out programs and activities that are designed to improve the quality of early intervention personnel, including paraprofessionals and primary referral sources, such as—

''(A) professional development programs to improve the delivery of early intervention services;

''(B) initiatives to promote the recruitment and retention of early intervention personnel; and

''(C) interagency activities to ensure that early intervention personnel are adequately prepared and trained.

''(b) OTHER ACTIVITIES.—A State educational agency that receives a grant under this subpart shall use the grant funds to support activities in accordance with the State's plan described in section 653, including 1 or more of the following:

''(1) Reforming special education and regular education teacher certification (including recertification) or licensing requirements to ensure that—

''(A) special education and regular education teachers have—

''(i) the training and information necessary to address the full range of needs of children with disabilities across disability categories; and

''(ii) the necessary subject matter knowledge and teaching skills in the academic subjects that the teachers teach;

''(B) special education and regular education teacher certification (including recertification) or licensing requirements are aligned with challenging State academic content standards; and

''(C) special education and regular education teachers have the subject matter knowledge and teaching skills, including technology literacy, necessary to help students with disabilities meet challenging State student academic achievement and functional standards.

''(2) Programs that establish, expand, or improve alternative routes for State certification of special education teachers for highly qualified individuals with a baccalaureate or master's degree, including mid-career professionals from other occupations, paraprofessionals, and recent college or university graduates with records of academic distinction who demonstrate the potential to become highly effective special education teachers.

''(3) Teacher advancement initiatives for special education teachers that promote professional growth and emphasize multiple career paths (such as paths to becoming a career teacher, mentor teacher, or exemplary teacher) and pay differentiation.

"(4) Developing and implementing mechanisms to assist local educational agencies and schools in effectively recruiting and retaining highly qualified special education teachers.

"(5) Reforming tenure systems, implementing teacher testing for subject matter knowledge, and implementing teacher testing for State certification or licensing, consistent with title II of the Higher Education Act of 1965.

"(6) Funding projects to promote reciprocity of teacher certification or licensing between or among States for special education teachers, except that no reciprocity agreement developed under this paragraph or developed using funds provided under this subpart may lead to the weakening of any State teaching certification or licensing requirement.

"(7) Assisting local educational agencies to serve children with disabilities through the development and use of proven, innovative strategies to deliver intensive professional development programs that are both cost effective and easily accessible, such as strategies that involve delivery through the use of technology, peer networks, and distance learning.

"(8) Developing, or assisting local educational agencies in developing, merit based performance systems, and strategies that provide differential and bonus pay for special education teachers.

"(9) Supporting activities that ensure that teachers are able to use challenging State academic content standards and student academic achievement and functional standards, and State assessments for all children with disabilities, to improve instructional practices and improve the academic achievement of children with disabilities.

"(10) When applicable, coordinating with, and expanding centers established under, section 2113(c)(18) of the Elementary and Secondary Education Act of 1965 to benefit special education teachers.

"(c) CONTRACTS AND SUBGRANTS.—A State educational agency that receives a grant under this subpart—

"(1) shall award contracts or subgrants to local educational agencies, institutions of higher education, parent training and information centers, or community parent resource centers, as appropriate, to carry out its State plan under this subpart; and

"(2) may award contracts and subgrants to other public and private entities, including the lead agency under part C, to carry out the State plan.

"(d) USE OF FUNDS FOR PROFESSIONAL DEVELOPMENT.—A State educational agency that receives a grant under this subpart shall use—

"(1) not less than 90 percent of the funds the State educational agency receives under the grant for any fiscal year for activities under subsection (a); and

"(2) not more than 10 percent of the funds the State educational agency receives under the grant for any fiscal year for activities under subsection (b).

"(e) GRANTS TO OUTLYING AREAS.—Public Law 95–134, permitting the consolidation of grants to the outlying areas, shall not apply to funds received under this subpart.

"SEC. 655. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated to carry out this subpart such sums as may be necessary for each of the fiscal years 2005 through 2010.

"Subpart 2—Personnel Preparation, Technical Assistance, Model Demonstration Projects, and Dissemination of Information

"SEC. 661. PURPOSE; DEFINITION OF ELIGIBLE ENTITY.

"(a) PURPOSE.—The purpose of this subpart is—

"(1) to provide Federal funding for personnel preparation, technical assistance, model demonstration projects, information dissemination, and studies and evaluations, in order to improve early intervention, educational, and transitional results for children with disabilities; and

"(2) to assist State educational agencies and local educational agencies in improving their education systems for children with disabilities.

"(b) DEFINITION OF ELIGIBLE ENTITY.—

"(1) IN GENERAL.—In this subpart, the term 'eligible entity' means—

"(A) a State educational agency;

"(B) a local educational agency;

"(C) a public charter school that is a local educational agency under State law;

"(D) an institution of higher education;

"(E) a public agency not described in subparagraphs (A) through (D);

"(F) a private nonprofit organization;

"(G) an outlying area;

"(H) an Indian tribe or a tribal organization (as defined under section 4 of the Indian Self-Determination and Education Assistance Act); or

"(I) a for-profit organization, if the Secretary finds it appropriate in light of the purposes of a particular competition for a grant, contract, or cooperative agreement under this subpart.

"(2) SPECIAL RULE.—The Secretary may limit which eligible entities described in paragraph (1) are eligible for a grant, contract, or cooperative agreement under this subpart to 1 or more of the categories of eligible entities described in paragraph (1).

"SEC. 662. PERSONNEL DEVELOPMENT TO IMPROVE SERVICES AND RESULTS FOR CHILDREN WITH DISABILITIES.

"(a) IN GENERAL.—The Secretary, on a competitive basis, shall award grants to, or enter into contracts or cooperative agreements with, eligible entities to carry out 1 or more of the following objectives:

"(1) To help address the needs identified in the State plan described in section 653(a)(2) for highly qualified personnel, as defined in section 651(b), to work with infants or toddlers with disabilities, or children with disabilities, consistent with the qualifications described in section 612(a)(14).

"(2) To ensure that those personnel have the necessary skills and knowledge, derived from practices that have been determined, through scientifically based research, to be successful in serving those children.

"(3) To encourage increased focus on academics and core content areas in special education personnel preparation programs.

"(4) To ensure that regular education teachers have the necessary skills and knowledge to provide instruction to students with disabilities in the regular education classroom.

"(5) To ensure that all special education teachers are highly qualified.

"(6) To ensure that preservice and in-service personnel preparation programs include training in—

"(A) the use of new technologies;

"(B) the area of early intervention, educational, and transition services;

"(C) effectively involving parents; and

"(D) positive behavioral supports.

"(7) To provide high-quality professional development for principals, superintendents, and other administrators, including training in—

"(A) instructional leadership;

"(B) behavioral supports in the school and classroom;

"(C) paperwork reduction;

"(D) promoting improved collaboration between special education and general education teachers;

"(E) assessment and accountability;

"(F) ensuring effective learning environments; and

"(G) fostering positive relationships with parents.

"(b) PERSONNEL DEVELOPMENT; ENHANCED SUPPORT FOR BEGINNING SPECIAL EDUCATORS.—

"(1) IN GENERAL.—In carrying out this section, the Secretary shall support activities—

"(A) for personnel development, including activities for the preparation of personnel who will serve children with high incidence and low incidence disabilities, to prepare special education and general education teachers, principals, administrators, and related services personnel (and school board members, when appropriate) to meet the diverse and individualized instructional needs of children with disabilities and improve early intervention, educational, and transitional services and results for children with disabilities, consistent with the objectives described in subsection (a); and

"(B) for enhanced support for beginning special educators, consistent with the objectives described in subsection (a).

"(2) PERSONNEL DEVELOPMENT.—In carrying out paragraph (1)(A), the Secretary shall support not less than 1 of the following activities:

"(A) Assisting effective existing, improving existing, or developing new, collaborative personnel preparation activities undertaken by institutions of higher education, local educational agencies, and other local entities that incorporate best practices and scientifically based research, where applicable, in providing special education and general education teachers, principals, administrators, and re-

lated services personnel with the knowledge and skills to effectively support students with disabilities, including—

''(i) working collaboratively in regular classroom settings;

''(ii) using appropriate supports, accommodations, and curriculum modifications;

''(iii) implementing effective teaching strategies, classroom-based techniques, and interventions to ensure appropriate identification of students who may be eligible for special education services, and to prevent the misidentification, inappropriate overidentification, or underidentification of children as having a disability, especially minority and limited English proficient children;

''(iv) effectively working with and involving parents in the education of their children;

''(v) utilizing strategies, including positive behavioral interventions, for addressing the conduct of children with disabilities that impedes their learning and that of others in the classroom;

''(vi) effectively constructing IEPs, participating in IEP meetings, and implementing IEPs;

''(vii) preparing children with disabilities to participate in statewide assessments (with or without accommodations) and alternate assessments, as appropriate, and to ensure that all children with disabilities are a part of all accountability systems under the Elementary and Secondary Education Act of 1965; and

''(viii) working in high need elementary schools and secondary schools, including urban schools, rural schools, and schools operated by an entity described in section 7113(d)(1)(A)(ii) of the Elementary and Secondary Education Act of 1965, and schools that serve high numbers or percentages of limited English proficient children.

''(B) Developing, evaluating, and disseminating innovative models for the recruitment, induction, retention, and assessment of new, highly qualified teachers to reduce teacher shortages, especially from groups that are underrepresented in the teaching profession, including individuals with disabilities.

''(C) Providing continuous personnel preparation, training, and professional development designed to provide support and ensure retention of special education and general education teachers and personnel who teach and provide related services to children with disabilities.

''(D) Developing and improving programs for paraprofessionals to become special education teachers, related services personnel, and early intervention personnel, including interdisciplinary training to enable the paraprofessionals to improve early intervention, educational, and transitional results for children with disabilities.

''(E) In the case of principals and superintendents, providing activities to promote instructional leadership and

improved collaboration between general educators, special education teachers, and related services personnel.

"(F) Supporting institutions of higher education with minority enrollments of not less than 25 percent for the purpose of preparing personnel to work with children with disabilities.

"(G) Developing and improving programs to train special education teachers to develop an expertise in autism spectrum disorders.

"(H) Providing continuous personnel preparation, training, and professional development designed to provide support and improve the qualifications of personnel who provide related services to children with disabilities, including to enable such personnel to obtain advanced degrees.

"(3) ENHANCED SUPPORT FOR BEGINNING SPECIAL EDUCATORS.—In carrying out paragraph (1)(B), the Secretary shall support not less than 1 of the following activities:

"(A) Enhancing and restructuring existing programs or developing preservice teacher education programs to prepare special education teachers, at colleges or departments of education within institutions of higher education, by incorporating an extended (such as an additional 5th year) clinical learning opportunity, field experience, or supervised practicum into such programs.

"(B) Creating or supporting teacher-faculty partnerships (such as professional development schools) that—

"(i) consist of not less than—

"(I) 1 or more institutions of higher education with special education personnel preparation programs;

"(II) 1 or more local educational agencies that serve high numbers or percentages of low-income students; or

"(III) 1 or more elementary schools or secondary schools, particularly schools that have failed to make adequate yearly progress on the basis, in whole and in part, of the assessment results of the disaggregated subgroup of students with disabilities;

"(ii) may include other entities eligible for assistance under this part; and

"(iii) provide—

"(I) high-quality mentoring and induction opportunities with ongoing support for beginning special education teachers; or

"(II) inservice professional development to beginning and veteran special education teachers through the ongoing exchange of information and instructional strategies with faculty.

"(c) LOW INCIDENCE DISABILITIES; AUTHORIZED ACTIVITIES.—

"(1) IN GENERAL.—In carrying out this section, the Secretary shall support activities, consistent with the objectives described in subsection (a), that benefit children with low incidence disabilities.

"(2) AUTHORIZED ACTIVITIES.—Activities that may be carried out under this subsection include activities such as the following:

"(A) Preparing persons who—

"(i) have prior training in educational and other related service fields; and

"(ii) are studying to obtain degrees, certificates, or licensure that will enable the persons to assist children with low incidence disabilities to achieve the objectives set out in their individualized education programs described in section 614(d), or to assist infants and toddlers with low incidence disabilities to achieve the outcomes described in their individualized family service plans described in section 636.

"(B) Providing personnel from various disciplines with interdisciplinary training that will contribute to improvement in early intervention, educational, and transitional results for children with low incidence disabilities.

"(C) Preparing personnel in the innovative uses and application of technology, including universally designed technologies, assistive technology devices, and assistive technology services—

"(i) to enhance learning by children with low incidence disabilities through early intervention, educational, and transitional services; and

"(ii) to improve communication with parents.

"(D) Preparing personnel who provide services to visually impaired or blind children to teach and use Braille in the provision of services to such children.

"(E) Preparing personnel to be qualified educational interpreters, to assist children with low incidence disabilities, particularly deaf and hard of hearing children in school and school related activities, and deaf and hard of hearing infants and toddlers and preschool children in early intervention and preschool programs.

"(F) Preparing personnel who provide services to children with significant cognitive disabilities and children with multiple disabilities.

"(G) Preparing personnel who provide services to children with low incidence disabilities and limited English proficient children.

"(3) DEFINITION.—In this section, the term 'low incidence disability' means—

"(A) a visual or hearing impairment, or simultaneous visual and hearing impairments;

"(B) a significant cognitive impairment; or

"(C) any impairment for which a small number of personnel with highly specialized skills and knowledge are needed in order for children with that impairment to receive early intervention services or a free appropriate public education.

"(4) SELECTION OF RECIPIENTS.—In selecting eligible entities for assistance under this subsection, the Secretary may give preference to eligible entities submitting applications that include 1 or more of the following:

"(A) A proposal to prepare personnel in more than 1 low incidence disability, such as deafness and blindness.

"(B) A demonstration of an effective collaboration between an eligible entity and a local educational agency that promotes recruitment and subsequent retention of highly qualified personnel to serve children with low incidence disabilities.

"(5) PREPARATION IN USE OF BRAILLE.—The Secretary shall ensure that all recipients of awards under this subsection who will use that assistance to prepare personnel to provide services to visually impaired or blind children that can appropriately be provided in Braille, will prepare those individuals to provide those services in Braille.

"(d) LEADERSHIP PREPARATION; AUTHORIZED ACTIVITIES.—

"(1) IN GENERAL.—In carrying out this section, the Secretary shall support leadership preparation activities that are consistent with the objectives described in subsection (a).

"(2) AUTHORIZED ACTIVITIES.—Activities that may be carried out under this subsection include activities such as the following:

"(A) Preparing personnel at the graduate, doctoral, and postdoctoral levels of training to administer, enhance, or provide services to improve results for children with disabilities.

"(B) Providing interdisciplinary training for various types of leadership personnel, including teacher preparation faculty, related services faculty, administrators, researchers, supervisors, principals, and other persons whose work affects early intervention, educational, and transitional services for children with disabilities, including children with disabilities who are limited English proficient children.

"(e) APPLICATIONS.—

"(1) IN GENERAL.—An eligible entity that wishes to receive a grant, or enter into a contract or cooperative agreement, under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

"(2) IDENTIFIED STATE NEEDS.—

"(A) REQUIREMENT TO ADDRESS IDENTIFIED NEEDS.—An application for assistance under subsection (b), (c), or (d) shall include information demonstrating to the satisfaction of the Secretary that the activities described in the application will address needs identified by the State or States the eligible entity proposes to serve.

"(B) COOPERATION WITH STATE EDUCATIONAL AGENCIES.—An eligible entity that is not a local educational agency or a State educational agency shall include in the eligible entity's application information demonstrating to the satisfaction of the Secretary that the eligible entity and 1 or more State educational agencies or local educational agencies will cooperate in carrying out and monitoring the proposed project.

"(3) ACCEPTANCE BY STATES OF PERSONNEL PREPARATION REQUIREMENTS.—The Secretary may require eligible entities to

provide in the eligible entities' applications assurances from 1 or more States that such States intend to accept successful completion of the proposed personnel preparation program as meeting State personnel standards or other requirements in State law or regulation for serving children with disabilities or serving infants and toddlers with disabilities.

"(f) SELECTION OF RECIPIENTS.—

"(1) IMPACT OF PROJECT.—In selecting eligible entities for assistance under this section, the Secretary shall consider the impact of the proposed project described in the application in meeting the need for personnel identified by the States.

"(2) REQUIREMENT FOR ELIGIBLE ENTITIES TO MEET STATE AND PROFESSIONAL QUALIFICATIONS.—The Secretary shall make grants and enter into contracts and cooperative agreements under this section only to eligible entities that meet State and professionally recognized qualifications for the preparation of special education and related services personnel, if the purpose of the project is to assist personnel in obtaining degrees.

"(3) PREFERENCES.—In selecting eligible entities for assistance under this section, the Secretary may give preference to eligible entities that are institutions of higher education that are—

"(A) educating regular education personnel to meet the needs of children with disabilities in integrated settings;

"(B) educating special education personnel to work in collaboration with regular educators in integrated settings; and

"(C) successfully recruiting and preparing individuals with disabilities and individuals from groups that are underrepresented in the profession for which the institution of higher education is preparing individuals.

"(g) SCHOLARSHIPS.—The Secretary may include funds for scholarships, with necessary stipends and allowances, in awards under subsections (b), (c), and (d).

"(h) SERVICE OBLIGATION.—

"(1) IN GENERAL.—Each application for assistance under subsections (b), (c), and (d) shall include an assurance that the eligible entity will ensure that individuals who receive a scholarship under the proposed project agree to subsequently provide special education and related services to children with disabilities, or in the case of leadership personnel to subsequently work in the appropriate field, for a period of 2 years for every year for which the scholarship was received or repay all or part of the amount of the scholarship, in accordance with regulations issued by the Secretary.

"(2) SPECIAL RULE.—Notwithstanding paragraph (1), the Secretary may reduce or waive the service obligation requirement under paragraph (1) if the Secretary determines that the service obligation is acting as a deterrent to the recruitment of students into special education or a related field.

"(3) SECRETARY'S RESPONSIBILITY.—The Secretary—

"(A) shall ensure that individuals described in paragraph (1) comply with the requirements of that paragraph; and

"(B) may use not more than 0.5 percent of the funds appropriated under subsection (i) for each fiscal year, to

carry out subparagraph (A), in addition to any other funds that are available for that purpose.

"(i) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary for each of the fiscal years 2005 through 2010.

"SEC. 663. TECHNICAL ASSISTANCE, DEMONSTRATION PROJECTS, DISSEMINATION OF INFORMATION, AND IMPLEMENTATION OF SCIENTIFICALLY BASED RESEARCH.

"(a) IN GENERAL.—The Secretary shall make competitive grants to, or enter into contracts or cooperative agreements with, eligible entities to provide technical assistance, support model demonstration projects, disseminate useful information, and implement activities that are supported by scientifically based research.

"(b) REQUIRED ACTIVITIES.—Funds received under this section shall be used to support activities to improve services provided under this title, including the practices of professionals and others involved in providing such services to children with disabilities, that promote academic achievement and improve results for children with disabilities through—

"(1) implementing effective strategies for addressing inappropriate behavior of students with disabilities in schools, including strategies to prevent children with emotional and behavioral problems from developing emotional disturbances that require the provision of special education and related services;

"(2) improving the alignment, compatibility, and development of valid and reliable assessments and alternate assessments for assessing adequate yearly progress, as described under section 1111(b)(2)(B) of the Elementary and Secondary Education Act of 1965;

"(3) providing training for both regular education teachers and special education teachers to address the needs of students with different learning styles;

"(4) disseminating information about innovative, effective, and efficient curricula designs, instructional approaches, and strategies, and identifying positive academic and social learning opportunities, that—

"(A) provide effective transitions between educational settings or from school to post school settings; and

"(B) improve educational and transitional results at all levels of the educational system in which the activities are carried out and, in particular, that improve the progress of children with disabilities, as measured by assessments within the general education curriculum involved; and

"(5) applying scientifically based findings to facilitate systemic changes, related to the provision of services to children with disabilities, in policy, procedure, practice, and the training and use of personnel.

"(c) AUTHORIZED ACTIVITIES.—Activities that may be carried out under this section include activities to improve services provided under this title, including the practices of professionals and others involved in providing such services to children with disabilities, that promote academic achievement and improve results for children with disabilities through—

"(1) applying and testing research findings in typical settings where children with disabilities receive services to deter-

mine the usefulness, effectiveness, and general applicability of such research findings in such areas as improving instructional methods, curricula, and tools, such as textbooks and media;

"(2) supporting and promoting the coordination of early intervention and educational services for children with disabilities with services provided by health, rehabilitation, and social service agencies;

"(3) promoting improved alignment and compatibility of general and special education reforms concerned with curricular and instructional reform, and evaluation of such reforms;

"(4) enabling professionals, parents of children with disabilities, and other persons to learn about, and implement, the findings of scientifically based research, and successful practices developed in model demonstration projects, relating to the provision of services to children with disabilities;

"(5) conducting outreach, and disseminating information, relating to successful approaches to overcoming systemic barriers to the effective and efficient delivery of early intervention, educational, and transitional services to personnel who provide services to children with disabilities;

"(6) assisting States and local educational agencies with the process of planning systemic changes that will promote improved early intervention, educational, and transitional results for children with disabilities;

"(7) promoting change through a multistate or regional framework that benefits States, local educational agencies, and other participants in partnerships that are in the process of achieving systemic-change outcomes;

"(8) focusing on the needs and issues that are specific to a population of children with disabilities, such as providing single-State and multi-State technical assistance and in-service training—

"(A) to schools and agencies serving deaf-blind children and their families;

"(B) to programs and agencies serving other groups of children with low incidence disabilities and their families;

"(C) addressing the postsecondary education needs of individuals who are deaf or hard-of-hearing; and

"(D) to schools and personnel providing special education and related services for children with autism spectrum disorders;

"(9) demonstrating models of personnel preparation to ensure appropriate placements and services for all students and to reduce disproportionality in eligibility, placement, and disciplinary actions for minority and limited English proficient children; and

"(10) disseminating information on how to reduce inappropriate racial and ethnic disproportionalities identified under section 618.

"(d) BALANCE AMONG ACTIVITIES AND AGE RANGES.—In carrying out this section, the Secretary shall ensure that there is an appropriate balance across all age ranges of children with disabilities.

"(e) LINKING STATES TO INFORMATION SOURCES.—In carrying out this section, the Secretary shall support projects that link States

to technical assistance resources, including special education and general education resources, and shall make research and related products available through libraries, electronic networks, parent training projects, and other information sources, including through the activities of the National Center for Education Evaluation and Regional Assistance established under part D of the Education Sciences Reform Act of 2002.

''(f) APPLICATIONS.—

''(1) IN GENERAL.—An eligible entity that wishes to receive a grant, or enter into a contract or cooperative agreement, under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

''(2) STANDARDS.—To the maximum extent feasible, each eligible entity shall demonstrate that the project described in the eligible entity's application is supported by scientifically valid research that has been carried out in accordance with the standards for the conduct and evaluation of all relevant research and development established by the National Center for Education Research.

''(3) PRIORITY.—As appropriate, the Secretary shall give priority to applications that propose to serve teachers and school personnel directly in the school environment.

''SEC. 664. STUDIES AND EVALUATIONS.

''(a) STUDIES AND EVALUATIONS.—

''(1) DELEGATION.—The Secretary shall delegate to the Director of the Institute of Education Sciences responsibility to carry out this section, other than subsections (d) and (f).

''(2) ASSESSMENT.—The Secretary shall, directly or through grants, contracts, or cooperative agreements awarded to eligible entities on a competitive basis, assess the progress in the implementation of this title, including the effectiveness of State and local efforts to provide—

''(A) a free appropriate public education to children with disabilities; and

''(B) early intervention services to infants and toddlers with disabilities, and infants and toddlers who would be at risk of having substantial developmental delays if early intervention services were not provided to the infants and toddlers.

''(b) ASSESSMENT OF NATIONAL ACTIVITIES.—

''(1) IN GENERAL.—The Secretary shall carry out a national assessment of activities carried out with Federal funds under this title in order—

''(A) to determine the effectiveness of this title in achieving the purposes of this title;

''(B) to provide timely information to the President, Congress, the States, local educational agencies, and the public on how to implement this title more effectively; and

''(C) to provide the President and Congress with information that will be useful in developing legislation to achieve the purposes of this title more effectively.

''(2) SCOPE OF ASSESSMENT.—The national assessment shall assess activities supported under this title, including—

"(A) the implementation of programs assisted under this title and the impact of such programs on addressing the developmental needs of, and improving the academic achievement of, children with disabilities to enable the children to reach challenging developmental goals and challenging State academic content standards based on State academic assessments;

"(B) the types of programs and services that have demonstrated the greatest likelihood of helping students reach the challenging State academic content standards and developmental goals;

"(C) the implementation of the professional development activities assisted under this title and the impact on instruction, student academic achievement, and teacher qualifications to enhance the ability of special education teachers and regular education teachers to improve results for children with disabilities; and

"(D) the effectiveness of schools, local educational agencies, States, other recipients of assistance under this title, and the Secretary in achieving the purposes of this title by—

"(i) improving the academic achievement of children with disabilities and their performance on regular statewide assessments as compared to nondisabled children, and the performance of children with disabilities on alternate assessments;

"(ii) improving the participation of children with disabilities in the general education curriculum;

"(iii) improving the transitions of children with disabilities at natural transition points;

"(iv) placing and serving children with disabilities, including minority children, in the least restrictive environment appropriate;

"(v) preventing children with disabilities, especially children with emotional disturbances and specific learning disabilities, from dropping out of school;

"(vi) addressing the reading and literacy needs of children with disabilities;

"(vii) reducing the inappropriate overidentification of children, especially minority and limited English proficient children, as having a disability;

"(viii) improving the participation of parents of children with disabilities in the education of their children; and

"(ix) resolving disagreements between education personnel and parents through alternate dispute resolution activities, including mediation.

"(3) INTERIM AND FINAL REPORTS.—The Secretary shall submit to the President and Congress—

"(A) an interim report that summarizes the preliminary findings of the assessment not later than 3 years after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2004; and

"(B) a final report of the findings of the assessment not later than 5 years after the date of enactment of such Act.

"(c) STUDY ON ENSURING ACCOUNTABILITY FOR STUDENTS WHO ARE HELD TO ALTERNATIVE ACHIEVEMENT STANDARDS.—The Secretary shall carry out a national study or studies to examine—

"(1) the criteria that States use to determine—

"(A) eligibility for alternate assessments; and

"(B) the number and type of children who take those assessments and are held accountable to alternative achievement standards;

"(2) the validity and reliability of alternate assessment instruments and procedures;

"(3) the alignment of alternate assessments and alternative achievement standards to State academic content standards in reading, mathematics, and science; and

"(4) the use and effectiveness of alternate assessments in appropriately measuring student progress and outcomes specific to individualized instructional need.

"(d) ANNUAL REPORT.—The Secretary shall provide an annual report to Congress that—

"(1) summarizes the research conducted under part E of the Education Sciences Reform Act of 2002;

"(2) analyzes and summarizes the data reported by the States and the Secretary of the Interior under section 618;

"(3) summarizes the studies and evaluations conducted under this section and the timeline for their completion;

"(4) describes the extent and progress of the assessment of national activities; and

"(5) describes the findings and determinations resulting from reviews of State implementation of this title.

"(e) AUTHORIZED ACTIVITIES.—In carrying out this section, the Secretary may support objective studies, evaluations, and assessments, including studies that—

"(1) analyze measurable impact, outcomes, and results achieved by State educational agencies and local educational agencies through their activities to reform policies, procedures, and practices designed to improve educational and transitional services and results for children with disabilities;

"(2) analyze State and local needs for professional development, parent training, and other appropriate activities that can reduce the need for disciplinary actions involving children with disabilities;

"(3) assess educational and transitional services and results for children with disabilities from minority backgrounds, including—

"(A) data on—

"(i) the number of minority children who are referred for special education evaluation;

"(ii) the number of minority children who are receiving special education and related services and their educational or other service placement;

"(iii) the number of minority children who graduated from secondary programs with a regular diploma in the standard number of years; and

"(iv) the number of minority children who drop out of the educational system; and

"(B) the performance of children with disabilities from minority backgrounds on State assessments and other performance indicators established for all students;

"(4) measure educational and transitional services and results for children with disabilities served under this title, including longitudinal studies that—

"(A) examine educational and transitional services and results for children with disabilities who are 3 through 17 years of age and are receiving special education and related services under this title, using a national, representative sample of distinct age cohorts and disability categories; and

"(B) examine educational results, transition services, postsecondary placement, and employment status for individuals with disabilities, 18 through 21 years of age, who are receiving or have received special education and related services under this title; and

"(5) identify and report on the placement of children with disabilities by disability category.

"(f) STUDY.—The Secretary shall study, and report to Congress regarding, the extent to which States adopt policies described in section 635(c)(1) and on the effects of those policies.

"SEC. 665. INTERIM ALTERNATIVE EDUCATIONAL SETTINGS, BEHAVIORAL SUPPORTS, AND SYSTEMIC SCHOOL INTERVENTIONS.

"(a) PROGRAM AUTHORIZED.—The Secretary may award grants, and enter into contracts and cooperative agreements, to support safe learning environments that support academic achievement for all students by—

"(1) improving the quality of interim alternative educational settings; and

"(2) providing increased behavioral supports and research-based, systemic interventions in schools.

"(b) AUTHORIZED ACTIVITIES.—In carrying out this section, the Secretary may support activities to—

"(1) establish, expand, or increase the scope of behavioral supports and systemic interventions by providing for effective, research-based practices, including—

"(A) training for school staff on early identification, prereferral, and referral procedures;

"(B) training for administrators, teachers, related services personnel, behavioral specialists, and other school staff in positive behavioral interventions and supports, behavioral intervention planning, and classroom and student management techniques;

"(C) joint training for administrators, parents, teachers, related services personnel, behavioral specialists, and other school staff on effective strategies for positive behavioral interventions and behavior management strategies that focus on the prevention of behavior problems;

"(D) developing or implementing specific curricula, programs, or interventions aimed at addressing behavioral problems;

"(E) stronger linkages between school-based services and community-based resources, such as community mental health and primary care providers; or

"(F) using behavioral specialists, related services personnel, and other staff necessary to implement behavioral supports; or

"(2) improve interim alternative educational settings by—

"(A) improving the training of administrators, teachers, related services personnel, behavioral specialists, and other school staff (including ongoing mentoring of new teachers) in behavioral supports and interventions;

"(B) attracting and retaining a high quality, diverse staff;

"(C) providing for referral to counseling services;

"(D) utilizing research-based interventions, curriculum, and practices;

"(E) allowing students to use instructional technology that provides individualized instruction;

"(F) ensuring that the services are fully consistent with the goals of the individual student's IEP;

"(G) promoting effective case management and collaboration among parents, teachers, physicians, related services personnel, behavioral specialists, principals, administrators, and other school staff;

"(H) promoting interagency coordination and coordinated service delivery among schools, juvenile courts, child welfare agencies, community mental health providers, primary care providers, public recreation agencies, and community-based organizations; or

"(I) providing for behavioral specialists to help students transitioning from interim alternative educational settings reintegrate into their regular classrooms.

"(c) DEFINITION OF ELIGIBLE ENTITY.—In this section, the term "eligible entity" means—

"(1) a local educational agency; or

"(2) a consortium consisting of a local educational agency and 1 or more of the following entities:

"(A) Another local educational agency.

"(B) A community-based organization with a demonstrated record of effectiveness in helping children with disabilities who have behavioral challenges succeed.

"(C) An institution of higher education.

"(D) A community mental health provider.

"(E) An educational service agency.

"(d) APPLICATIONS.—Any eligible entity that wishes to receive a grant, or enter into a contract or cooperative agreement, under this section shall—

"(1) submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require; and

"(2) involve parents of participating students in the design and implementation of the activities funded under this section.

"(e) REPORT AND EVALUATION.—Each eligible entity receiving a grant under this section shall prepare and submit annually to the

Secretary a report on the outcomes of the activities assisted under the grant.

"SEC. 667. AUTHORIZATION OF APPROPRIATIONS.

"(a) IN GENERAL.—There are authorized to be appropriated to carry out this subpart (other than section 662) such sums as may be necessary for each of the fiscal years 2005 through 2010.

"(b) RESERVATION.—From amounts appropriated under subsection (a) for fiscal year 2005, the Secretary shall reserve $1,000,000 to carry out the study authorized in section 664(c). From amounts appropriated under subsection (a) for a succeeding fiscal year, the Secretary may reserve an additional amount to carry out such study if the Secretary determines the additional amount is necessary.

"Subpart 3—Supports To Improve Results for Children With Disabilities

"SEC. 670. PURPOSES.

"The purposes of this subpart are to ensure that—

"(1) children with disabilities and their parents receive training and information designed to assist the children in meeting developmental and functional goals and challenging academic achievement goals, and in preparing to lead productive independent adult lives;

"(2) children with disabilities and their parents receive training and information on their rights, responsibilities, and protections under this title, in order to develop the skills necessary to cooperatively and effectively participate in planning and decision making relating to early intervention, educational, and transitional services;

"(3) parents, teachers, administrators, early intervention personnel, related services personnel, and transition personnel receive coordinated and accessible technical assistance and information to assist such personnel in improving early intervention, educational, and transitional services and results for children with disabilities and their families; and

"(4) appropriate technology and media are researched, developed, and demonstrated, to improve and implement early intervention, educational, and transitional services and results for children with disabilities and their families.

"SEC. 671. PARENT TRAINING AND INFORMATION CENTERS.

"(a) PROGRAM AUTHORIZED.—

"(1) IN GENERAL.—The Secretary may award grants to, and enter into contracts and cooperative agreements with, parent organizations to support parent training and information centers to carry out activities under this section.

"(2) DEFINITION OF PARENT ORGANIZATION.—In this section, the term 'parent organization' means a private nonprofit organization (other than an institution of higher education) that—

"(A) has a board of directors—

"(i) the majority of whom are parents of children with disabilities ages birth through 26;

"(ii) that includes—

"(I) individuals working in the fields of special education, related services, and early intervention; and

"(II) individuals with disabilities; and

"(iii) the parent and professional members of which are broadly representative of the population to be served, including low-income parents and parents of limited English proficient children; and

"(B) has as its mission serving families of children with disabilities who—

"(i) are ages birth through 26; and

"(ii) have the full range of disabilities described in section 602(3).

"(b) REQUIRED ACTIVITIES.—Each parent training and information center that receives assistance under this section shall—

"(1) provide training and information that meets the needs of parents of children with disabilities living in the area served by the center, particularly underserved parents and parents of children who may be inappropriately identified, to enable their children with disabilities to—

"(A) meet developmental and functional goals, and challenging academic achievement goals that have been established for all children; and

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

"(2) serve the parents of infants, toddlers, and children with the full range of disabilities described in section 602(3);

"(3) ensure that the training and information provided meets the needs of low-income parents and parents of limited English proficient children;

"(4) assist parents to—

"(A) better understand the nature of their children's disabilities and their educational, developmental, and transitional needs;

"(B) communicate effectively and work collaboratively with personnel responsible for providing special education, early intervention services, transition services, and related services;

"(C) participate in decisionmaking processes and the development of individualized education programs under part B and individualized family service plans under part C;

"(D) obtain appropriate information about the range, type, and quality of—

"(i) options, programs, services, technologies, practices and interventions based on scientifically based research, to the extent practicable; and

"(ii) resources available to assist children with disabilities and their families in school and at home;

"(E) understand the provisions of this title for the education of, and the provision of early intervention services to, children with disabilities;

"(F) participate in activities at the school level that benefit their children; and

"(G) participate in school reform activities;

"(5) in States where the State elects to contract with the parent training and information center, contract with State educational agencies to provide, consistent with subparagraphs (B) and (D) of section 615(e)(2), individuals who meet with parents to explain the mediation process to the parents;

"(6) assist parents in resolving disputes in the most expeditious and effective way possible, including encouraging the use, and explaining the benefits, of alternative methods of dispute resolution, such as the mediation process described in section 615(e);

"(7) assist parents and students with disabilities to understand their rights and responsibilities under this title, including those under section 615(m) upon the student's reaching the age of majority (as appropriate under State law);

"(8) assist parents to understand the availability of, and how to effectively use, procedural safeguards under this title, including the resolution session described in section 615(e);

"(9) assist parents in understanding, preparing for, and participating in, the process described in section 615(f)(1)(B);

"(10) establish cooperative partnerships with community parent resource centers funded under section 672;

"(11) network with appropriate clearinghouses, including organizations conducting national dissemination activities under section 663 and the Institute of Education Sciences, and with other national, State, and local organizations and agencies, such as protection and advocacy agencies, that serve parents and families of children with the full range of disabilities described in section 602(3); and

"(12) annually report to the Secretary on—

"(A) the number and demographics of parents to whom the center provided information and training in the most recently concluded fiscal year;

"(B) the effectiveness of strategies used to reach and serve parents, including underserved parents of children with disabilities; and

"(C) the number of parents served who have resolved disputes through alternative methods of dispute resolution.

"(c) OPTIONAL ACTIVITIES.—A parent training and information center that receives assistance under this section may provide information to teachers and other professionals to assist the teachers and professionals in improving results for children with disabilities.

"(d) APPLICATION REQUIREMENTS.—Each application for assistance under this section shall identify with specificity the special efforts that the parent organization will undertake—

"(1) to ensure that the needs for training and information of underserved parents of children with disabilities in the area to be served are effectively met; and

"(2) to work with community based organizations, including community based organizations that work with low-income parents and parents of limited English proficient children.

"(e) DISTRIBUTION OF FUNDS.—

"(1) IN GENERAL.—The Secretary shall—

"(A) make not less than 1 award to a parent organization in each State for a parent training and information

center that is designated as the statewide parent training and information center; or

"(B) in the case of a large State, make awards to multiple parent training and information centers, but only if the centers demonstrate that coordinated services and supports will occur among the multiple centers.

"(2) SELECTION REQUIREMENT.—The Secretary shall select among applications submitted by parent organizations in a State in a manner that ensures the most effective assistance to parents, including parents in urban and rural areas, in the State.

"(f) QUARTERLY REVIEW.—

"(1) MEETINGS.—The board of directors of each parent organization that receives an award under this section shall meet not less than once in each calendar quarter to review the activities for which the award was made.

"(2) CONTINUATION AWARD.—When a parent organization requests a continuation award under this section, the board of directors shall submit to the Secretary a written review of the parent training and information program conducted by the parent organization during the preceding fiscal year.

"SEC. 672. COMMUNITY PARENT RESOURCE CENTERS.

"(a) PROGRAM AUTHORIZED.—

"(1) IN GENERAL.—The Secretary may award grants to, and enter into contracts and cooperative agreements with, local parent organizations to support community parent resource centers that will help ensure that underserved parents of children with disabilities, including low income parents, parents of limited English proficient children, and parents with disabilities, have the training and information the parents need to enable the parents to participate effectively in helping their children with disabilities—

"(A) to meet developmental and functional goals, and challenging academic achievement goals that have been established for all children; and

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

"(2) DEFINITION OF LOCAL PARENT ORGANIZATION.—In this section, the term 'local parent organization' means a parent organization, as defined in section 671(a)(2), that—

"(A) has a board of directors the majority of whom are parents of children with disabilities ages birth through 26 from the community to be served; and

"(B) has as its mission serving parents of children with disabilities who—

"(i) are ages birth through 26; and

"(ii) have the full range of disabilities described in section 602(3).

"(b) REQUIRED ACTIVITIES.—Each community parent resource center assisted under this section shall—

"(1) provide training and information that meets the training and information needs of parents of children with disabilities proposed to be served by the grant, contract, or cooperative agreement;

"(2) carry out the activities required of parent training and information centers under paragraphs (2) through (9) of section 671(b);

"(3) establish cooperative partnerships with the parent training and information centers funded under section 671; and

"(4) be designed to meet the specific needs of families who experience significant isolation from available sources of information and support.

"SEC. 673. TECHNICAL ASSISTANCE FOR PARENT TRAINING AND INFORMATION CENTERS.

"(a) PROGRAM AUTHORIZED.—

"(1) IN GENERAL.—The Secretary may, directly or through awards to eligible entities, provide technical assistance for developing, assisting, and coordinating parent training and information programs carried out by parent training and information centers receiving assistance under section 671 and community parent resource centers receiving assistance under section 672.

"(2) DEFINITION OF ELIGIBLE ENTITY.—In this section, the term 'eligible entity' has the meaning given the term in section 661(b).

"(b) AUTHORIZED ACTIVITIES.—The Secretary may provide technical assistance to a parent training and information center or a community parent resource center under this section in areas such as—

"(1) effective coordination of parent training efforts;

"(2) dissemination of scientifically based research and information;

"(3) promotion of the use of technology, including assistive technology devices and assistive technology services;

"(4) reaching underserved populations, including parents of low-income and limited English proficient children with disabilities;

"(5) including children with disabilities in general education programs;

"(6) facilitation of transitions from—

"(A) early intervention services to preschool;

"(B) preschool to elementary school;

"(C) elementary school to secondary school; and

"(D) secondary school to postsecondary environments; and

"(7) promotion of alternative methods of dispute resolution, including mediation.

"(c) COLLABORATION WITH THE RESOURCE CENTERS.—Each eligible entity receiving an award under subsection (a) shall develop collaborative agreements with the geographically appropriate regional resource center and, as appropriate, the regional educational laboratory supported under section 174 of the Education Sciences Reform Act of 2002, to further parent and professional collaboration.

"SEC. 674. TECHNOLOGY DEVELOPMENT, DEMONSTRATION, AND UTILIZATION; MEDIA SERVICES; AND INSTRUCTIONAL MATERIALS.

"(a) PROGRAM AUTHORIZED.—

"(1) IN GENERAL.—The Secretary, on a competitive basis, shall award grants to, and enter into contracts and cooperative agreements with, eligible entities to support activities described in subsections (b) and (c).

"(2) DEFINITION OF ELIGIBLE ENTITY.—In this section, the term 'eligible entity' has the meaning given the term in section 661(b).

"(b) TECHNOLOGY DEVELOPMENT, DEMONSTRATION, AND USE.—

"(1) IN GENERAL.—In carrying out this section, the Secretary shall support activities to promote the development, demonstration, and use of technology.

"(2) AUTHORIZED ACTIVITIES.—The following activities may be carried out under this subsection:

"(A) Conducting research on and promoting the demonstration and use of innovative, emerging, and universally designed technologies for children with disabilities, by improving the transfer of technology from research and development to practice.

"(B) Supporting research, development, and dissemination of technology with universal design features, so that the technology is accessible to the broadest range of individuals with disabilities without further modification or adaptation.

"(C) Demonstrating the use of systems to provide parents and teachers with information and training concerning early diagnosis of, intervention for, and effective teaching strategies for, young children with reading disabilities.

"(D) Supporting the use of Internet-based communications for students with cognitive disabilities in order to maximize their academic and functional skills.

"(c) EDUCATIONAL MEDIA SERVICES.—

"(1) IN GENERAL.—In carrying out this section, the Secretary shall support—

"(A) educational media activities that are designed to be of educational value in the classroom setting to children with disabilities;

"(B) providing video description, open captioning, or closed captioning, that is appropriate for use in the classroom setting, of—

"(i) television programs;

"(ii) videos;

"(iii) other materials, including programs and materials associated with new and emerging technologies, such as CDs, DVDs, video streaming, and other forms of multimedia; or

"(iv) news (but only until September 30, 2006);

"(C) distributing materials described in subparagraphs (A) and (B) through such mechanisms as a loan service; and

"(D) providing free educational materials, including textbooks, in accessible media for visually impaired and print disabled students in elementary schools and secondary schools.

"(2) LIMITATION.—The video description, open captioning, or closed captioning described in paragraph (1)(B) shall be provided only when the description or captioning has not been previously provided by the producer or distributor, or has not been fully funded by other sources.

"(d) APPLICATIONS.—

"(1) IN GENERAL.—Any eligible entity that wishes to receive a grant, or enter into a contract or cooperative agreement, under subsection (b) or (c) shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

"(2) SPECIAL RULE.—For the purpose of an application for an award to carry out activities described in subsection (c)(1)(D), such eligible entity shall—

"(A) be a national, nonprofit entity with a proven track record of meeting the needs of students with print disabilities through services described in subsection (c)(1)(D);

"(B) have the capacity to produce, maintain, and distribute in a timely fashion, up-to-date textbooks in digital audio formats to qualified students; and

"(C) have a demonstrated ability to significantly leverage Federal funds through other public and private contributions, as well as through the expansive use of volunteers.

"(e) NATIONAL INSTRUCTIONAL MATERIALS ACCESS CENTER.—

"(1) IN GENERAL.—The Secretary shall establish and support, through the American Printing House for the Blind, a center to be known as the 'National Instructional Materials Access Center' not later than 1 year after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2004.

"(2) DUTIES.—The duties of the National Instructional Materials Access Center are the following:

"(A) To receive and maintain a catalog of print instructional materials prepared in the National Instructional Materials Accessibility Standard, as established by the Secretary, made available to such center by the textbook publishing industry, State educational agencies, and local educational agencies.

"(B) To provide access to print instructional materials, including textbooks, in accessible media, free of charge, to blind or other persons with print disabilities in elementary schools and secondary schools, in accordance with such terms and procedures as the National Instructional Materials Access Center may prescribe.

"(C) To develop, adopt and publish procedures to protect against copyright infringement, with respect to the print instructional materials provided under sections 612(a)(23) and 613(a)(6).

"(3) DEFINITIONS.—In this subsection:

"(A) BLIND OR OTHER PERSONS WITH PRINT DISABILITIES.—The term 'blind or other persons with print disabilities' means children served under this Act and who may qualify in accordance with the Act entitled 'An Act to provide books for the adult blind', approved March 3, 1931 (2

U.S.C. 135a; 46 Stat. 1487) to receive books and other publications produced in specialized formats.

"(B) NATIONAL INSTRUCTIONAL MATERIALS ACCESSIBILITY STANDARD.—The term 'National Instructional Materials Accessibility Standard' means the standard established by the Secretary to be used in the preparation of electronic files suitable and used solely for efficient conversion into specialized formats.

"(C) PRINT INSTRUCTIONAL MATERIALS.—The term 'print instructional materials' means printed textbooks and related printed core materials that are written and published primarily for use in elementary school and secondary school instruction and are required by a State educational agency or local educational agency for use by students in the classroom.

"(D) SPECIALIZED FORMATS.—The term 'specialized formats' has the meaning given the term in section 121(d)(3) of title 17, United States Code.

"(4) APPLICABILITY.—This subsection shall apply to print instructional materials published after the date on which the final rule establishing the National Instructional Materials Accessibility Standard was published in the Federal Register.

"(5) LIABILITY OF THE SECRETARY.—Nothing in this subsection shall be construed to establish a private right of action against the Secretary for failure to provide instructional materials directly, or for failure by the National Instructional Materials Access Center to perform the duties of such center, or to otherwise authorize a private right of action related to the performance by such center, including through the application of the rights of children and parents established under this Act.

"(6) INAPPLICABILITY.—Subsections (a) through (d) shall not apply to this subsection.

"SEC. 675. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated to carry out this subpart such sums as may be necessary for each of the fiscal years 2005 through 2010.

"Subpart 4—General Provisions

"SEC. 681. COMPREHENSIVE PLAN FOR SUBPARTS 2 AND 3.

"(a) COMPREHENSIVE PLAN.—

"(1) IN GENERAL.—After receiving input from interested individuals with relevant expertise, the Secretary shall develop and implement a comprehensive plan for activities carried out under subparts 2 and 3 in order to enhance the provision of early intervention services, educational services, related services, and transitional services to children with disabilities under parts B and C. To the extent practicable, the plan shall be coordinated with the plan developed pursuant to section 178(c) of the Education Sciences Reform Act of 2002 and shall include mechanisms to address early intervention, educational, related service and transitional needs identified by State educational agencies in applications submitted for State personnel develop-

ment grants under subpart 1 and for grants under subparts 2 and 3.

"(2) PUBLIC COMMENT.—The Secretary shall provide a public comment period of not less than 45 days on the plan.

"(3) DISTRIBUTION OF FUNDS.—In implementing the plan, the Secretary shall, to the extent appropriate, ensure that funds awarded under subparts 2 and 3 are used to carry out activities that benefit, directly or indirectly, children with the full range of disabilities and of all ages.

"(4) REPORTS TO CONGRESS.—The Secretary shall annually report to Congress on the Secretary's activities under subparts 2 and 3, including an initial report not later than 12 months after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2004.

"(b) ASSISTANCE AUTHORIZED.—The Secretary is authorized to award grants to, or enter into contracts or cooperative agreements with, eligible entities to enable the eligible entities to carry out the purposes of such subparts in accordance with the comprehensive plan described in subsection (a).

"(c) SPECIAL POPULATIONS.—

"(1) APPLICATION REQUIREMENT.—In making an award of a grant, contract, or cooperative agreement under subpart 2 or 3, the Secretary shall, as appropriate, require an eligible entity to demonstrate how the eligible entity will address the needs of children with disabilities from minority backgrounds.

"(2) REQUIRED OUTREACH AND TECHNICAL ASSISTANCE.—Notwithstanding any other provision of this title, the Secretary shall reserve not less than 2 percent of the total amount of funds appropriated to carry out subparts 2 and 3 for either or both of the following activities:

"(A) Providing outreach and technical assistance to historically Black colleges and universities, and to institutions of higher education with minority enrollments of not less than 25 percent, to promote the participation of such colleges, universities, and institutions in activities under this subpart.

"(B) Enabling historically Black colleges and universities, and the institutions described in subparagraph (A), to assist other colleges, universities, institutions, and agencies in improving educational and transitional results for children with disabilities, if the historically Black colleges and universities and the institutions of higher education described in subparagraph (A) meet the criteria established by the Secretary under this subpart.

"(d) PRIORITIES.—The Secretary, in making an award of a grant, contract, or cooperative agreement under subpart 2 or 3, may, without regard to the rulemaking procedures under section 553 of title 5, United States Code, limit competitions to, or otherwise give priority to—

"(1) projects that address 1 or more—

"(A) age ranges;

"(B) disabilities;

"(C) school grades;

"(D) types of educational placements or early intervention environments;

"(E) types of services;

"(F) content areas, such as reading; or

"(G) effective strategies for helping children with disabilities learn appropriate behavior in the school and other community based educational settings;

"(2) projects that address the needs of children based on the severity or incidence of their disability;

"(3) projects that address the needs of—

"(A) low achieving students;

"(B) underserved populations;

"(C) children from low income families;

"(D) limited English proficient children;

"(E) unserved and underserved areas;

"(F) rural or urban areas;

"(G) children whose behavior interferes with their learning and socialization;

"(H) children with reading difficulties;

"(I) children in public charter schools;

"(J) children who are gifted and talented; or

"(K) children with disabilities served by local educational agencies that receive payments under title VIII of the Elementary and Secondary Education Act of 1965;

"(4) projects to reduce inappropriate identification of children as children with disabilities, particularly among minority children;

"(5) projects that are carried out in particular areas of the country, to ensure broad geographic coverage;

"(6) projects that promote the development and use of technologies with universal design, assistive technology devices, and assistive technology services to maximize children with disabilities' access to and participation in the general education curriculum; and

"(7) any activity that is authorized in subpart 2 or 3.

"(e) ELIGIBILITY FOR FINANCIAL ASSISTANCE.—No State or local educational agency, or other public institution or agency, may receive a grant or enter into a contract or cooperative agreement under subpart 2 or 3 that relates exclusively to programs, projects, and activities pertaining to children aged 3 through 5, inclusive, unless the State is eligible to receive a grant under section 619(b).

"SEC. 682. ADMINISTRATIVE PROVISIONS.

"(a) APPLICANT AND RECIPIENT RESPONSIBILITIES.—

"(1) DEVELOPMENT AND ASSESSMENT OF PROJECTS.—The Secretary shall require that an applicant for, and a recipient of, a grant, contract, or cooperative agreement for a project under subpart 2 or 3—

"(A) involve individuals with disabilities or parents of individuals with disabilities ages birth through 26 in planning, implementing, and evaluating the project; and

"(B) where appropriate, determine whether the project has any potential for replication and adoption by other entities.

"(2) ADDITIONAL RESPONSIBILITIES.—The Secretary may require a recipient of a grant, contract, or cooperative agreement under subpart 2 or 3 to—

"(A) share in the cost of the project;

"(B) prepare any findings and products from the project in formats that are useful for specific audiences, including parents, administrators, teachers, early intervention personnel, related services personnel, and individuals with disabilities;

"(C) disseminate such findings and products; and

"(D) collaborate with other such recipients in carrying out subparagraphs (B) and (C).

"(b) APPLICATION MANAGEMENT.—

"(1) STANDING PANEL.—

"(A) IN GENERAL.—The Secretary shall establish and use a standing panel of experts who are qualified, by virtue of their training, expertise, or experience, to evaluate each application under subpart 2 or 3 that requests more than $75,000 per year in Federal financial assistance.

"(B) MEMBERSHIP.—The standing panel shall include, at a minimum—

"(i) individuals who are representatives of institutions of higher education that plan, develop, and carry out high quality programs of personnel preparation;

"(ii) individuals who design and carry out scientifically based research targeted to the improvement of special education programs and services;

"(iii) individuals who have recognized experience and knowledge necessary to integrate and apply scientifically based research findings to improve educational and transitional results for children with disabilities;

"(iv) individuals who administer programs at the State or local level in which children with disabilities participate;

"(v) individuals who prepare parents of children with disabilities to participate in making decisions about the education of their children;

"(vi) individuals who establish policies that affect the delivery of services to children with disabilities;

"(vii) individuals who are parents of children with disabilities ages birth through 26 who are benefiting, or have benefited, from coordinated research, personnel preparation, and technical assistance; and

"(viii) individuals with disabilities.

"(C) TERM.—No individual shall serve on the standing panel for more than 3 consecutive years.

"(2) PEER-REVIEW PANELS FOR PARTICULAR COMPETITIONS.—

"(A) COMPOSITION.—The Secretary shall ensure that each subpanel selected from the standing panel that reviews an application under subpart 2 or 3 includes—

"(i) individuals with knowledge and expertise on the issues addressed by the activities described in the application; and

"(ii) to the extent practicable, parents of children with disabilities ages birth through 26, individuals with disabilities, and persons from diverse backgrounds.

"(B) FEDERAL EMPLOYMENT LIMITATION.—A majority of the individuals on each subpanel that reviews an application under subpart 2 or 3 shall be individuals who are not employees of the Federal Government.

"(3) USE OF DISCRETIONARY FUNDS FOR ADMINISTRATIVE PURPOSES.—

"(A) EXPENSES AND FEES OF NON-FEDERAL PANEL MEMBERS.—The Secretary may use funds available under subpart 2 or 3 to pay the expenses and fees of the panel members who are not officers or employees of the Federal Government.

"(B) ADMINISTRATIVE SUPPORT.—The Secretary may use not more than 1 percent of the funds appropriated to carry out subpart 2 or 3 to pay non-Federal entities for administrative support related to management of applications submitted under subpart 2 or 3, respectively.

"(c) PROGRAM EVALUATION.—The Secretary may use funds made available to carry out subpart 2 or 3 to evaluate activities carried out under subpart 2 or 3, respectively.

"(d) MINIMUM FUNDING REQUIRED.—

"(1) IN GENERAL.—Subject to paragraph (2), the Secretary shall ensure that, for each fiscal year, not less than the following amounts are provided under subparts 2 and 3 to address the following needs:

"(A) $12,832,000 to address the educational, related services, transitional, and early intervention needs of children with deaf-blindness.

"(B) $4,000,000 to address the postsecondary, vocational, technical, continuing, and adult education needs of individuals with deafness.

"(C) $4,000,000 to address the educational, related services, and transitional needs of children with an emotional disturbance and those who are at risk of developing an emotional disturbance.

"(2) RATABLE REDUCTION.—If the sum of the amount appropriated to carry out subparts 2 and 3, and part E of the Education Sciences Reform Act of 2002 for any fiscal year is less than $130,000,000, the amounts listed in paragraph (1) shall be ratably reduced for the fiscal year.".

TITLE II—NATIONAL CENTER FOR SPECIAL EDUCATION RESEARCH

SEC. 201. NATIONAL CENTER FOR SPECIAL EDUCATION RESEARCH.

(a) AMENDMENT.—The Education Sciences Reform Act of 2002 (20 U.S.C. 9501 et seq.) is amended—

(1) by redesignating part E as part F; and

(2) by inserting after part D the following:

"PART E—NATIONAL CENTER FOR SPECIAL EDUCATION RESEARCH

"SEC. 175. ESTABLISHMENT.

"(a) ESTABLISHMENT.—There is established in the Institute a National Center for Special Education Research (in this part referred to as the 'Special Education Research Center').

"(b) MISSION.—The mission of the Special Education Research Center is—

"(1) to sponsor research to expand knowledge and understanding of the needs of infants, toddlers, and children with disabilities in order to improve the developmental, educational, and transitional results of such individuals;

"(2) to sponsor research to improve services provided under, and support the implementation of, the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.); and

"(3) to evaluate the implementation and effectiveness of the Individuals with Disabilities Education Act in coordination with the National Center for Education Evaluation and Regional Assistance.

"(c) APPLICABILITY OF EDUCATION SCIENCES REFORM ACT OF 2002.—Parts A and F, and the standards for peer review of applications and for the conduct and evaluation of research under sections 133(a) and 134, respectively, shall apply to the Secretary, the Director, and the Commissioner in carrying out this part.

"SEC. 176. COMMISSIONER FOR SPECIAL EDUCATION RESEARCH.

"The Special Education Research Center shall be headed by a Commissioner for Special Education Research (in this part referred to as the 'Special Education Research Commissioner') who shall have substantial knowledge of the Special Education Research Center's activities, including a high level of expertise in the fields of research, research management, and the education of children with disabilities.

"SEC. 177. DUTIES.

"(a) GENERAL DUTIES.—The Special Education Research Center shall carry out research activities under this part consistent with the mission described in section 175(b), such as activities that—

"(1) improve services provided under the Individuals with Disabilities Education Act in order to improve—

"(A) academic achievement, functional outcomes, and educational results for children with disabilities; and

"(B) developmental outcomes for infants or toddlers with disabilities;

"(2) identify scientifically based educational practices that support learning and improve academic achievement, functional outcomes, and educational results for all students with disabilities;

"(3) examine the special needs of preschool aged children, infants, and toddlers with disabilities, including factors that may result in developmental delays;

"(4) identify scientifically based related services and interventions that promote participation and progress in the general education curriculum and general education settings;

"(5) improve the alignment, compatibility, and development of valid and reliable assessments, including alternate assessments, as required by section 1111(b) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311(b));

"(6) examine State content standards and alternate assessments for students with significant cognitive impairment in terms of academic achievement, individualized instructional need, appropriate education settings, and improved post-school results;

"(7) examine the educational, developmental, and transitional needs of children with high incidence and low incidence disabilities;

"(8) examine the extent to which overidentification and underidentification of children with disabilities occurs, and the causes thereof;

"(9) improve reading and literacy skills of children with disabilities;

"(10) examine and improve secondary and postsecondary education and transitional outcomes and results for children with disabilities;

"(11) examine methods of early intervention for children with disabilities, including children with multiple or complex developmental delays;

"(12) examine and incorporate universal design concepts in the development of standards, assessments, curricula, and instructional methods to improve educational and transitional results for children with disabilities;

"(13) improve the preparation of personnel, including early intervention personnel, who provide educational and related services to children with disabilities to increase the academic achievement and functional performance of students with disabilities;

"(14) examine the excess costs of educating a child with a disability and expenses associated with high cost special education and related services;

"(15) help parents improve educational results for their children, particularly related to transition issues;

"(16) address the unique needs of children with significant cognitive disabilities; and

"(17) examine the special needs of limited English proficient children with disabilities.

"(b) STANDARDS.—The Special Education Research Commissioner shall ensure that activities assisted under this section—

"(1) conform to high standards of quality, integrity, accuracy, validity, and reliability;

"(2) are carried out in accordance with the standards for the conduct and evaluation of all research and development established by the National Center for Education Research; and

"(3) are objective, secular, neutral, and nonideological, and are free of partisan political influence, and racial, cultural, gender, regional, or disability bias.

"(c) PLAN.—The Special Education Research Commissioner shall propose to the Director a research plan, developed in collaboration with the Assistant Secretary for Special Education and Rehabilitative Services, that—

"(1) is consistent with the priorities and mission of the Institute and the mission of the Special Education Research Center;

"(2) is carried out, updated, and modified, as appropriate;

"(3) is consistent with the purposes of the Individuals with Disabilities Education Act;

"(4) contains an appropriate balance across all age ranges and types of children with disabilities;

"(5) provides for research that is objective and uses measurable indicators to assess its progress and results; and

"(6) is coordinated with the comprehensive plan developed under section 681 of the Individuals with Disabilities Education Act.

"(d) GRANTS, CONTRACTS, AND COOPERATIVE AGREEMENTS.—

"(1) IN GENERAL.—In carrying out the duties under this section, the Director may award grants to, or enter into contracts or cooperative agreements with, eligible applicants.

"(2) ELIGIBLE APPLICANTS.—Activities carried out under this subsection through contracts, grants, or cooperative agreements shall be carried out only by recipients with the ability and capacity to conduct scientifically valid research.

"(3) APPLICATIONS.—An eligible applicant that wishes to receive a grant, or enter into a contract or cooperative agreement, under this section shall submit an application to the Director at such time, in such manner, and containing such information as the Director may require.

"(e) DISSEMINATION.—The Special Education Research Center shall—

"(1) synthesize and disseminate, through the National Center for Education Evaluation and Regional Assistance, the findings and results of special education research conducted or supported by the Special Education Research Center; and

"(2) assist the Director in the preparation of a biennial report, as described in section 119.

"(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this part such sums as may be necessary for each of fiscal years 2005 through 2010.".

(b) CONFORMING AMENDMENTS.—

(1) AMENDMENTS TO THE TABLE OF CONTENTS.—The table of contents in section 1 of the Act entitled "An Act to provide for improvement of Federal education research, statistics, evaluation, information, and dissemination, and for other purposes", approved November 5, 2002 (116 Stat. 1940; Public Law 107–279), is amended—

(A) by redesignating the item relating to part E as the item relating to part F; and

(B) by inserting after the item relating to section 174 the following:

"Part E—National Center for Special Education Research

"Sec. 175. Establishment.
"Sec. 176. Commissioner for Special Education Research.
"Sec. 177. Duties.".

(2) EDUCATION SCIENCES REFORM ACT OF 2002.—The Education Sciences Reform Act of 2002 (20 U.S.C. 9501 et seq.) is amended—

(A) in section 111(b)(1)(A) (20 U.S.C. 9511(b)(1)(A)), by inserting "and special education" after "early childhood education";

(B) in section 111(c)(3) (20 U.S.C. 9511(c)(3))—

(i) in subparagraph (B), by striking "and" after the semicolon;

(ii) in subparagraph (C), by striking the period and inserting "; and"; and

(iii) by adding at the end the following:

"(D) the National Center for Special Education Research (as described in part E).";

(C) in section 115(a) (20 U.S.C. 9515(a)), by striking "including those" and all that follows through "such as" and inserting "including those associated with the goals and requirements of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.), the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.), and the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.), such as"; and

(D) in section 116(c)(4)(A)(ii) (20 U.S.C. 9516(c)(4)(A)(ii), by inserting "special education experts," after "early childhood experts,".

(3) ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965.—Section 1117(a)(3) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6317(a)(3)) is amended by striking "part E" and inserting "part D".

SEC. 202. NATIONAL BOARD FOR EDUCATION SCIENCES.

Section 116(c)(9) of the Education Sciences Reform Act of 2002 (20 U.S.C. 9516(c)(9)) is amended by striking the third sentence and inserting the following: "Meetings of the Board are subject to section 552b of title 5, United States Code (commonly referred to as the Government in the Sunshine Act).".

SEC. 203. REGIONAL ADVISORY COMMITTEES.

Section 206(d)(3) of the Educational Technical Assistance Act of 2002 (20 U.S.C. 9605(d)(3)) is amended by striking "Academy" and inserting "Institute".

TITLE III—MISCELLANEOUS PROVISIONS

SEC. 301. AMENDMENT TO CHILDREN'S HEALTH ACT OF 2000.

Section 1004 of the Children's Health Act of 2000 (42 U.S.C. 285g note) is amended—

(1) in subsection (b), by striking "Agency" and inserting "Agency, and the Department of Education"; and

(2) in subsection (c)—

(A) in paragraph (2), by striking "and" after the semicolon;

(B) in paragraph (3), by striking the period at the end and inserting "; and"; and

(C) by adding at the end the following:

"(4) be conducted in compliance with section 444 of the General Education Provisions Act (20 U.S.C. 1232g), including the requirement of prior parental consent for the disclosure of any education records, except without the use of authority or exceptions granted to authorized representatives of the Secretary of Education for the evaluation of Federally-supported education programs or in connection with the enforcement of the Federal legal requirements that relate to such programs.".

SEC. 302. EFFECTIVE DATES.

(a) PARTS A, B, AND C, AND SUBPART 1 OF PART D.—

(1) IN GENERAL.—Except as provided in paragraph (2), parts A, B, and C, and subpart 1 of part D, of the Individuals with Disabilities Education Act, as amended by title I, shall take effect on July 1, 2005.

(2) HIGHLY QUALIFIED DEFINITION.—Subparagraph (A), and subparagraphs (C) through (F), of section 602(10) of the Individuals with Disabilities Education Act, as amended by title I, shall take effect on the date of enactment of this Act for purposes of the Elementary and Secondary Education Act of 1965.

(b) SUBPARTS 2, 3, AND 4 OF PART D.—Subparts 2, 3, and 4 of part D of the Individuals with Disabilities Education Act, as amended by title I, shall take effect on the date of enactment of this Act.

(c) EDUCATION SCIENCES REFORM ACT OF 2002.—

(1) NATIONAL CENTER FOR SPECIAL EDUCATION RESEARCH.—Sections 175, 176, and 177 (other than section 177(c)) of the Education Sciences Reform Act of 2002, as enacted by section 201(a)(2) of this Act, shall take effect on the date of enactment of this Act.

(2) PLAN.—Section 177(c) of the Education Sciences Reform Act of 2002, as enacted by section 201(a)(2) of this Act, shall take effect on October 1, 2005.

SEC. 303. TRANSITION.

(a) ORDERLY TRANSITION.—

(1) IN GENERAL.—The Secretary of Education (in this section referred to as "the Secretary") shall take such steps as are necessary to provide for the orderly transition from the Individuals with Disabilities Education Act, as such Act was in effect on the day preceding the date of enactment of this Act, to the Individuals with Disabilities Education Act and part E of the Education Sciences Reform Act of 2002, as amended by this Act.

(2) LIMITATION.—The Secretary's authority in paragraph (1) shall terminate 1 year after the date of enactment of this Act.

(b) MULTI-YEAR AWARDS.—Notwithstanding any other provision of law, the Secretary may use funds appropriated under part D of the Individuals with Disabilities Education Act to make continuation awards for projects that were funded under section 618, and part D, of the Individuals with Disabilities Education Act (as such section and part were in effect on September 30, 2004), in accordance with the terms of the original awards.

(c) RESEARCH.—Notwithstanding section 302(b) or any other provision of law, the Secretary may award funds that are appropriated under the Department of Education Appropriations Act, 2005 for special education research under either of the headings "SPECIAL EDUCATION" or "INSTITUTE OF EDUCATION SCIENCES" in accordance with sections 672 and 674 of the Individuals with Disabilities Education Act, as such sections were in effect on October 1, 2004.

SEC. 304. REPEALER.

Section 644 of the Individuals with Disabilities Education Act, as such section was in effect on the day before the enactment of this Act, is repealed.

SEC. 305. IDEA TECHNICAL AMENDMENTS TO OTHER LAWS.

(a) TITLE 10.—Section 2164(f) of title 10, United States Code is amended—

(1) in paragraph (1)(B)—

(A) by striking "infants and toddlers" each place the term appears and inserting "infants or toddlers";

(B) by striking "part H" and inserting "part C"; and

(C) by striking "1471" and inserting "1431"; and

(2) in paragraph (3)—

(A) in subparagraph (A)—

(i) by striking "602(a)(1)" and inserting "602"; and

(ii) by striking "1401(a)(1)" and inserting "1401";

(B) by striking subparagraph (B);

(C) by redesignating subparagraph (C) as subparagraph (B); and

(D) in subparagraph (B) (as so redesignated)—

(i) by striking "and toddlers" and inserting "or toddlers";

(ii) by striking "672(1)" and inserting "632"; and

(iii) by striking "1472(1)" and inserting "1432".

(b) DEFENSE DEPENDENTS EDUCATION ACT OF 1978.—Section 1409(c)(2) of the Defense Dependents Education Act of 1978 (20 U.S.C. 927(c)(2)) is amended—

(1) by striking "677" and inserting "636"; and

(2) by striking "part H" and inserting "part C".

(c) HIGHER EDUCATION ACT OF 1965.—The Higher Education Act of 1965 (20 U.S.C. 1001 et seq.) is amended—

(1) in section 465(a)(2)(C) (20 U.S.C. 1087ee(a)(2)(C), by striking "Individuals With" and inserting "Individuals with" and;

(2) in section 469(c) (20 U.S.C. 1087ii(c)), by striking "602(a)(1) and 672(1)" and inserting "602 and 632".

(d) EDUCATION OF THE DEAF ACT.—The matter preceding subparagraph (A) of section 104(b)(2) of the Education of the Deaf Act (20 U.S.C. 4304(b)(2)) is amended by striking "618(a)(1)(A)" and inserting "618(a)(1)".

(e) GOALS 2000: EDUCATE AMERICA ACT.—Section 3(a)(9) of the Goals 2000: Educate America Act (20 U.S.C. 5802(a)(9)) is amended by striking "602(a)(17)" and inserting "602".

(f) SCHOOL-TO-WORK OPPORTUNITIES ACT OF 1994.—Section 4(15) of the School-to-Work Opportunities Act of 1994 (20 U.S.C. 6103(15)) is amended—

(1) by striking "602(a)(17)" and inserting "602"; and

(2) by striking "1401(17)" and inserting "1401".

(g) ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965.—The Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.) is amended—

(1) in section 1111(b)(2)(I)(ii) (20 U.S.C. 6311(b)(2)(I)(ii)), by striking "612(a)(17)(A)" and inserting "612(a)(16)(A)";

(2) in section 5208 (20 U.S.C. 7221g), by striking "602(11)" and inserting "602"; and

(3) in section 5563(b)(8)(C) (20 U.S.C. 7273b(b)(8)(C)), by striking "682" and inserting "671".

(h) REHABILITATION ACT OF 1973.—The Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.) is amended—

(1) in section 101(a)(11)(D)(ii) (29 U.S.C. 721(a)(11)(D)(ii)), by striking "(as added by section 101 of Public Law 105–17)";

(2) in section 105(b)(1)(A)(ii) (29 U.S.C. 725(b)(1)(A)(ii)), by striking "682(a) of the Individuals with Disabilities Education Act (as added by section 101 of the Individuals with Disabilities Education Act Amendments of 1997; Public Law 105–17)" and inserting "671 of the Individuals with Disabilities Education Act";

(3) in section 105(c)(6) (29 U.S.C. 725(c)(6))—

(A) by striking "612(a)(21)" and inserting "612(a)(20)";

(B) by striking "Individual with" and inserting "Individuals with"; and

(C) by striking "(as amended by section 101 of the Individuals with Disabilities Education Act Amendments of 1997; Public Law 105–17)";

(4) in section 302(f)(1)(D)(ii) (29 U.S.C. 772 (f)(1)(D)(ii)), by striking "(as amended by section 101 of the Individuals with Disabilities Education Act Amendments of 1997 (Public Law 105–17))";

(5) in section 303(c)(6) (29 U.S.C. 773(c)(6))—

(A) by striking "682(a)" and inserting "671"; and

(B) by striking "(as added by section 101 of the Individuals with Disabilities Education Act Amendments of 1997; Public Law 105–17)"; and

(6) in section 303(c)(4)(A)(ii) (29 U.S.C. 773(c)(4)(A)(ii)), by striking "682(a) of the Individuals with Disabilities Education Act (as added by section 101 of the Individuals with Disabilities Education Act Amendments of 1997; Public Law 105–17)" and inserting "671 of the Individuals with Disabilities Education Act".

(i) PUBLIC HEALTH SERVICE ACT.—The Public Health Service Act (42 U.S.C. 201 et seq.) is amended—

(1) in section 399A(f) (42 U.S.C. 280d(f), by striking "part H" and inserting "part C";

(2) in section 399(n)(3) (42 U.S.C. 280c–6(n)(3)), by striking "part H" and inserting "part C";

(3) in section 399A(b)(8) (42 U.S.C. 280d(b)(8)), by striking "part H" and inserting "part C";

(4) in section 562(d)(3)(B) (42 U.S.C. 290ff–1(d)(3)(B)), by striking "and H" and inserting "and C"; and

(5) in section 563(d)(2) (42 U.S.C. 290ff–2(d)(2)), by striking "602(a)(19)" and inserting "602".

(j) SOCIAL SECURITY ACT.—The Social Security Act (42 U.S.C. 301 et seq.) is amended—

(1) in section 1903(c) (42 U.S.C. 1396b(c)), by striking "part H" and inserting "part C"; and

(2) in section 1915(c)(5)(C)(i) (42 U.S.C. 1396n(c)(5)(C)(i)), by striking "(as defined in section 602(16) and (17) of the Education of the Handicapped Act (20 U.S.C. 1401(16), (17))" and inserting "(as such terms are defined in section 602 of the Individuals with Disabilities Education Act (20 U.S.C. 1401))".

(k) DOMESTIC VOLUNTEER SERVICE ACT OF 1973.—Section 211(a) of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 5011(a)) is amended—

(1) by striking "part H" and inserting "part C"; and

(2) by striking "1471" and inserting "1431".

(l) HEAD START ACT.—The Head Start Act (42 U.S.C. 9831 et seq.) is amended—

(1) in section 640(a)(5)(C)(iv) (42 U.S.C. 9835(a)(5)(C)(iv)), by striking "1445" and inserting "1444";

(2) in section 640(d) (42 U.S.C. 9835(d))—

(A) by striking "U.S.C" and inserting "U.S.C."; and

(B) by striking "1445" and inserting "1444";

(3) in section 641(d)(3) (42 U.S.C. 9836(d)(3)), by striking "U.S.C 1431–1445" and inserting "U.S.C. 1431–1444"; and

(4) in section 642(c) (42 U.S.C. 9837(c)), by striking "1445" and inserting "1444".

(m) NATIONAL AND COMMUNITY SERVICE ACT OF 1990.—Section 101(21)(B) of the National and Community Service Act of 1990 (42 U.S.C. 12511(21)(B)) is amended—

(1) by striking "602(a)(1)" and inserting "602"; and

(2) by striking "1401(a)(1)" and inserting "1401".

(n) DEVELOPMENTAL DISABILITIES ASSISTANCE AND BILL OF RIGHTS ACT OF 2000.—The Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15001 et seq.) is amended—

(1) in section 125(c)(5)(G)(i) (42 U.S.C. 15025(c)(5)(G)(i)), by striking "subtitle C" and inserting "part C"; and

(2) in section 154(a)(3)(E)(ii)(VI) (42 U.S.C. 15064(a)(3)(E)(ii)(VI))—

(A) by striking "682 or 683" and inserting "671 or 672"; and

(B) by striking "(20 U.S.C. 1482, 1483)".

(o) DISTRICT OF COLUMBIA SCHOOL REFORM ACT OF 1995.—The District of Columbia School Reform Act of 1995 (Public Law 104–134) is amended—

(1) in section 2002(32)—

(A) by striking "602(a)(1)" and inserting "602"; and

(B) by striking "1401(a)(1)" and inserting "1401";

(2) in section 2202(19), by striking "Individuals With" and inserting "Individuals with"; and

(3) in section 2210—

(A) in the heading for subsection (c), by striking "WITH DISABILITIES" and inserting "WITH DISABILITIES"; and

(B) in subsection (c), by striking "Individuals With" and inserting "Individuals with".

SEC. 306. COPYRIGHT.

Section 121 of title 17, United States Code, is amended—

(1) by redesignating subsection (c) as subsection (d);

(2) by inserting after subsection (b) the following:

"(c) Notwithstanding the provisions of section 106, it is not an infringement of copyright for a publisher of print instructional materials for use in elementary or secondary schools to create and distribute to the National Instructional Materials Access Center copies of the electronic files described in sections 612(a)(23)(C), 613(a)(6), and section 674(e) of the Individuals with Disabilities Education Act that contain the contents of print instructional materials using the National Instructional Material Accessibility Standard (as defined in section 674(e)(3) of that Act), if—

"(1) the inclusion of the contents of such print instructional materials is required by any State educational agency or local educational agency;

"(2) the publisher had the right to publish such print instructional materials in print formats; and

"(3) such copies are used solely for reproduction or distribution of the contents of such print instructional materials in specialized formats."; and

(3) in subsection (d), as redesignated by this section—

(A) in paragraph (2), by striking "and" after the semicolon; and

(B) by striking paragraph (3) and inserting the following:

"(3) 'print instructional materials' has the meaning given under section 674(e)(3)(C) of the Individuals with Disabilities Education Act; and

"(4) 'specialized formats' means—

"(A) braille, audio, or digital text which is exclusively for use by blind or other persons with disabilities; and

"(B) with respect to print instructional materials, includes large print formats when such materials are distributed exclusively for use by blind or other persons with disabilities.".

And the Senate agree to the same.

From the Committee on Education and the Workforce, of reconsideration of the House bill and the Senate amendment, and modifications committed to conference:

JOHN BOEHNER,
MICHAEL N. CASTLE,
VERNON J. EHLERS,
RIC KELLER,
JOE WILSON,
GEORGE MILLER,
LYNN C. WOOLSEY,
MAJOR R. OWENS,

From the Committee on Energy and Commerce, for consideration of sec. 101 and title V of the Senate amendment, and modifications committed to conference:

JOE BARTON,
MICHAEL BILIRAKIS,
JOHN D. DINGELL,

From the Committee on the Judiciary, for consideration of sec. 205 of the House bill, and sec. 101 of the Senate amendment, and modifications committed to conference:

F. JAMES SENSENBRENNER, Jr.,
LAMAR SMITH,
JOHN CONYERS,
Managers on the Part of the House.

JUDD GREGG,
BILL FRIST,
MICHAEL B. ENZI,
LAMAR ALEXANDER,
CHRISTOPHER BOND,
MIKE DEWINE,
PAT ROBERTS,
JEFF SESSIONS,
JOHN ENSIGN,
LINDSEY GRAHAM,
JOHN WARNER,
EDWARD KENNEDY,
CHRISTOPHER J. DODD,
TOM HARKIN,
BARBARA A. MIKULSKI,
JEFF BINGAMAN,
PATTY MURRAY,
JACK REED,
JOHN EDWARDS,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 1350), an Act to reauthorize the Individuals with Disabilities Education Act, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by managers and recommended in the accompanying conference report:

RECOMMENDATIONS

Enacting Clause, Short Title, and Organization

(1) The House bill and Senate amendment have different titles and different organization systems.

HR

(2) The House bill includes this technical language as part of its structure to keep section 604 as current law. The Senate amendment replaces the entire existing law.

HR/LC

Title I, Part A

(3) There are no significant differences between the House bill and Senate amendment.

HR/LC

(4) The House bill and Senate amendment have different sections and headings in Part A and Part D. In Part D the Senate amendment has a subpart IV that is not in the House bill.

LC

(5) There are no significant differences between House (c)(1) and Senate (c)(1).

LC

(6) The Senate amendment goes into greater detail on how the needs of special education students were not being met prior to PL 94–142.

HR

(7) The House bill does not include the Senate findings on implementation or providing services.

HR

(8) There are no significant differences between the House bill and Senate amendment.

LC

(9) The House bill does not include these Senate findings.

HR

(10) There are no significant differences between the House bill and Senate amendment.

LC

(11) There are no significant differences between the House and Senate amendments.

LC

(12) There are minor wording differences between the House bill and the Senate amendment regarding full participation of minority individuals.

SR

(13) The House bill does not include this Senate finding.

HR

(14) The House bill refers to "system improvement activities" while the Senate bill refers to "systemic-change activities."

SR

(15) The Senate amendment, but not the House bill, includes a clarification that certain medical devices are not required to be provided under the Act.

HR

(16) There are no significant differences between the House bill and Senate amendment.

LC

(17) The Senate amendment, but not the House bill, adds this new definition.

HR

(18) There are no differences between the House bill and Senate amendment.

LC

(19) The Senate amendment, not the House bill, has greater detail in citing ESEA programs. There are also minor wording differences between the bills in describing the impact of State or local funds.

HR

(20) The House bill and Senate amendment are largely similar except the House bill includes language designed to place a limita-

tion on the extent of the services provided under the Act. The Senate amendment does not include this provision.

HR

(21) The House bill applies the requirements for a highly qualified teacher in NCLB to special education teachers. The Senate amendment mirrors the NCLB definition of a highly qualified teacher, with these exceptions:

1. Requires all special education teachers to be certified as special education teachers.

2. Exempts teachers who only provide consultative services from demonstrating subject knowledge/competency.

3. Requires middle/high school teachers, who primarily teach children with significant cognitive disabilities to demonstrate knowledge of elementary curriculum rather than high level competition in each of the subjects they teach.

HR with an amendment to read as follows:

"(10) HIGHLY QUALIFIED.—

"(A) IN GENERAL.—For any special education teacher, the term "highly qualified" has the meaning given the term in section 9101 of the Elementary and Secondary Education Act of 1965, except that such term also—

"(i) includes the requirements described in subparagraph (B); and

"(ii) includes the option for teachers to meet the requirements of section 9101 of such Act by meeting the requirements of subparagraph (C) or (D).

"(B) REQUIREMENTS FOR SPECIAL EDUCATION TEACHERS.—When used with respect to any public elementary school or secondary school special education teacher teaching in a State, such term means that—

"(i) the teacher has obtained full State certification as a special education teacher (including certification obtained through alternative routes to certification), or passed the State special education teacher licensing examination, and holds a license to teach in the State as a special education teacher, except that when used with respect to any teacher teaching in a public charter school, the term means that the teacher meets the requirements set forth in the State's public charter school law;

"(ii) the teacher has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and

"(iii) the teacher holds at least a bachelor's degree.

"(C) SPECIAL EDUCATION TEACHERS TEACHING TO ALTERNATE ACHIEVEMENT STANDARDS.—When used with respect to a special education teacher who teaches core academic subjects exclusively to children who are assessed against alternate achievement standards established under the regulations promulgated under section 1111(b)(1) of such Act, such term means the teacher, whether new or not new to the profession, may either—

"(i) meet the applicable requirements of section 9101 of such Act for any elementary, middle, or secondary school teacher who is new or not new to the profession; or

"(ii) meet the requirement of subparagraph (B) or (C) of section 9101(23) of such Act as applied to an elementary school teacher, or, in the case of instruction above the elementary level, has subject matter knowledge appropriate to the level of instruction being provided, as determined by the State, needed to effectively teach to those standards.

"(D) SPECIAL EDUCATION TEACHERS TEACHING MULTIPLE SUBJECTS.—When used with respect to a special education teacher who teaches 2 or more core academic subjects exclusively to children with disabilities, such term means that the teacher may—

"(i) meet the applicable requirements of section 9101 of the Elementary and Secondary Education Act of 1965 for any elementary, middle, or secondary school teacher who is new or not new to the profession;

"(ii) in the case of a teacher who is not new to the profession, demonstrate competence in all the core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher who is not new to the profession under section 9101(23)(C)(ii) of such Act, which may include a single, high objective uniform State standard of evaluation covering multiple subjects; or

"(iii) in the case of a new special education teacher who teaches multiple subjects and who is highly qualified in mathematics, language arts, or science, demonstrate competence in the additional core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher under section 9101(23)(C)(ii) of such Act, which may include a single, high objective uniform state standard of evaluation covering multiple subjects, not later than 2 years after the date of employment.

"(E) RULE OF CONSTRUCTION.—Notwithstanding any other individual right of action that a parent or student may maintain under this part, nothing in this section or part shall be construed to create a right of action on behalf of an individual student or class of students for the failure of a particular State educational agency or local educational agency employee to be highly qualified.

"(F) DEFINITION FOR PURPOSES OF THE ESEA.—A teacher who is highly qualified under this paragraph shall be considered highly qualified for purposes of the Elementary and Secondary Education Act of 1965."

Report language: "The Conference Committee intends to clarify that, for the purposes of the Elementary and Secondary Education

Act of 1965 and the Individuals with Disabilities Education Act, a special education teacher who provides only consultative services to a highly qualified teacher (as such term is defined in section 9101 (23) of the Elementary and Secondary Education Act of 1965) should be considered a highly qualified special education teacher if such teacher meets the requirements of section 602(10)(A) of this legislation. Such consultative services do not include instruction in core academic subjects, but may include adjustments to the learning environment, modifications of instructional methods, adaptation of curricula, the use of positive behavioral supports and interventions, or the use of appropriate accommodations to meet the needs of individual children.''

Report language: ''Under the Elementary and Secondary Education Act of 1965, each state was charged with developing a 'high, objective, uniform state standard of evaluation' (HOUSSE) to provide teachers with another avenue through which to demonstrate the subject mastery requirements of the 'highly qualified' definition. Some states have developed HOUSSE standards for special education teachers. With the passage of this legislation, the Conference committee intends to clarify that under the Elementary and Secondary Education Act of 1965, states may allow special education teachers to utilize a HOUSSE which applies to all teachers or adapt a HOUSSE to accommodate special education teachers, including a HOUSSE that consists of a single evaluation to cover multiple subjects. Such adaptations or accommodations must not, however, establish a lesser standard for the content knowledge requirements of special education teachers compared to the standards for general education teachers. The Conference committee encourages all states to explore these options.''

Report language: ''It is the conferees' intent that any new special education teacher teaching one core academic subject shall demonstrate competency by passing a rigorous State academic subject test in that subject, or successful completion in that subject of an academic major, a graduate degree, coursework equivalent to an undergraduate academic major, or advanced certification or credentialing. Any special education teacher who is not new to the profession and who teaches one core academic subject must, by the end of the 2005–2006 school year, pass a rigorous State academic subject test in that subject, complete in that subject an academic major, a graduate degree, coursework equivalent to an undergraduate academic major, or advanced certification or credentialing, or complete a high objective uniform State standard of evaluation.''

Report language: ''The bill requires special education teachers to have obtained full State certification as special education teachers, but it does not prevent general education and other teachers who are highly qualified in particular subjects from providing instruction in core academic subjects to children with disabilities in those subjects. For example, a reading specialist who is highly qualified in reading instruction, but who is not certified as a special education teacher, would not be prohibited by this provision from providing reading instruction to children with disabilities.''

Report language: ''In special cases where such children also receive instruction in one or more core academic subjects at an in-

structional level above the basic elementary school curriculum, the Conferees fully intend for such instruction to be provided by a highly qualified teacher demonstrating a high level of competency in each of the core academic subjects taught. Such instruction could be provided by a highly qualified teacher in the general education classroom or by such teacher providing instruction in a self-contained classroom. Such competency shall be demonstrated consistent with the requirements of this section and with those of section 9101 of the Elementary and Secondary Education Act of 1965.''

(22) There are no significant differences between the House bill and the Senate amendment.

LC

(23) The Senate amendment, but not the House bill, adds this new definition.

HR

(24) There are no significant differences between the House bill and the Senate amendment.

LC

(25) There are no significant differences between the House bill and the Senate amendment. Both the House bill and the Senate amendment include this definition of outlying area.

LC

(26) The Senate amendment, but not the House bill, includes extensive language regarding the different types of people that can be deemed a parent of a child with a disability.

SR with an amendment to read as follows:

> ''(22) PARENT.—The term 'parent' means—
>
> ''(i) a natural, adoptive or foster parent of a child (unless prohibited by State law);
>
> ''(ii) a guardian (but not the State if the child is a ward of the State);
>
> ''(iii) an individual acting in the place of a natural or adoptive parent, including a grandparent, stepparent or other relative with whom the child lives or an individual who is legally responsible for the child's welfare; or
>
> ''(iv) except as used in sections 615(b)(2) and 639(a)(5), an individual assigned under either of those sections to be a surrogate parent.''

(27) The House bill and Senate amendment are largely similar except the Senate amendment includes an exception regarding certain medical devices and the Senate amendment includes interpreting services, school health services, and travel training instruction as listed related services. The Senate amendment, but not the House bill, includes an exception for medical devices that are surgically implemented or its replacement.

HR with an amendment:

Strike ''school health services'' and insert ''school nurse services designed to enable the child to receive FAPE as described in the IEP'' and strike ''travel training instruction,''.

Report language: ''The Conferees intend that 'orientation and mobility services' include travel training instruction.''

(28) There are no significant differences between the House bill and the Senate amendment.

LC

(29) There are no differences between the House bill and the Senate amendment.

LC

(30) There are no significant differences between the House bill and the Senate amendment.

LC

(31) The House bill focuses on ''academic and developmental achievement'' and the Senate amendment focuses on ''academic and functional achievement.''

HR

(32) The Senate amendment, but not the House bill, includes these definitions for military children, homeless children, and wards of the State.

SR with an amendment to read as follows:

> ''(34) HOMELESS CHILDREN.—The term 'homeless children' has the meaning given the term 'homeless children and youths' in section 725 of the McKinney-Vento Homeless Assistance Act.
>
> ''(35) WARD OF THE STATE.—
>
> ''(A) The term 'ward of the State' means a child who, as defined by the State where the child resides, is a foster child, a ward of the State or is in the custody of a public child welfare agency; and
>
> ''(B) Not withstanding subparagraph (A), the term does not include a foster child who has a foster parent covered by the definition of ''parent'' in section 602 (22).''

(33) There are no differences between the House bill and the Senate amendment.

LC

(34) Neither the House bill nor Senate amendment make changes to current law.

HR

(35) The House bill includes this technical language as part of its structure to keep section 604 as current law. The Senate amendment replaces the entire existing law.

LC

(36) There are no differences between the House bill and the Senate amendment.

LC

(37) The House bill, but not the Senate amendment, provides examples of jobs in which recipients of funds should try to employ people with disabilities.

HR

(38) There are minor wording differences between the House bill and the Senate amendment.

HR

(39) The House bill requires a public comment period of 60 days while the Senate amendment limits the comment period to 90 days.

SR with an amendment:

Strike "60" and insert "75".

(40) There are minor wording differences between the House bill and the Senate amendment, but the content is the same.

HR

(41) The House and Senate have the same language, but the Senate amendment places this in (f) (see note 43).

HR

(42) The House bill and Senate amendment are similar with minor wording differences, except that the Senate amendment and not the House bill includes a provision that any letters are provided as guidance and are not legally binding.

HR

(43) The House and Senate have similar language, but the House bill places this in (e) (see note 41).

HR

(44) The House bill includes this technical language as part of its structure to keep parts of current law. The Senate amendment replaces the entire existing law.

LC

(45) The House bill and Senate amendment contain similar provisions regarding State support and facilitation of regulations. But the House bill, not the Senate amendment, requires States to minimize the number of regulations under the Act while the Senate amendment, not the House bill, requires States to identify in writing any rule, regulation, or policy that is generated by the State, not the Act or its regulations.

HR with an amendment:

Insert paragraph (2) of House bill.

(46) The Senate amendment allows up to 15 States to participate in a paperwork reduction pilot. The House bill allows the participation of up to 10 States in note 263.

HR

(47) The House bill contains a request for GAO to report on the paperwork burden of the Act every 2 years, with an initial 2 year deadline.

HR

(48) The House bill also includes requests for GAO to report on disability definitions in the States, distance learning for professional development programs, and the impact of the Act on limited English proficient students. The Senate amendment does not include these reports.

HR

(49a) The Senate amendment, but not the House bill, specifies that the Freely Associated States shall continue to be eligible for competitive grants administered by the Secretary.

HR

Part B

(49) The House bill includes this technical language as part of its structure to keep parts of current law. The Senate amendment replaces the entire existing law.

LC

(50) There are no differences between the House bill and the Senate amendment.

LC

(51) The House bill places a cap on the maximum grant that is based on the number of students in the State. The Senate amendment bases the formula for the maximum total cap on the number of children with disabilities in the 02–03 school year and adjusts the formula by the change in the population and poverty rates in the State.

SR with an amendment:

Rewrite (a)(2) to read as follows:

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

"(A) for fiscal years 2005 and 2006 is—

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

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

"(II) aged 6 through 21; multiplied by—

"(ii) 40 percent of the APPE in public elementary and secondary schools in the United States; and

"(B) for fiscal year 2007 and subsequent fiscal years—
"(i) the number of children with disabilities in the 2004–2005 school year in the State who received special education and related services—
"(I) aged 3 through 5 if the State is eligible for a grant under section 619; and
"(II) aged 6 through 21; multiplied by—
"(ii) 40 percent of the APPE in public elementary and secondary schools in the United States; adjusted by;
"(iii) the rate of annual change in the sum of—
"(I) 85 percent of such State's population described in subsection (d)(3)(A)(i)(II); and
"(II) 15 percent of such State's population described in subsection (d)(3)(A)(i)(III)."

(52) The Senate amendment includes the Freely Associated States as eligible entities under this Act. The House bill does not.

HR

(53) There are no differences between the House bill and Senate amendment.

LC

(54) The Senate amendment allows funds to be allocated to the Freely Associated States and for studies and evaluations under Part B. The FAS's are not eligible entities under the House bill, and the House bill allocates funds for studies and evaluations in Part D.

HR with amendment:

Insert:

"(i) TECHNICAL ASSISTANCE.—
"(A) IN GENERAL.—The Secretary may reserve not more than ½ of 1 percent of the amounts appropriated under this Part for each fiscal year to provide technical assistance activities authorized under section 616.
"(B) MAXIMUM AMOUNT.—The maximum amount the Secretary may reserve under (A) for any fiscal year is $25,000,000, increased by the cumulative rate of inflation since fiscal year 2004."

(55) The House bill and Senate amendment have different language to recalculate the 1999 base amount if a State that served 3–5 year olds in that year does not serve them in a subsequent year.

HR

(56) There are minor technical differences between the House and Senate amendments, but the content is the same.

HR

(57) There are minor technical and wording differences between the House and Senate amendments, but the content is the same.

HR

(58) There are no differences between the House bill and Senate amendment.

HR/LC

(59) There are minor technical and wording differences between the House and Senate amendments, but the content is the same.

HR/LC

(60) The House bill limits the amount of funds for State-level activities to 25% of its FY 97 State grant, adjusted by inflation or the percent increase of the Federal appropriation, and allows these funds to be used without regard to commingling or supplantation requirements. The Senate amendment allows States in FY 04 and 05 to reserve 10% off their State grant for State-level activities, after reserving funds for administration. After FY 05, this figure is then increased by the inflation rate. Small States are allowed to reserve 12% until FY 05, and then adjust that level by inflation (see note (62)). Both House and Senate allow commingling. See note (66).

HR

(61) The House bill allows States to use up to 20% of its State set-aside for administration, or $750,000. The Senate amendment allows States to use their FY 03 level for administration, or $800,000, adjusted for inflation each year.

The Senate amendment, but not the House bill, also requires States to certify that they meet the requirements of designating financial responsibilities for services.

SR with an amendment to read as follows:

> "(1) STATE ADMINISTRATION.—
>
> "(A) IN GENERAL.—For the purpose of administering this part, including paragraph (3), section 619, and the coordination of activities under this part with, and providing technical assistance to, other programs that provide services to children with disabilities—
>
> "(i) each State may reserve for each fiscal year not more than the maximum amount the State was eligible to reserve for State administration under this part for fiscal year 2004 or $800,000 (adjusted in accordance with subparagraph (B)), whichever is greater; and
>
> "(ii) each outlying area may reserve for each fiscal year not more than 5 percent of the amount the outlying area receives under subsection (b) for the fiscal year or $35,000, whichever is greater.

"(B) CUMULATIVE ANNUAL ADJUSTMENTS.—For each fiscal year beginning with fiscal year 2005, the Secretary shall cumulatively adjust (i) the maximum amount the State was eligible to reserve for State administration under this part for fiscal year 2004, and (ii) $800,000, by the rate of inflation as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

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

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

(62) The Senate amendment allows States in FY 04 and 05 to reserve 10% off their State grant for State-level activities, after reserving funds for administration. After FY 05, this figure is then increased by the inflation rate. Small States are allowed to reserve 12% until FY 05, and then adjust that level by inflation. The House bill limits the amount of funds for State-level activities to 25% of its FY 97 State grant, adjusted by inflation or the percent increase of the Federal appropriation, and allows these funds to be used without regard to commingling or supplantation requirements. See note (66).

SR with an amendment to read as follows:

"(2) OTHER STATE-LEVEL ACTIVITIES.—

"(A) STATE-LEVEL ACTIVITIES.—

"(i) IN GENERAL.—For the purpose of carrying out State-level activities, each State may reserve for each of the fiscal years 2005 and 2006 not more than 10 percent from the amount of the State's allocation under subsection (d) for fiscal year 2005 and 2006, respectively. For fiscal year 2007 and each subsequent fiscal year, the State may reserve the maximum amount the State was eligible to reserve under the preceding sentence for fiscal year 2006 (adjusted by the cumulative rate of inflation since fiscal year 2006 as measured by the percentage increase, if any in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

"(ii) SMALL STATE ADJUSTMENT.—Notwithstanding clause (i), in the case of a state for which the maximum amount reserved for State administration is not greater than $850,000 the State may reserve for the purpose of carrying out State-level activities for each of the fiscal years 2005 and 2006, not more than 10.5 percent from the amount of the State's allocation under subsection (d) for fiscal year 2005 and 2006, re-

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

(63) The Senate amendment establishes a list of required activities that States must support with their State-level funds to support. The House bill has no similar requirement.

SR with an amendment to read as follows:

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

''(i) For monitoring, enforcement and complaint investigation.

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

(64) The Senate amendment establishes a list of authorized activities that States may conduct with State-level funds. The House bill includes Senate activities (i), (ii), (vii), and (viii) in note 67 and adds monitoring and complaint investigation, mediation and voluntary binding arbitration, support to meet State goals in 612(a)(15), prereferral services, and subgrants to LEAs designated as in need of improvement due to the scores of students with disabilities. Activities (iii)–(vi), (ix), and (x) in the Senate amendment are not included in the House bill.

SR with an amendment to read as follows:

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

''(i) For support and direct services, including technical assistance, personnel preparation, and professional development and training.

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

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

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

''(v) To support the use of technology, including universally designed technology and assistive technology devices, to maximize accessibility to the general curriculum for children with disabilities.

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

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

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

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

"(x) To support the development and provision of appropriate accommodations for children with disabilities, or the development and provision of alternate assessments that are valid and reliable for assessing the performance of children with disabilities, in accordance with sections 1111(b) and 6111 of the Elementary and Secondary Education Act of 1965.

"(xi) To provide technical assistance to schools and local educational agencies, and direct services, including supplemental educational services, to students with disabilities, in schools or local educational agencies identified as being in need of improvement under section 1116 of the Elementary and Secondary Education Act of 1965 on the basis, in whole, of the assessment results of the disaggregated subgroup of students with disabilities, including providing professional development to special and regular education teachers, that teach students with disabilities, based on scientifically based research to improve educational instruction, in order to improve academic achievement to meet the goals in section 1111."

(65) The House bill allows States to reserve up to 40% of its state-level funds to establish a fund for high cost special education services. The Senate requires States to reserve 2% of their State grant (after reserving funds for administration) to establish a LEA risk pool and distribute those funds to LEAs. The Senate requires the State to pay 75% of the costs that exceed 4 times the national APPE for every student in each LEA that applies. This amount is ratably reduced if there are not sufficient funds. The Senate amendment requires LEA applications to ensure that the State funds do not supplant State medicaid payments for appropriate services. The Senate amendment also allows pre-existing State programs to override the required elements established in the Senate amendment.

HR with an amendment to read as follows:

"(3) LOCAL EDUCATIONAL AGENCY RISK POOL.—

"(A) IN GENERAL.—For the purpose of assisting local educational agencies (and charter schools that are local

educational agencies, and consortia of local educational agencies) in addressing the needs of high-need children, each State shall reserve for each fiscal year 10 percent from the amount of the State's reservation for state-level activities under paragraph (2)(A), to—

"(i) establish a high-cost fund, but only during the initial fiscal year of the fund;

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

"(iii) support innovative and effective ways of cost-sharing by the State, by a local educational agency, or among a consortia of local educational agencies, as determined by the State in coordination with representatives from local educational agencies (including charter schools that are local educational agencies, and consortia of local educational agencies).

"(B) LIMITATION ON USES OF FUNDS.—

"(i) The funds used pursuant to subparagraph (A)(i) to establish a high-cost fund shall not exceed five percent of the reservation in the initial fiscal year of the fund.

"(ii) The funds used pursuant to subparagraph (A)(iii) to support the innovative and effective ways of cost-sharing among a consortia of local educational agencies shall be not more than five percent of the reservation.

"(C) STATE PLAN FOR HIGH-COST FUND.—

"(i) The State educational agency shall establish a plan, including the State's definition of a 'high need' child with a disability, which is developed in consultation with local educational agencies (including charter schools that are local educational agencies, and consortia of local educational agencies) within 90 days of the reservation of funds under this subsection.

"(ii) Such plan shall—

"(I) Establish, in coordination with representatives from local educational agencies (including charter schools that are local educational agencies, and consortia of local educational agencies), the definition of a 'high need' child with a disability that, at a minimum—

"(aa) addresses the financial impact the specific 'high need' child with a disability has on that child's local educational agency budget, and

"(bb) ensures that the cost of any such 'high need' child with a disability is greater than three times the average per pupil expenditure (as defined in ESEA) in a local educational agency during the preceding school year for an elementary or secondary school student, as may be appropriate;

"(II) Establish eligibility criteria for the participation of local educational agencies (including charter schools that are local educational agencies, and consortia of local educational agencies) that, at a minimum, takes into account the number and percentage of 'high need' children with disabilities in a local educational agency;

"(III) Develop a funding mechanism that provides distributions each fiscal year to eligible local educational agencies (including charter schools that are local educational agencies, and consortia of local educational agencies) that meet the criteria developed by the State under subclause (II); and

"(IV) Establish an annual schedule by which the State educational agency shall make its distributions from the fund each fiscal year.

"(iii) The State shall make its final plan publicly available at least 30 days prior to the beginning of the school year, including dissemination of such information on the State website.

"(D) DISBURSEMENTS FROM THE HIGH-COST FUND.—

"(i) IN GENERAL.—Each State educational agency shall make all annual disbursements from the fund established under subparagraph (A)(i) in accordance with the plan published pursuant to subparagraph (C).

"(ii) USE OF DISBURSEMENTS.—Each State educational agency shall make annual disbursements to eligible local educational agencies in accordance with its plan under (C)(ii).

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

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

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

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

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

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

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

"(H) SPECIAL RULE FOR RISK POOL AND HIGH-NEED ASSISTANCE PROGRAMS IN EFFECT AS OF JANUARY 1, 2004.—Notwithstanding the provisions of subparagraphs (A) through (G), a State may use funds reserved pursuant to this paragraph for implementing a placement neutral cost-sharing and reimbursement program of high-need, low-incidence, catastrophic, or extraordinary aid to local educational agencies that provides services to students eligible under this part based on eligibility criteria for such programs that were created not later than January 1, 2004 and are currently in operation, provided such program meets the minimum definition of a 'high need' child with a disability in subparagraph (C)(2)(I).

"(I) REMAINING FUNDS.—Funds reserved under subparagraph (A) in any fiscal year but not expended in that fiscal year pursuant to subparagraph (D) or subparagraph (F) shall be allocated to local educational agencies in the same manner as funds are allocated to local educational agencies under subsection (f)."

(66) The Senate amendment allows State-level funds to be used without regard to commingling or supplantation requirements. See note (60), which includes identical language from the House bill.

HR with an amendment:

Strike ", and (3)" and insert "and" before (2) in paragraph (4).

(67) The House bill establishes a list of authorized activities that States may conduct with State-level funds. The Senate amendment only includes House activities (A), (D), (F), and (H) in note 64 and adds positive behavioral supports and mental health services, use of technology, transition programs, alternative programming for expelled students, and support for appropriate accommodations and alternate assessments.

HR

(68) The House bill, but not the Senate amendment, requires States to use any increase in State-level funds that exceeds the rate of inflation to be used to provide subgrants to LEAs designated as in need of improvement due to the scores of students with disabilities to improve results for students with disabilities in those LEAs.

HR

(69) There are minor wording differences between the House and Senate amendments, and the House bill includes a requirement that the report include information on the percentage of funds distributed by formula to LEAs.

HR

(70) The Senate amendment allows States to use State-level funds under Part B and the 619 program to support a State policy to allow children to remain in Part C instead of moving to the 619 program until kindergarten. The House bill does not include this provision.

HR

(71) There are minor wording differences between the House and Senate amendments, but the content is the same.

LC

(72) There are minor wording differences between the House and Senate amendments. Note: the reference to subsection (e) in (2) of the House bill should be a reference to subsection (d).

LC

(73) There are no differences between the House bill and Senate amendment.

LC

(74) The House bill places a cap on the amount of funds for State-level activities to the FY 03 level, except that the amount may increase by the rate of inflation for the purpose of making subgrants to LEAs designated as in need of improvement due to the assessment scores of students with disabilities.

HR with an amendment:

Add the following language to section 611(e) as paragraph (5):

"(5) SPECIAL RULE FOR INCREASED FUNDS.—The State may use funds it reserves as a result of inflationary increases under section 611(e)(1)(B) to carry out activities authorized by sections 611(e)(2)(C)(i), (iii), (vii), and (viii)."

(75) There are no differences between the House bill and Senate amendment.

LC

(76) The House bill and the Senate amendment are the same, except the House bill includes a requirement that the BIA distribute 80% of its funds to BIA schools by July 1 of the fiscal year and 20% of the funds by September 30 of the fiscal year.

SR

(77) There are minor wording differences between the House bill and Senate amendment, but the content is the same.

LC

(78) There are no significant differences between the House and Senate amendments, except the House bill requires an annual report from the Secretary of the Interior while the Senate amendment requires a biennial report.

HR

(79) There are minor wording differences between the House and Senate amendments but the content is the same.

LC

(80) There are no significant differences between the House and Senate amendments, except for differences in section numbers between the two bills.

LC

(81) There are no significant differences between the House and Senate amendments, except for differences in section numbers between the two bills.

LC

(82) The House bill and Senate amendment establish slightly different patterns toward reaching the 40% goal.

HR

(83) There are no differences between the House bill and Senate amendment.

LC

(84) The House bill requires State plans to "reasonably demonstrate" that the plan meets the requirements of the law. The Senate amendment requires States to "provide assurances" that the plan meets the requirements of the law.

HR

(85) The House bill includes this technical language as part of its structure to keep section 612(a)(12) as current law. The Senate amendment replaces the entire existing law.

LC

(86) There are no differences between the House bill and Senate amendment.

LC

(87) The Senate amendment exempts States from FAPE requirements if the State provides services to children through the part C program that are eligible for the 619 program. The House bill has similar language as part C.

HR

(88) The Senate amendment, but not the House bill, includes language regarding children with disabilities who are homeless or are wards of the State.

HR

(89) The House bill and Senate amendment have the same definition of least restrictive environment. The House bill requires that if a State distributes funds through a mechanism based on the child's setting, such formula cannot result in violations of the LRE requirements. The House bill also requires States to modify fund-

ing mechanisms that do not comply with that requirement. The Senate amendment prohibits a funding mechanism that violates the LRE requirements and requires States to revise any funding mechanism that violates that requirement.

HR

Report language: "The conferees are concerned that some States continue to use funding mechanisms that provide financial incentives for, and disincentives against, certain placements. It is the intent of the changes to Section 612(a)(5)(B) to prevent State funding mechanisms from affecting appropriate placement decisions for students with disabilities.

"The law requires that each public agency shall ensure that a continuum of alternative placements (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions) is available to meet the needs of children with disabilities for special education and related services. State funding mechanisms are in place to ensure funding is available to support the requirements of this provision, not to provide an incentive or disincentive for placement. Part B's LRE principle is intended to ensure that a child with a disability is served in a setting where the child can be educated successfully in the least restrictive environment. Through the Individual Education Plan (IEP) process the Team shall make placement decisions that are individually determined on the basis of each child's abilities and needs. The new provisions in this section were added to prohibit States from maintaining funding mechanisms that violate appropriate placement decisions, not to require States to change funding mechanisms that support appropriate placements decisions."

(90) The House bill and Senate amendment are substantially the same except the House bill, but not the Senate amendment, requires that children with disabilities also be evaluated in accordance with section 614(c).

SR

(91) The House bill and Senate amendment are similar, with the Senate amendment adding a clause referring to the Senate language allowing a child to stay in the Part C program until kindergarten, instead of moving to the Section 619 program at age 3.

HR

(92) The House bill and Senate amendment include similar requirement, except the Senate amendment requires a written explanation by LEAs when they disagree with private school officials, a written affirmation from private school officials about consultation, and the provision of direct services (to the extent practicable) private schools. Also, the Senate amendment does not include the supplement, not supplant language included in the House bill. The House bill also contains specific sections regarding thorough child find when calculating the proportionate share of Federal funds and regarding services to be provided by employees of a public agency or through a contract by a public agency.

SR with an amendment to read as follows:

"(10) CHILDREN IN PRIVATE SCHOOLS.—

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

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

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

"(II) In calculating the proportionate share of Federal funds, the local educational Agency, after timely and meaningful consultation with representatives of private schools as described in clause (iii), shall conduct a thorough and complete child-find process to determine the number of parentally-placed children with disabilities attending private schools located in the district.

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

"(IV) State and local funds may supplement and in no case shall supplant the proportionate amount of Federal funds required to be expended under this paragraph.

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

"(ii) CHILD-FIND REQUIREMENT.—

"(I) IN GENERAL.—The requirements of paragraph (3) of this subsection (relating to child find) shall apply with respect to children with disabilities in the State who are enrolled in private, including religious, elementary and secondary schools.

"(II) EQUITABLE PARTICIPATION.—The child-find process shall be designed to ensure the equitable participation of parentally-placed private

school children and an accurate count of such children.

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

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

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

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

"(I) the child-find process and how parentally-placed private school children suspected of having a disability can participate equitably, including how parents, teachers, and private school officials will be informed of the process;

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

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

"(IV) how, where, and by whom special education and related services will be provided for parentally-placed private school children, including a discussion of types of services, including direct services and alternate service delivery mechanisms, how such services will be apportioned if funds are insufficient to serve all children, and how and when these decisions will be made; and

"(V) how, if the local educational agency disagrees with the views of the private school officials on the provision of services or the types of

services, whether provided directly or through a contract, the local educational agency shall provide to the private school officials a written explanation of the reasons why the local educational agency chose not to provide services directly or through a contract.

"(iv) WRITTEN AFFIRMATION.—When timely and meaningful consultation as required by this section has occurred, the local educational agency shall obtain a written affirmation signed by the representatives of participating private schools, and if such representatives do not provide such affirmation within a reasonable period of time, the local educational agency shall forward the documentation of the consultation process to the State educational agency.

"(v) COMPLIANCE.—

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

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

"(vi) PROVISION OF EQUITABLE SERVICES.—

"(I) DIRECTLY OR THROUGH CONTRACTS.—The provision of services under this Act shall be provided—

"(aa) by employees of a public agency; or

"(bb) through contract by the public agency with an individual, association, agency, organization, or other entity.

"(II) SECULAR, NEUTRAL, NONIDEOLOGICAL.—Special education and related services provided to children with disabilities attending private schools, including materials and equipment, shall be secular, neutral, and nonideological.

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

provided in this Act, and a public agency shall administer the funds and property.

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

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

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

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

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

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

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

"(I) if—

"(aa) at the most recent IEP meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP Team that they were rejecting the placement proposed by the public agency to provide a free appropriate public

education to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or

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

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

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

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

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

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

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

"(cc) compliance with clause (iii)(I) would likely result in physical harm to the child; and

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

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

"(bb) compliance with clause (iii)(I) would likely result in serious emotional harm to the child."

(93) There are no differences between the House bill and Senate amendment.

SR with an amendment:

Add an (11)(A)(iii):

"(iii) in carrying out this part with respect to homeless children and youth, the requirements of subtitle B of the McKinney-Vento Homeless Assistance Act are met."

(94) The House bill did not make any changes to current law in this section. The Senate amendment includes minor technical changes to current law regarding authority to claim reimburse-

ment, methods of determining responsibility, and updated section numbers.

HR

(95) The House bill includes this technical language as part of its structure to keep section 612(a)(12) as current law. The Senate amendment replaces the entire existing law.

LC

(96) There are no differences between the House bill and Senate amendment.

LC

(97) The House bill requires the State plan to include standards to ensure that all special education teachers are highly qualified in core academic subjects; that standards for all related services personnel and paraprofessionals are set to ensure the providers are qualified to provide services, and that the SEA develops innovative strategies for professional development. The Senate amendment requires all special education teachers to be highly qualified by the end of the 2006–2007 school year, requires States to inform parents about the qualifications of the teachers, requires States to adopt policies to recruit, train, and retain highly qualified personnel, and establishes that those requirements do not create a right to action.

HR with an amendment:

Strike references to ''standards'' and replace with ''qualifications'' throughout and strike ''not later than the end of the 2006–2007 school year.'' in (C)(i) and in (ii)(II).

Report language: ''Conferees are cognizant of the difficulties that some local educational agencies have experienced in recruiting and retaining qualified related services providers and have provided greater flexibility to State educational agencies to establish appropriate personnel standards.

''Conferees are concerned that language in current law regarding the qualifications of related services providers has established an unreasonable standard for State educational agencies to meet, and as a result, has led to a shortage of the availability of related services for students with disabilities.

''Conferees intend for State educational agencies to establish rigorous qualifications for related services providers to ensure that students with disabilities receive the appropriate quality and quantity of care. State educational agencies are encouraged to consult with local educational agencies, other State agencies, the disability community, and professional organizations to determine the appropriate qualifications for related service providers, including the use of consultative, supervisory, and collaborative models to ensure that students with disabilities receive the services described in their individual IEP's.''

(98) The House bill and Senate amendment are the same except the Senate amendment adds a requirement that States establish performance goals for graduation rates.

HR with an amendment:

Insert "which may include elements of the reports required under section 1111(h) of the Elementary and Secondary Education Act of 1965." at the end of subparagraph (C).

(99) The House bill and Senate amendment include similar requirements except the Senate amendment adds requirements for alternate assessments, reporting requirements relating to students with disabilities taking alternate assessments, and requirements regarding universal design. Both the House bill and Senate amendment require that alternate assessments have been developed and conducted.

HR with an amendment:

Strike "accountability systems" throughout.

(100) The House bill requires States to develop voluntary binding arbitration system. The Senate amendment does not include this requirement.

HR

(101) There are no significant differences between the House bill and Senate amendment.

HR/LC

(102) There are no significant differences between the House bill and Senate amendment.

HR/LC with an amendment:

Strike paragraph (20) and insert the following, and renumber subsequent paragraphs:

> "(20) RULE OF CONSTRUCTION.—In complying with paragraphs 612(a)(18) and (19), a state may not use funds paid to it under this part to satisfy state-law mandated funding obligations for local educational agencies, including funding based on student attendance or enrollment, or inflation."

(103) There are no significant differences between the House bill and Senate amendment.

HR/LC

(104) The House bill requires the panel to be comprised of a majority of individuals with disabilities or parents of children with disabilities ages birth through 26. The Senate amendment requires the panel to be comprised of a majority of individuals with disabilities ages birth through 26 or parents of children with disabilities ages birth through 26.

The Senate amendment, but not the House bill, adds requirements of the types of parents that must be on the panel.

The Senate amendment, but not the House bill, adds additional parties that must be represented on the panel.

SR with an amendment:

Strike clause (v) from the House bill and insert clause (v) from the Senate amendment. Insert ''(xi) a representative from the State child welfare agency responsible for foster care.''

(105) The House bill, but not the Senate amendment, requires suspension and expulsion rates to be disaggregated by race and ethnicity.

SR

(106) The House bill includes this technical language as part of its structure. The Senate amendment replaces the entire existing law.

HR/LC

(107) The House bill and Senate amendment include similar language requiring States to adopt the national instructional materials accessibility standard and requiring States to modify their contracts to obtain accessible materials.

The House bill, but not the Senate amendment, has a definition of instructional materials.

The Senate amendment, not the House bill, includes a requirement for the establishment of a national center for instructional materials.

HR with an amendment as follows:

Strike ''675(a)'' and insert ''674(d)(3)(A)'' in subparagraph (A).

HR with an amendment as follows:

Insert subparagraph (B) to read as follows, and redesignate the other paragraphs accordingly:

> ''(B) RIGHTS OF STATE EDUCATIONAL AGENCY.—Nothing in this paragraph shall be construed to require any State educational agency to participate in the National Instructional Materials Access Center. If a State educational agency chooses not to participate, such agency shall provide an assurance to the Secretary that it will provide instructional materials to blind persons or other persons with print disabilities in a timely manner.''

HR with an amendment to strike the new (C) and insert the following:

> ''(C) PREPARATION AND DELIVERY OF FILES.—If a State educational agency chooses to participate in the National Instructional Materials Access Center, not later than 2 years after the date of enactment [of the Individuals with Disabilities Education Improvement Act of 2004—not sure we need since we have an enactment clause?], such agency, as part of any print instructional materials adoption process, procurement contract, or other practice or instrument used for purchase of print instructional materials, enters into a written contract with the publisher of the print instructional materials to—

"(i) prepare, and on or before delivery of the print instructional materials, provide to the National Instructional Materials Access Center, established pursuant to section 674(d), electronic files containing the contents of the print instructional materials using the Instructional Materials Accessibility Standard; or

"(ii) purchase instructional materials from a publisher that are produced in or may be rendered in the specialized formats described in section 674(d)(3)(C)."

(108) The House bill, but not the Senate amendment, requires States to adopt policies to prevent overidentification by race or ethnicity.

SR with an amendment:

Insert "(c)" after "618" and strike "the identification of children as".

(109) The House bill, but not the Senate amendment, requires States to adopt policies regarding psychotropic medication.

HR with an amendment to read as follows:

"(25) Prohibition on mandatory medication.

"(a) IN GENERAL.—The State educational agency shall prohibit State and local educational personnel from requiring a child to obtain a prescription for substances covered by the Controlled Substances Act as a condition of attending school, receiving an evaluation under section 614 (a) and (c) or receiving services.

"(b) RULE OF CONSTRUCTION.—Nothing in subsection (a) shall be construed to create a Federal prohibition against teachers and other school personnel consulting or sharing classroom-based observations with parents or guardians regarding a student's academic and functional performance, or behavior in the classroom or school, or regarding the need for evaluation for special education or related services under section 612(a)(3)."

(110) The House bill includes this technical language as part of its structure. The Senate amendment replaces the entire existing law.

HR/LC

(111) There are no differences between the House bill and Senate amendment.

HR/LC

(112) The House bill includes this technical language as part of its structure. The Senate amendment replaces the entire existing law.

HR/LC

(113) There are no significant differences between the House bill and Senate amendment.

LC

(114) The House bill includes this technical language as part of its structure. The Senate amendment replaces the entire existing law.

HR/LC

(115) There are no differences between the House bill and Senate amendment.

LC

(116) The House bill includes this technical language as part of its structure. The Senate amendment replaces the entire existing law.

LC

(117) There are no differences between the House bill and Senate amendment.

LC

(118) The House bill makes no changes to current law in this section. The Senate amendment largely follows current law, except that the Senate amendment makes changes to require the Secretary to determine whether the State has failed or is unwilling to provide for the equitable participation of private school students.

HR

(119) The House bill includes this technical language as part of its structure. The Senate amendment replaces the entire existing law.

LC

(120) The House bill requires the LEA to "reasonably demonstrate" that the LEA meets the conditions, while the Senate amendment requires the LEA to "provide assurances" that the LEA meets the conditions.

HR

(121) There are no differences between the House bill and Senate amendment.

LC

(122) The House bill allows LEAs to treat 20% of the increase from one year to the next as local funds to be used for educational programs authorized under ESEA, unless the SEA determines that the LEA has not provided FAPE to its students with disabilities. The Senate amendment allows LEAs to treat 8% of their funds as local funds each year. The Senate amendment allows LEAs to treat not more than 40% of their funds as local funds in any year that the maximum amount for State grants is provided under 611. The Senate amendment requires any LEA that exercises this authority to include that in its calculation of funds reserved for prereferral services.

SR with an amendment to read as follows:

"(C) ADJUSTMENT TO LOCAL FISCAL EFFORT IN CERTAIN FISCAL YEARS.—

"(i) AMOUNTS IN EXCESS.—Notwithstanding clauses (ii) and (iii) of subparagraph (A), for any fiscal year for which the allocation received by a local educational agency under section 611(f) exceeds the amount the local educational agency received for the previous fiscal year, the local educational agency may reduce the level of expenditures otherwise required by subparagraph (A)(iii) by not more than 50 percent of the amount of such excess.

"(ii) USE OF AMOUNTS TO CARRY OUT ACTIVITIES UNDER ESEA.—If a local educational agency exercises the authority under clause (i), the agency shall use an amount of local funds equal to the reduction in expenditures under clause (i) to carry out activities authorized under the Elementary and Secondary Education Act of 1965.

"(iii) STATE PROHIBITION.—Notwithstanding clause (i), if a State educational agency determines that a local educational agency is unable to establish and maintain programs of free appropriate public education that meet the requirements of subsection (a) or the State educational agency has taken action against the local educational agency under section 616, the State educational agency shall prohibit the local educational agency from reducing the level of expenditures under clause (i) for that fiscal year.

"(iv) SPECIAL RULE.—The amount of funds expended by a local educational agency under subsection (f) shall count toward the maximum amount of expenditures such local educational agency may reduce under clause (i)."

Report language: "The Conferees intend for school districts to have meaningful flexibility to use local funds that are generated from their reduction in the maintenance of effort. The Conferees do not intend that school districts have to use these local funds for programs exclusively authorized under the Elementary and Secondary Act of 1965. The conferees recognize that most state and local education programs are consistent with the broad flexibility that is provided in section 5131 of the Elementary and Secondary Education Act of 1965.

"The Conferees intend that in any fiscal year in which the local educational agency or State educational agency reduces expenditures pursuant to section 613(a)(2)(C) or section 613(j), the reduced level of effort shall be considered the new base for purposes of determining the required level of fiscal effort for the succeeding year."

(123) The Senate amendment, but not the House bill, allows these Federal funds to be treated as local funds in calculating local shares under Medicaid.

The Senate amendment also requires LEAs to report to SEAs on the amount of funds treated as local funds each year.

SR

(124) The House bill and Senate amendment refer to different sections of ESEA regarding programs of personnel development.

HR

(125) The House bill and Senate amendment include similar allowable uses of funds for LEAs, except the House bill also allows funds to be used for high cost reserve funds and supplemental services provided under ESEA.

HR with an amendment:

Insert subparagraph (C) from House bill.

(126) The House bill and Senate amendment are essentially the same.

HR with an amendment:

Rewrite subparagraph (B) to read as follows:

"(B) provides funds under this part to those charter schools on the same basis as it provides those funds to its other public schools, including proportional distribution based on relative enrollment of children with disabilities, and at the same time as such agency distributes other Federal funds to its other schools, consistent with State's charter school law."

(127) The House bill and Senate amendment include a similar requirement requiring LEAs to use the national instructional materials accessibility standard when purchasing instructional materials.

HR with an amendment to read as follows:

"(6) INSTRUCTIONAL MATERIALS.—

"(A) PURCHASE.—Not later than 2 years after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2004, a local educational agency that chooses to participate in the National Instructional Materials Access Center, such agency, when purchasing print instructional materials, acquires these instructional materials in the same manner as a State educational agency described in section 612(a)(22).

"(B) RIGHTS OF LOCAL EDUCATIONAL AGENCY.—Nothing in this paragraph shall be construed to require any local educational agency to participate in the National Instructional Materials Access Center. If a local educational agency chooses not to participate, such agency shall provide an assurance to the State educational agency that it will provide instructional materials to blind persons or other persons with print disabilities in a timely manner."

(128) There are no significant differences between the House and Senate amendments.

LC

(129) There are no significant differences between the House bill and Senate amendment.

LC

(130) There are no differences between the House bill and Senate amendment.

HR/LC

(131) There are no differences between the House bill and Senate amendment.

LC

(132) There are no differences between the House bill and Senate amendment.

LC

(133) There are no differences between the House bill and Senate amendment.

LC

(134) Using different names and different methods of identifying children as eligible for these activities, both the House bill and Senate amendment allow LEAs to use up to 15% of their funds to provide services to students before they are identified with a disability.

HR with an amendment:

Strike "who do not meet the definition of a child with a disability under section 602(3)" and insert "who have not been identified as needing special education or related services".

(135) The House bill and Senate amendment allow similar activities such as professional development evaluations, and behavioral supports. The Senate amendment also allows LEAs to use funds to develop and implement interagency financing structures.

HR with an amendment:

Strike paragraph (C).

(136) There are no differences between the House bill and Senate amendment.

LC

(137) The House bill and Senate amendment require similar reporting requirements, with the House bill adding a requirement that LEAs report on children served for two years.

SR

Report language: "The Conferees want to ensure that information is provided on the impact that the early intervening services have on children to determine if these activities have reduced the numbers of referrals to special education. Local educational agencies are required to report on the number of students who are served under this activity for two years to determine if the provision of services under this activity reduces the number of overall referrals to special education and related services. The Conferees intend that the two-year period apply to the two years after the child has received services under this activity."

(138) The House bill and Senate amendment allow funds used in the section to be aligned with ESEA activities so long as the IDEA funds supplement, but not supplant, other Federal funds for those activities.

HR with an amendment:

Strike "Certain Projects Under" from heading.

(139) The House bill does not include this GAO study.

SR

(140) There are no differences between the House bill and Senate amendment.

LC

(141) There are no differences between the House bill and Senate amendment.

LC

(142) The Senate amendment, but not the House bill, gives States that are the providers of special education or pay for 80% or more of the non-federal share of special education costs, the same options that LEAs have to treat a certain portion of its IDEA funds if the State adheres to the requirements of the Act.

SR with an amendment to read as follows:

"(j) STATE AGENCY FLEXIBILITY.—

"(1) ADJUSTMENT TO STATE FISCAL EFFORT IN CERTAIN FISCAL YEARS.—For any fiscal year for which the allotment received by a State under section 611 exceeds the amount the State received for the previous fiscal year and if the State in school year 2003–2004 or any subsequent school year pays or reimburses all local educational agencies within the State from State revenue 100 percent of the non-Federal share of the costs of special education and related services, the State educational agency, notwithstanding paragraphs (17) and (18) of section 612(a) and section 612(b), may reduce the level of expenditures from State sources for the education of children with disabilities by not more than 50 percent of the amount of such excess.

"(2) PROHIBITION.—Notwithstanding paragraph (1), if the Secretary determines that a State educational agency is unable to establish, maintain, or oversee programs of free appropriate public education that meet the requirements of this part, or that the State needs assistance, intervention, or substantial intervention under section 616(d)(2)(A), the Secretary shall prohibit the State educational agency from exercising the authority in paragraph (1).

"(3) EDUCATION ACTIVITIES.—If a State educational agency exercises the authority under paragraph (1), the agency shall use funds from State sources, in an amount equal to the amount of the reduction under paragraph (1), to support activities authorized under the Elementary and Secondary Education Act of 1965 or to support need based student or teacher higher education programs.

"(4) REPORT.—For each fiscal year for which a State educational agency exercises the authority under paragraph (1), the State educational agency shall report to the Secretary the amount of expenditures reduced pursuant to such paragraph and the activities that were funded pursuant to paragraph (3).

"(5) LIMITATION.—Notwithstanding paragraph (1), a State educational agency may not reduce the level of expenditures described in paragraph (1) if any local educational agency in the State would, as a result of such reduction, receive less than 100 percent of the amount necessary to ensure that all children with disabilities served by the local educational agency receive a free appropriate public education from the combination of Federal funds received under this title and State funds received from the State educational agency."

(143) The House bill includes this technical language as part of its structure. The Senate amendment replaces the entire existing law.

HR

(144) The House bill and Senate amendment are similar, with the House bill adding parental consent in the heading.

SR

(145) The House bill and Senate amendment have similar language regarding initial evaluations, with the Senate amendment requiring that such evaluations take place within 60 days unless the State has an existing established time frame.

HR with an amendment to read as follows:

"(C) PROCEDURES.—

"(i) IN GENERAL.—Such initial evaluation shall consist of procedures—

"(I) to determine whether a child is a child with a disability (as defined in section 602(3)) within 60 days of receiving parental consent for the evaluation, or, if the State establishes a timeframe within which the evaluation must be conducted, within such timeframe; and

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

"(ii) EXCEPTION.—The relevant timeframe in subparagraph (i)(I) shall not apply to a local educational agency if—

"(I) a child enrolls at a local educational agency after the relevant timeframe in subparagraph (i)(I) has begun and prior to a determination by the child's previous local educational agency as to whether a child is a child with a disability (as defined in section 602(3)), provided that the local educational agency is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and local educational agency agree to a specific time when the evaluation will be completed; or

"(II) the parent of a child repeatedly fails or refuses to produce the child for the evaluation."

(146a) The House bill provides guidance to parents and LEAs if the parent refuses consent for evaluation or initial services. The Senate amendment provides that the LEA is not in violation of FAPE if the parent refuses services.

SR with an amendment to read as follows:

"(ii) ABSENCE OF CONSENT.—

"(I) FOR INITIAL EVALUATION.—If the parent of such child does not provide consent for an initial evaluation under clause (i)(I), or the parent fails to respond to a request to provide the consent, the local educational agency may pursue the initial evaluation of the child by utilizing the procedures described in section 615, except to the extent inconsistent with State law relating to such parental consent.

"(II) FOR SERVICES.—If the parent of such child refuses to consent to services under clause (i)(II), the local educational agency shall not provide special education and related services to the child by utilizing the procedures described in section 615.

"(III) EFFECT ON AGENCY OBLIGATIONS.—If the parent of a child refuses to consent to the receipt of special education and related services, or the parent fails to respond to a request to provide the consent—

"(aa) the local educational agency shall not be considered to be in violation of the requirement to make available a free appropriate public education to the child for the failure to provide the special education and related services for which the local educational agency requests such consent; and

"(bb) the local educational agency shall not be required to convene an IEP meeting or develop an IEP under this section for the child for services for which the local educational agency requests such consent."

(146b) The Senate amendment, but not the House bill, allows the school district to not seek parental consent for wards of the State if consent has been given by an appropriate official.

SR with an amendment to read as follows:

"(iv) EXCEPTION FOR WARDS OF THE STATE.—If the child is a ward of the state and is not residing with the child's parent, the agency shall make reasonable efforts to obtain the informed consent from the parents, as defined in section 602(22), of a child for an initial evaluation to determine whether the child is a child with a disability. In cases where—

"(I) despite reasonable efforts to do so, the agency cannot discover the whereabouts of the parents of such child;

"(II) the rights of the parents have been terminated in accordance with State law; or

"(III) the rights of the parents to make educational decisions have been subrogated by a judge in accordance with State law and consent has been given by an individual appointed by the judge to represent the child

the agency shall not be required to obtain informed consent from the parents of a child for an initial evaluation to determine whether the child is a child with a disability."

Report language: "The conferees intend that in the case of children who are wards of the State, consent may be provided by individuals legally responsible for the child's welfare or appointed by the judge to protect the rights of the child."

(147) The House bill, but not the Senate amendment, provides that the screening of a child by a teacher or specialist shall not be considered an evaluation.

SR

(148) The House bill and Senate amendment have similar language regarding reevaluations, except the Senate amendment also allows that related service need to factor in the need for evaluation.

HR

(149) There are no differences between the House bill and Senate amendment.

HR

(150) The House bill and Senate amendment have similar requirements regarding the assessments used for evaluations. The House bill requires multiple up-to-date measures, while the Senate amendment requires a variety of assessment tools and strategies.

The Senate amendment also requires that the LEA not use any single procedure, measure or assessment as the sole criteria, while the House bill requires that the LEA not use any single measure or assessment.

HR with an amendment:

Strike "procedure" in 2(B).

(151) The House bill and Senate amendment have similar requirements with the House bill focusing on "assessments" and the Senate amendment focusing on "tests".

The Senate amendment, but not the House bill, adds additional requirements for homeless children, wards of the State, and military children.

HR with an amendment:

Strike "tests" and insert "assessments" throughout.

Strike (D) and insert a new (D) to read as follows:

"(D) assessments of children with disabilities who transfer from 1 school district to another school district in the same academic year, are coordinated with such children's prior and subsequent schools as necessary and as expeditiously as possible to ensure prompt completion of full evaluations."

Report language: "The Conferees recognize that the high mobility rates of some children, including homeless children and youth and children and youth in the custody of a state child welfare agency, may cause delays in the assessment process and in the provision of a free appropriate public education. In order to minimize such delays, the Conferees intend that local education agencies ensure that assessments for these children and youth be completed expeditiously, taking into consideration the date on which such children and youth were first referred for assessment in any local educational agency. Such assessments shall be made in collaboration with parents (including foster parents) and, where applicable, surrogate parents, homeless liaisons designated under Section 723(g)(1)(j)(ii) of the McKinney-Vento Homeless Assistance Act, court appointed special advocates, a guardian ad litem, or a judge."

(152) The House bill and Senate amendment have similar language except the House bill adds the requirement that the evaluation team and the parents determine the educational needs of the child.

SR

Report language: "Conferees intend the evaluation process for determining eligibility of a child under this Act to be a comprehensive process that determines whether the child has a disability, and as a result of that disability, whether the child has a need for special education and related services. As part of the evaluation process, conferees expect the multi-disciplinary evaluation team to address the educational needs of the child in order to fully inform the decisions made by the IEP Team when developing the educational components of the child's IEP. Conferees expect the IEP Team to independently review any determinations made by the evaluation team, and that the IEP Team will utilize the information gathered during the evaluation to appropriately inform the development of the IEP for the child."

(153) The House bill and Senate amendment have the similar language except the House bill expands on the definition of reading by referring to the ESEA definition of scientifically based reading practices.

SR with an amendment:

Strike (A) and insert a new (A) to read as follows:

"(A) lack of appropriate instruction in reading, including in the essential components of reading as defined in Sec. 1208(3) of ESEA of 1965."

(154) The Senate amendment, but not the House bill, requires that the determination of the diagnosis of specific learning disability falls under the evaluation procedures.

HR

(156) The House bill specifies that classroom-based assessments should be local or State assessments and requires the evaluation to determine whether the child continues to have educational needs based on the child's academic achievement. The Senate amendment requires the reevaluation to determine the particular category of disability.

SR with an amendment:

Insert comma before "local" in (c)(1)(A).

(157) The House bill and Senate amendment have similar language, except for the difference in referring to assessments in the House bill and tests in the Senate amendment, and the inclusion of procedures in the Senate amendment.

SR

(158) There are no differences between the House bill and Senate amendment.

LC

(159) The House bill and Senate amendment have similar language, except for the House bill requiring the evaluation to determine the educational need of the child.

SR

(160) The House bill requires a reevaluation prior to graduation and before determining the child no longer has a disability only if the IEP Team is not in agreement regarding that decision. The Senate amendment requires a reevaluation prior to determining the child no longer has a disability. The Senate amendment requires the LEA to provide a summary of the child's performance to a student that is graduating or exceeding the age eligibility under State law.

HR

(161) The House bill and Senate amendment have similar language except the Senate amendment also requires functional performance to be part of the present levels of performance.

HR

(162) The House bill establishes requirements for the inclusion of benchmarks or short-term objectives in the child's IEP for students taking alternate assessments aligned to alternate standards.

SR with an amendment:

Strike (d)(1)(A)(I)(cc) and replace with new (d)(1)(A)(I)(cc) to read as follows: "for children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives."

(163) The House bill and Senate amendment include similar language regarding annual goals, with the Senate amendment also requiring that the IEP include quarterly reporting on progress to-

wards those annual goals. The House bill includes a regular reporting requirement in (VII), see note 166.

HR

(164) The House bill and Senate amendment have similar requirements, with the House bill including a requirement that related services be based on peer-reviewed research to the extent practicable.

SR

(165) The House bill requires the IEP team to explain why the regular assessment is not appropriate and how the child will be assessed. The Senate amendment requires the IEP team to explain why the child cannot participate in the regular assessment and why the alternate assessment is appropriate.

HR

(166) The House bill requires the IEP team to plan for transition at age 14 and implement a transition plan by age 16. The Senate amendment requires all transition planning and services to start at age 14.

HR with an amendment:

Strike "14" and insert "16".

(167) The House bill requires the IEP to report progress toward the annual goals in the same frequency as LEAs report progress on non-disabled students. Senate has similar requirement in earlier provision (see note 163).

HR

(168) There are no significant differences between the House bill and Senate amendments.

HR

(169) There are no differences between the House bill and Senate amendment.

LC

(170) Both the House bill and Senate amendment require a regular education teacher to be on the IEP team, but the House bill, and not the Senate amendment, allows the regular education teacher flexibility in which parts of the meetings they attend. The House bill also allows one regular education teacher to serve as a representative if the child has multiple regular education teachers. See note 172 for similar Senate provision.

HR

(171) The House bill refers to the general education curriculum while the Senate amendment refers to the general curriculum.

The Senate amendment, but not the House bill, specifies that a child who is a ward of the State may have an appropriate official at the IEP Team meeting.

SR

(172) The Senate amendment allows an IEP team member flexibility in which parts of the meetings they attend so long as the parent and LEA agree and so long as the excused member submits input prior to the IEP meeting. See note 170 and 177 for similar House provision.

HR with an amendment:

Insert "to the IEP team" after "submits" in (C)(ii)(II).

HR with an amendment:

Strike "that member," in (C)(i) and (C)(ii)(I), and the "," after "parent" in (C)(ii)(I), and insert "in writing to the parent and IEP team" after "input" in (C)(ii)(II).

HR with an amendment:

Insert (D) to read as follows:

> "(D) IEP TEAM TRANSITION.—In the case of a child who was previously served under Part C, an invitation to the initial IEP meeting to the Part C service coordinator or other representatives of the Part C system to assist with the smooth transition of services."

Report language: "The Conferees recognize that ensuring that a smooth transition from the Part C system to the Preschool Program or to school is vital for a child's educational success. It is the Conferees' intent that during the initial IEP meeting for a child transferring from the Part C program the types of services the child received as part of the IFSP are discussed. The Conferees understand that services provided through the Part B program may differ in frequency, duration, and environment, however, the IEP Team should explain the changes in services in the initial IEP meeting. The Conferees do not intend that a State or district reduce any service a child would be otherwise eligible for under Part B."

(173) The House bill, but not the Senate amendment, requires the IEP team to consider the IFSP when developing an IEP.

The Senate amendment, but not the House bill, requires that IEPs transfer with a child from one district to another, or State to State.

SR with an amendment:

Insert (C) to read as follows:

> "(C) PROGRAM FOR CHILDREN WHO TRANSFER SCHOOL DISTRICTS.—
>
> "(i) IN GENERAL.—
>
> "(I) In the case of a child with a disability who transfers school districts within the same academic year, who enrolls in a new school and who had an IEP that was in effect in the same State, the local educational agency shall provide such child with a free appropriate public education, including services comparable to those described in the previously held IEP, in consultation with the

parents until such time as the local educational agency adopts the previously held IEP or develops, adopts, and implements a new IEP that is consistent with Federal and State law.

"(II) In the case of a child with a disability who transfers school districts within the same academic year, who enrolls in a new school and who had an IEP that was in effect in another State, the local educational agency shall provide such child with a free appropriate public education, including services comparable to those described in the previously held IEP, in consultation with the parents until such time as the local educational agency conducts an evaluation pursuant to section 614(a)(1), if determined to be necessary by such agency, and develops a new IEP, if appropriate, that is consistent with Federal and State law.

"(ii) TRANSMITTAL OF RECORDS.—To facilitate the transition for a child described in clause (i)—

"(I) the new school in which the child enrolls shall take reasonable steps to promptly obtain the child's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous school in which the child was enrolled pursuant to 34 CFR 99.31(a)(2), and

"(II) the previous school in which the child was enrolled shall take reasonable steps to promptly respond to such request from the new school."

(174) The House bill and Senate amendment have similar language, in different order, and the Senate amendment adds a requirement that the functional needs of the child are considered.

HR

Report language: "The Conferees understand that the development of a child's IEP involves many considerations and decisions on how best to create an education program that serves the needs of the individual child. The Conferees intend that the uniqueness of each child help guide these decisions, including the child's strengths, characteristics, and background when developing the IEP."

(175) The Senate amendment, but not the House bill, requires that IEPs provide behavioral interventions for children whose behavior impedes their own learning or that of others. The Senate amendment also requires the IEP team to consider a larger list of services for blind students.

SR

(176) The House bill, but not the Senate amendment, allows for the possibility that the regular education teacher may not be part of the IEP team if appropriately determined.

HR

(177) The House bill allows an IEP team member flexibility in which parts of the meetings they attend so long as the parent and LEA agree and so long as the excused member submits written input prior to the IEP meeting. See note 172 for similar Senate provision.

HR

(178) The House bill encourages consolidation of IEP meetings while the Senate amendment encourages consolidation of reevaluations with the IEP Team meeting.

HR with an amendment:

Strike (E) and insert new (E) to read as follows:

"(E) CONSOLIDATION OF IEP TEAM MEETINGS.—To the extent possible, the local educational agency shall encourage the consolidation of reevaluation meetings for the child and other IEP Team meetings for the child."

(179) The House bill, but not the Senate amendment, specifies that changes to the IEP can be done by amendment, instead of rewriting the entire IEP.

SR with an amendment:

Insert "Upon request, a parent shall be provided an executed copy of the IEP." at the end of subparagraph (G).

(180) The House bill, but not the Senate amendment, allows for the possibility that the regular education teacher may not be part of the IEP team if appropriately determined.

HR

(181) Both the House bill and the Senate amendment allow the LEA to offer to parents the ability to develop a comprehensive 3-year IEP, if the parents choose to develop such an IEP. The House bill allows this to be done for all children that receive special education. The Senate amendment restricts this option to students age 18 that stay within the educational system.

SR with an amendment to read as follows:

"(5) MULTI-YEAR IEP DEMONSTRATION.—

"(A) PILOT PROGRAM.—

"(i) PURPOSE.—The purpose of this subsection is to provide an opportunity for States to allow parents and local educational agencies the opportunity for long-term planning by offering the option of developing a comprehensive multi-year IEP, not to exceed 3 years, that is designed to coincide with the natural transition points for the child.

"(ii) AUTHORIZATION.—In order to carry out the purpose of this subsection, the Secretary is authorized to approve not more than 15 States based on proposals submitted by States to allow parents and local educational agencies the opportunity for long-term planning by offering the option of developing a comprehensive multi-year IEP, not to exceed 3 years, that is designed to coincide with the natural transition points for the child.

"(iii) PROPOSAL.—

"(I) IN GENERAL.—A State desiring to participate in the program under this subsection shall submit a proposal to the Secretary at such time and in such manner as the Secretary may reasonably require.

"(II) CONTENT.—The proposal shall include—

"(aa) assurances that the parent must consent to the option of developing a comprehensive multi-year IEP;

"(bb) a list of required elements for each multi-year IEP, including—

"(AA) measurable goals pursuant to paragraph (1)(A)(i)(II), coinciding with natural transition points for the child, that will enable the child to be involved in and make progress in the general education curriculum and that will meet the child's other needs that result from the child's disability; and

"(BB) measurable annual goals for determining progress toward meeting the goals described in subitem (AA); and

"(cc) a description of the process for the review and revision of each multi-year IEP, including—

"(AA) a review by the IEP Team of the child's multi-year IEP at each of the child's natural transition points;

"(BB) in years other than a child's natural transition points, an annual review of the child's IEP to determine the child's current levels of progress and whether the annual goals for the child are being achieved; and to amend the IEP, as appropriate, to enable the child to continue to meet the measurable goals set out in the IEP;

"(CC) if the IEP Team determines on the basis of a review that the child is not making sufficient progress toward the goals described in the multi-year IEP, a local educational agency will ensure that the IEP Team reviews the IEP within 30 calendar days; and

"(DD) at the request of the parent, the IEP Team shall conduct a review of the child's

multi-year IEP rather than or subsequent to an annual review.

"(B) REPORT.—Beginning 2 years after the date of enactment, the Secretary shall submit an annual report to the Committee on Education and the Workforce in the House of Representatives and the Health, Education, Labor and Pensions Committee in the Senate regarding the effectiveness of the program and any specific recommendations for broader implementation of such program including

"(i) reducing—

"(I) the paperwork burden on teachers, principals, administrators, and related service providers; and

"(II) noninstructional time spent by teachers in complying with this part;

"(ii) enhancing longer-term educational planning;

"(iii) improving positive outcomes for children with disabilities;

"(iv) promoting collaboration between IEP Team members; and

"(v) ensuring satisfaction of family members."

"(C) DEFINITION.—As used in this paragraph, the term 'natural transition points' means those periods that are close in time to the transition of a child with a disability from preschool to elementary grades, from elementary grades to middle or junior high school grades, from middle or junior high school grades to high school grades, and from high school grades to post-secondary activities, but in no case longer than 3 years."

(182) There are no significant differences between the House bill and Senate amendment.

LC

(183) The Senate amendment, but not the House bill, requires that placements of homeless children with disabilities comply with the McKinney-Vento Homeless Assistance Act.

The House bill, but not the Senate amendment, allows for alternative means of meeting participation for meetings under section 615.

SR with an amendment:

Strike "and 615" in (f) and insert ", 615(e) and (f)(1)(B), and administrative matters under 615 (such as scheduling, exchange of witness lists and status conferences)".

(184) The House bill includes a Sense of Congress regarding the need to have a disability diagnosis performed by a physician or licensed health care professional. The Senate amendment does not include this provision.

HR

(185) The House bill includes this technical language as part of its structure. The Senate amendment replaces the entire existing law.

HR

(186) The Senate amendment, but not the House bill, includes language regarding children who are wards of the State.

SR

(187) The House bill includes this technical language as part of its structure. The Senate amendment replaces the entire existing law.

HR/LC

(188) The House bill and Senate amendment include similar language, except the House bill modifies the need for an independent evaluation to be done as appropriate.

HR

(189) The Senate amendment, but not the House bill, includes language regarding homeless children and children who are wards of the State.

SR with an amendment:

Rewrite (b)(2) to read as follows:

"(b)(2)(A) IN GENERAL.—procedures to protect the rights of the child whenever the parents of the child are not known, the agency cannot, after reasonable efforts, locate the parents or the child is a ward of the State, including the assignment of an individual (who shall not be an employee of the State educational agency, the local educational agency or any other agency that is involved in the education or care of the child) to act as a surrogate for the parents. In the case of—

"(i) a child who is a ward of the State, such surrogate may alternatively be appointed by the judge overseeing the child's care provided that the surrogate meets the requirements of this paragraph;

"(ii) an unaccompanied homeless youth as defined in Sec 725(6) of the McKinney-Vento Homeless Assistance Act, the LEA shall appoint a surrogate in accordance with this paragraph.

"(B) TIME REQUIREMENT.—The State shall make reasonable efforts to ensure the assignment of the surrogate not more than 30 days after there is a determination made by the agency that the child needs a surrogate."

Report language: "In light of the fact that unaccompanied homeless youth are a particularly mobile population, once the school district has made a determination that such youth require a surrogate, the Conferees encourage States or local educational agencies where allowed by law to quickly appoint a surrogate or refer the child to the child welfare system if consistent with State law. The Conferees recognize that, because the parents of homeless

unaccompanied youth may be unavailable or unwilling to participate in the youth's education, homeless unaccompanied youth face unique problems in obtaining a free appropriate public education. Accordingly, the Conferees intend that the surrogate parent process be available for such youth, to ensure that they are provided with a free appropriate public education. Furthermore, the Conferees intend that appropriate staff members of emergency shelters, transitional shelters, independent living programs, and street outreach programs not be considered to be employees of agencies involved in the education or care of youth, for purposes of the prohibition of certain agency employees from acting as surrogates for parents as set forth in Sec. (b)(2)(A), provided that a such role is temporary until a surrogate can be appointed that meets the requirements and such role in no way conflicts with, or is in derogation of, the provision of a free appropriate public education to these youth.''

(190) There are minor wording differences between the House and Senate amendments, but the content is the same.

LC

(191) There are no differences between the House bill and Senate amendment.

LC

(192) The House bill adds a requirement for voluntary binding arbitration that the Senate amendment does not include.

HR

(193) The House bill and Senate amendment have similar language regarding the opportunity to present complaints, but the House bill, not the Senate amendment, includes language establishing a 1 year statute of limitations on the right to present complaints. Senate has a 2 year timeline for filing complaints at note 221.

SR with an amendment to read as follows:

> ''(6) an opportunity to present complaints—
>
> ''(A) with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child; and
>
> ''(B) which set forth an alleged violation that occurred not more than two years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the complaint.''

(194) The Senate amendment, but not the House bill, allows for either party to file a due process complaint.

The House bill requires the complaint to have a description of the specific issues while the Senate amendment requires a description of the nature of the problem.

HR

(195) The Senate amendment, but not the House bill, requires the LEA to send a prior written notice to a parent if the LEA has

not already done so, after a parent has filed a due process complaint.

SR

(196) The Senate amendment, but not the House bill, requires the SEA to develop model forms for the complaint notice.

HR

(197) The Senate amendment, but not the House bill, includes procedures for children who are wards of the State.

SR

(198) The House bill includes this technical language as part of its structure. The Senate amendment replaces the entire existing law.

HR/LC

(199) The Senate amendment, but not the House bill, requires the notice to include what options the agency considered but did not include, and why. The Senate amendment, but not the House bill, requires a description of any other factors relevant to the agency's proposal or refusal.

SR with an amendment:

Insert (C) as amended by striking "any other options that the agency considered" and inserting "other options considered by the IEP team" and insert (E) as amended by striking "any other" and inserting "the".

(200) The Senate amendment, but not the House bill, presumes that the complaint is sufficient unless a party submits an objection to the notice, establishes timelines and procedures to support this rule, and requires the other party to receive the notice.

The Senate amendment, but not the House bill, also allows parents to amend their complaint if the hearing officer or other party consents, with timelines restarting at the time the amendment is filed.

HR with an amendment:

Strike "only" and insert "not later than 5 days" in (2)(D)(i)(II).

HR with an amendment:

Insert ", including the timeline under subsection (f)(1)(B)" after "notice" in (2)(D)(ii).

HR with an amendment:

Strike "20" and insert "15" in paragraph (B).

HR with an amendment:

Modify (2)(A) as follows:

"(2) DUE PROCESS COMPLAINT NOTICE.—

"(A)(i) PARENT COMPLAINT.—The due process complaint notice required under subsection (b)(7)(A) shall be deemed to be sufficient unless the party receiving the notice notifies the hearing officer and the other party in writ-

ing that the receiving party believes the notice has not met the requirements of that subsection.

"(ii) RESPONSE.—If the local educational agency has not sent a prior written notice to the parent regarding the subject matter contained in the parent's due process complaint notice, such local educational agency shall within 10 days send to the parent a response that shall include—

"(I) an explanation of why the agency proposed or refused to take the action raised in the complaint;

"(II) a description of other options that the IEP team considered and the reasons why those options were rejected;

"(III) a description of each evaluation procedure, test, record or report the agency used as the basis for the proposed or refused action; and

(IV) a description of the factors that are relevant to the agency's proposal or refusal.

"(iii) SUFFICIENCY.—A response filed by a local educational agency pursuant to clause (ii) shall not be construed to preclude such local educational agency from asserting that the parent's due process complaint notice was insufficient, where appropriate."

(201) The House bill includes this technical language as part of its structure. The Senate amendment replaces the entire existing law.

HR/LC

(202) The Senate amendment, but not the House bill, requires a notice whenever a due process complaint is filed.

HR with an amendment:

Rewrite (d)(1) to read as follows:

"(d) PROCEDURAL SAFEGUARDS NOTICE.—

"(1) IN GENERAL.—

"(A) A copy of the procedural safeguards available to the parents of a child with a disability shall be given to the parents only 1 time a year, except that a copy also shall be given to the parents—

"(i) upon initial referral or parental request for evaluation;

"(ii) upon the first occurrence of the registration of a complaint under subsection (b)(6); and

(iii) upon request by a parent.

"(B) The local educational agency may place a current copy of the procedural safeguards notice on its Internet website, if such website exists."

(203) The House bill and Senate amendment contain similar language, except the House bill requires a description of the safeguards while the Senate amendment requires a full explanation.

HR

(204) The Senate amendment, but not the House bill, requires the notice to include time period requirements and a description of

the State-level appeal. The House bill does not include a State-level appeal system.

HR

(205) The House bill, but not the Senate amendment, requires a description of the voluntary binding arbitration system. The Senate amendment does not include that option.

HR

(206) The House bill includes this technical language as part of its structure. The Senate amendment replaces the entire existing law.

HR/LC

(207) The House bill, but not the Senate amendment, creates a Voluntary Binding Arbitration system in the title of this section.

HR

(208) Senate amendment, but not House bill, specifies that a mediation agreement is enforceable in court.

HR with an amendment:

Strike (F) and (G) and insert the following (F) and (G):

"(F) WRITTEN AGREEMENT.—In the case that a resolution is reached to resolve the complaint through the mediation process, the parties shall execute a legally binding agreement that—

"(I) states that all discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings;

"(II) is signed by both the parent and a representative of the public agency who has the authority to bind such agency; and

"(III) is enforceable in any State court of competent jurisdiction or in a district court of the United States.

"(G) MEDIATION DISCUSSIONS.—Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings."

Report language: "The conferees intend that the parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of such process to ensure that all discussions that occur during the mediation process remain confidential irrespective of whether the mediation results in a resolution."

(209) The House bill, but not the Senate amendment, requires States to develop a voluntary binding arbitration system for the resolution of disputes.

HR

(210) The House bill includes this technical language as part of its structure. The Senate amendment replaces the entire existing law.

HR/LC

(211) The House bill does not provide for a State-level appeal system, so eliminates the dual-tier language. The Senate amendment maintains the State-level appeal.

HR

(212) Both the House bill and Senate amendment require the LEA and parent of a child with a disability to meet within 15 days of a parent's complaint being filed to attempt to resolve the complaint. The Senate amendment requires the meeting to include the IEP team and a person with decision making authority on behalf of the LEA. The House bill requires a meeting with the LEA and the parents. The House bill, but not the Senate amendment, operates within the regulatory 45 day timeline.

HR with an amendment:

Strike "Opportunity to Resolve Complaint" and insert "Resolution Session" in the heading.

HR with an amendment:

Strike "and the IEP Team" and replace with "and the relevant member or members of the IEP team with specific knowledge of the facts identified in the complaint" in (B)(i).

HR with an amendment:

Strike "specific issues" and insert "facts" in subparagraph (B)(i)(IV).

Report language: "The Committee intends that the relevant members be determined by the parents and LEA."

(216) The Senate amendment, but not the House bill, prevents the LEA from bringing an attorney to the preliminary meeting unless the parent brings their attorney. The House bill defines the resolution session as a non-administrative or judicial meeting, and the Senate amendment requires a written agreement to be signed by both parties if agreement is reached, and such agreement is to be enforceable in court.

HR with an amendment:

Strike (iii) and insert the following (iii) and (iv):

> "(iii) WRITTEN SETTLEMENT AGREEMENT.—In the case that a resolution is reached to resolve the complaint at such meeting, the parties shall execute a legally binding agreement that is—
>
> > "(I) signed by both the parent and a representative of the public agency who has the authority to bind such agency; and

"(II) enforceable in any State court of competent jurisdiction or in a district court of the United States.

"(iv) REVIEW PERIOD.—If the parties execute an agreement pursuant to clause (iii), each party has the opportunity to void such agreement within 3 business days of its execution."

(217) The House bill and Senate amendment contain similar timeline requirements with the House bill requiring notice "at least 5 business days prior" and the Senate amendment requiring "not less than 5 business days prior."

HR

(218) The House bill and Senate amendment include similar language regarding who cannot conduct a hearing. The Senate amendment, but not the House bill, adds additional requirements regarding the qualifications of hearing officers.

HR with an amendment:

Rewrite (3)(A)(ii) to read as follows:

"(ii) possess knowledge of, and the ability to understand, the provisions of this Act, Federal and State regulations pertaining to this Act, and legal interpretations of this Act by Federal and State courts;"

(219) Both the House bill and Senate amendment include similar requirements about the subject matters that may be brought up during a hearing, but the Senate amendment, not the House bill, clarifies that either the parent or the LEA may request a due process hearing.

HR

(220) The Senate amendment, but not the House bill, includes a rule of construction allowing parents to file separate due process hearings on separate issues.

HR

Report language: "The Conferees intend to encourage the consolidation of multiple issues into a single complaint where such issues are known at the time of the filing of the initial complaint."

(221) The Senate amendment establishes a 2-year statute of limitations unless State law already has a statute of limitations. The House bill includes a 1-year statute of limitations (see note 193).

HR/LC

(222) The Senate amendment, but not the House bill, includes several exceptions to the requirements of a statue of limitations.

HR with an amendment to read as follows:

"(E) EXCEPTION TO THE TIMELINE.—The timeline described in subparagraph (D) shall not apply if the parent was prevented from requesting the hearing due to—

"(i) specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint; or

"(ii) the local educational agency's withholding of information from parents that was required to be provided to parents under this part."

(223) The Senate amendment, but not the House bill, requires hearing officer decisions to be based on substantive grounds.

HR with an amendment:

Strike "compromised" and insert "impeded" in (F)(ii)(I) and strike "seriously hampered" and insert "significantly impeded" in (F)(ii)(II).

(224) The Senate amendment, but not the House bill, allows procedural violations to rise to the level of a substantive violation under certain circumstances.

HR with an amendment:

Strike "compromised" and insert "impeded" in (F)(ii)(I) and strike "seriously hampered" and insert "significantly impeded" in (F)(ii)(II).

(225) The Senate amendment, but not the House bill, allows for the existence of a State-level appeal system for due process hearings.

HR with an amendment:

Strike (G) and insert the following:

"(G) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to affect the right of a parent to file a complaint with the State educational agency, if such agency offers and conducts such appeals."

HR with an amendment:

Insert "if the State educational agency offers a state level appeals process" at the end of the first sentence in (g).

(226) The House bill includes this technical language as part of its structure. The Senate amendment replaces the entire existing law.

HR/LC

(227) The House bill, not the Senate amendment, allows for non-attorney advocates to represent parents at due process hearings. The Senate amendment, but not the House bill, allows for individuals with special knowledge to accompany and advise parents at due process hearings.

HR

(228) The Senate amendment, but not the House bill, allows for a State-level appeal system, and requires the transmittal of records to the State advisory panel.

HR

(229) The House bill includes technical changes to update language after removing the State-level appeal system. The Senate amendment replaces the entire existing law, but makes no changes in this section, except to add a 90 day limit for filing an appeal to court, unless State law provides for a different timeline.

HR

(230) The House bill includes technical changes to update language after removing the State-level appeal system.

HR

(231) The House bill requires the Governor to establish rates for attorney's fees and make those rates public. The Senate amendment places limitations on whether attorneys' fees can be awarded.

The Senate amendment clarifies that meetings conducted under the opportunity to resolve provision are not eligible for reimbursement for attorney's fees.

HR

(232) The Senate amendment clarifies that the parent's attorney's conduct may result in reduction of attorney's fees.

HR

(233) The Senate amendment allows parents to represent their child in court.

SR

(234) The House bill includes this technical language as part of its structure. The Senate amendment replaces the entire existing law.

HR/LC

(235) There are minor technical differences between the House bill and Senate amendment, but the content is the same.

LC

(236) The House bill includes this technical language as part of its structure. The Senate amendment replaces the entire existing law.

HR/LC

(237)–(245)

HR with an amendment to read as follows:

"(k) PLACEMENT IN ALTERNATIVE EDUCATIONAL SETTING.—

"(1) AUTHORITY OF SCHOOL PERSONNEL.—

"(A) CASE-BY-CASE DETERMINATION.—School personnel may consider any unique circumstances on a case-by-case basis when determining whether to order a change in placement for a child with a disability who violates a code of student conduct.

"(B) AUTHORITY.—School personnel under this section may remove a child with a disability who violates a code of student conduct from their current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 school days (to the extent such alternatives are applied to children without disabilities).

"(C) ADDITIONAL AUTHORITY.—If school personnel seek to order a change in placement that would exceed 10 school days and the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to subparagraph (E), the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner and for the same duration in which the procedures would be applied to children without disabilities, except as provided in section 612(a)(1) although it may be provided in an interim alternative educational setting.

"(D) SERVICES.—A child with a disability who is removed from the child's current placement under subparagraph (G) (irrespective of whether the behavior is determined to be a manifestation of the child's disability) or (C) shall—

"(i) continue to receive educational services, as provided in section 612(a)(1), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and

"(ii) receive, as appropriate, a functional behavioral assessment, behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

"(E) MANIFESTATION DETERMINATION.—

"(i) IN GENERAL.—Except as provided in subparagraph (B), within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the local educational agency, the parent and relevant members of the IEP Team (as determined by the parent and the local educational agency) shall review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine—

"(I) if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or

"(II) if the conduct in question was the direct result of the local educational agency's failure to implement the IEP.

"(ii) MANIFESTATION.—If the local educational agency, the parent and relevant members of the IEP Team determine that either subclause (I) or (II) of

clause (i) is applicable for the child, the conduct shall be determined to be a manifestation of the child's disability.

"(F) DETERMINATION THAT BEHAVIOR WAS A MANIFESTATION.—If the local educational agency, the parent and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team shall—

"(i) conduct a functional behavioral assessment, and implement a behavioral intervention plan for such child, provided that the local educational agency had not conducted such assessment prior to such determination before the behavior that resulted in the change in placement described in subparagraph (C) or (G);

"(ii) in the situation where a behavioral intervention plan has been developed, review the behavioral intervention plan if the child already has such a behavioral intervention plan, and modify it, as necessary, to address the behavior; and

"(iii) except as provided in subparagraph (G), return the child to the placement from which the child was removed, unless the parent and the local educational agency agree to a change of placement as part of the modification of the behavioral intervention plan.

"(G) SPECIAL CIRCUMSTANCES.—School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, in cases where a child—

"(i) carries or possesses a weapon to or at school, on school premises, or to or at a school function under the jurisdiction of a State or local educational agency; or

"(ii) knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or a school function under the jurisdiction of a State or local educational agency; or

"(iii) has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of a State or local educational agency.

"(H) NOTIFICATION.—Not later than the date on which the decision to take disciplinary action is made, the local educational agency shall notify the parents of that decision, and of all procedural safeguards accorded under this section.

(2) DETERMINATION OF SETTING.—The interim alternative educational setting in subparagraph (C) and (G) of paragraph (1) shall be determined by the IEP Team.

(3) APPEAL.—

"(A) IN GENERAL.—The parent of a child with a disability who disagrees with any decision regarding place-

ment, or the manifestation determination under this subsection, or a local educational agency that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others, may request a hearing.

"(B) AUTHORITY OF HEARING OFFICER.—

"(i) IN GENERAL.—A hearing officer shall hear, and make a determination regarding, an appeal requested under subparagraph (A).

"(ii) CHANGE OF PLACEMENT ORDER.—In making the determination under clause (i), the hearing officer may order a change in placement of a child with a disability. In such situations, the hearing officer may—

"(I) return a child with a disability to the placement from which the child was removed; or

"(II) order a change in placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of such child is substantially likely to result in injury to the child or to others.

"(4) PLACEMENT DURING APPEALS.—When an appeal under paragraph (3) has been requested by either the parent or the local educational agency—

"(A) the child shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period provided for in paragraph (1)(C), whichever occurs first, unless the parent and the State or local educational agency agree otherwise; and

"(B) the State or local educational agency shall arrange for an expedited hearing, which shall occur within 20 school days of the date the hearing is requested and shall result in a determination within 10 school days after the hearing.

"(5) PROTECTIONS FOR CHILDREN NOT YET ELIGIBLE FOR SPECIAL EDUCATION AND RELATED SERVICES.—

"(A) IN GENERAL.—A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violates a code of student conduct, may assert any of the protections provided for in this part if the local educational agency had knowledge (as determined in accordance with this paragraph) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

"(B) BASIS OF KNOWLEDGE.—A local educational agency shall be deemed to have knowledge that a child is a child with a disability if, before the behavior that precipitated the disciplinary action occurred—

"(i) the parent of the child has expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of

the child, that the child is in need of special education and related services;

"(ii) the parent of the child has requested an evaluation of the child pursuant to section 614(a)(1)(B); or

"(iii) the teacher of the child, or other personnel of the local educational agency, has expressed specific concerns about a pattern of behavior demonstrated by the child, directly to the director of special education of such agency or to other supervisory personnel of the agency.

"(C) EXCEPTION.—A local educational agency shall not be deemed to have knowledge that the child is a child with a disability if the parent of the child has not allowed an evaluation of the child pursuant to section 614 or has refused services under this part or the child has been evaluated and it was determined that the child was not a child with a disability under this part.

"(D) CONDITIONS THAT APPLY IF NO BASIS OF KNOWLEDGE.—

"(i) IN GENERAL.—If a local educational agency does not have knowledge that a child is a child with a disability (in accordance with subparagraph (B) or (C)) prior to taking disciplinary measures against the child, the child may be subjected to disciplinary measures applied to children without disabilities who engaged in comparable behaviors consistent with clause (ii).

"(ii) LIMITATIONS.—If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under this subsection, the evaluation shall be conducted in an expedited manner. If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency shall provide special education and related services in accordance with this part, except that, pending the results of the evaluation, the child shall remain in the educational placement determined by school authorities."

Report language: "The Conferees intend to assure that the manifestation determination is done carefully and thoroughly with consideration of any rare or extraordinary circumstances presented. Additionally, it is the intention of the Conferees that when a student has violated a code of conduct school personnel may consider any unique circumstances on a case-by-case basis to determine to whether a change of placement for discipline purposes is appropriate. The Conferees intend that if a change in placement is proposed, the manifestation determination will analyze the child's behavior as demonstrated across settings and across time when determining whether the conduct in question is a direct result of the disability. The Conferees intend that in situations where the local educational agency, the parent and the relevant members of the IEP team determine that the conduct was the direct result of the

child's disability, a child with a disability should not be subject to discipline in the same manner as a non-disabled child.

"The Conferees intend that in order to determine that the conduct in question was a manifestation of the child's disability, the local educational agency, the parent and the relevant members of the IEP team must determine the conduct in question be the direct result of the child's disability. It is intention of the Conferees that the conduct in question was caused by, or has a direct and substantial relationship to, the child's disability, and is not an attenuated association, such as low self-esteem, to the child's disability."

(246) There are no significant differences between the House bill and Senate amendment.

HR

(247) The House bill does not include these definitions.

HR

(248) The House bill includes this technical language as part of its structure. The Senate amendment adds language regarding the McKinney-Vento Act.

HR with an amendment:

Strike "or under subtitle B of title VII of the McKinney-Vento Homeless Assistance Act or parts B and E of title IV of the Social Security Act".

(249) The House bill includes this technical language as part of its structure. The Senate amendment replaces the entire existing law.

HR/LC

(250) There are no significant differences between the House bill and Senate amendment.

HR/LC

(251) The Senate amendment allows parents to receive notices through email. The House bill does not include this provision.

HR

(252) The Senate amendment, but not the House bill, includes language requiring the appointment of a surrogate parent if determined necessary by the LEA.

SR

(253)–(258):

SR with an amendment to read as follows:

"SEC. 616. MONITORING, TECHNICAL ASSISTANCE, AND ENFORCEMENT.

"(a) FEDERAL AND STATE MONITORING.—

"(1) IN GENERAL.—The Secretary shall—

"(A) monitor implementation of this part through—

"(i) oversight of the exercise of general supervision by the States, as required in section 612(a)(11); and

"(ii) the State performance plans, described in subsection (b)

"(B) enforce this part in accordance with subsection (e); and

"(C) require States to—

"(i) monitor implementation of this part by local educational agencies; and

"(ii) enforce this part in accordance with paragraph (3) and subsection (e).

"(2) FOCUSED MONITORING.—The primary focus of Federal and State monitoring activities described in paragraph (1) shall be on—

"(A) improving educational results and functional outcomes for all children with disabilities; and

"(B) ensuring that States meet the program requirements under this part, with a particular emphasis on those requirements that are most closely related to improving educational results for children with disabilities.

"(3) MONITORING PRIORITIES.—The Secretary shall monitor the States, and shall require each State to monitor its local educational agencies located in the State (except the State exercise of general supervisory responsibility), using quantifiable indicators, in the following priority areas and using such qualitative indicators as are needed to adequately measure performance in the following priority areas:

"(A) Provision of a free appropriate public education in the least restrictive environment.

"(B) State exercise of general supervisory authority, including child find, effective monitoring, the use of resolution sessions, mediation, voluntary binding arbitration, and a system of transition services as defined in section 602(33) and 637(a)(9).

"(C) Disproportionate representation of racial and ethnic groups in special education and related services, to the extent the representation is the result of inappropriate identification.

"(4) PERMISSIVE AREAS OF REVIEW.—The Secretary shall consider other relevant information and data, including data provided by States under section 618.

"(b) STATE PERFORMANCE PLANS.—

"(1) PLAN.—

"(A) IN GENERAL.—Not later than 1 year after the date of the enactment of the Individuals with Disabilities Education Improvement Act of 2004, each State shall have in place a performance plan that evaluates that State's efforts to implement the requirements and purposes of this Act and describes how the State will improve such implementation.

"(B) SUBMISSION FOR APPROVAL.—Each State shall submit the State's performance plan to the Secretary for approval in accordance with the approval process described in subsection (c).

"(C) REVIEW.—Each State shall review its State performance plan at least once every 6 years and submit any amendments to the Secretary.

"(2) TARGETS.—

"(A) IN GENERAL.—As a part of the plan described under paragraph (1), each State shall establish measurable and rigorous targets for the indicators established under the priority areas described in subsection (a)(3).

"(B) DATA COLLECTION.—

"(i) IN GENERAL.—Each State shall collect valid and reliable information as needed to report annually to the Secretary on the priority areas described in subsection (a)(3).

"(ii) RULE OF CONSTRUCTION.—Nothing in this Act shall be construed to authorize the development of a nationwide database of personally identifiable information on individuals involved in studies or other collections of data under this Act.

"(C) PUBLIC REPORTING AND PRIVACY.—

"(i) IN GENERAL.—The State shall use the targets established in the plan and priority areas described in subsection (a)(3) to analyze the performance of each local educational agency in the State in implementing this part.

"(ii) REPORT.—

"(I) PUBLIC REPORT.—The State shall report annually to the public on the performance of each local educational agency located in the State on the targets in the State's performance plan. The State shall make the State's performance plan available through public means, including posting on the website of the State educational agency, distribution to the media, and distribution through public agencies.

"(II) STATE PERFORMANCE REPORT.—The State shall report annually to the Secretary on the performance of the State under the State's performance plan.

"(iii) PRIVACY.—The State shall not report to the public or the Secretary any information on performance that would result in the disclosure of personally identifiable information about individual children or where the available data is insufficient to yield statistically reliable information.

"(c) APPROVAL PROCESS.—

"(1) DEEMED APPROVAL.—The Secretary shall review (including the specific provisions described in subsection (b)) each performance plan submitted by a State pursuant to subsection (b)(1)(B) and the plan shall be deemed to be approved by the Secretary unless the Secretary makes a written determination, prior to the expiration of the 120-day period beginning on the date on which the Secretary received the plan, that the plan does not meet the requirements of this section, including the specific provisions described in subsection (b).

"(2) DISAPPROVAL.—The Secretary shall not finally disapprove the plan, except after giving the State educational agency notice and an opportunity for a hearing.

"(3) NOTIFICATION.—If the Secretary finds that the plan does not meet the requirements, in whole or in part, of this section, the Secretary shall—

"(A) give the State notice and an opportunity for a hearing; and

"(B) notify the State of the finding, and in such notification shall—

"(i) cite the specific provisions in the plan that do not meet the requirements; and

"(ii) request additional information, only as to the provisions not meeting the requirements, needed to make the plan meet the requirements of this section.

"(4) RESPONSE.—If the State educational agency responds to the Secretary's notification described in paragraph (3)(B) during the 30-day period beginning on the date on which the agency received the notification, and resubmits the plan with the requested information described in paragraph (3)(B)(ii), the Secretary shall approve or disapprove such plan prior to the later of—

"(A) the expiration of the 30-day period beginning on the date on which the plan is resubmitted; or

"(B) the expiration of the 120-day period described in paragraph (1).

"(5) FAILURE TO RESPOND.—If the State educational agency does not respond to the Secretary's notification described in paragraph (3)(B) during the 30-day period beginning on the date on which the agency received the notification, such plan shall be deemed to be disapproved.

"(d) SECRETARY'S REVIEW AND DETERMINATION.—

"(1) REVIEW.—The Secretary shall annually review the State performance report submitted pursuant to subsection (b)(2)(C)(ii)(II) in accordance with this section.

"(2) DETERMINATION.—

"(A) IN GENERAL.—Based on the information provided by the State in the State performance report, information obtained through monitoring visits, and any other public information made available, the Secretary shall determine if the State—

"(i) meets the requirements and purposes of this part;

"(ii) needs assistance in implementing the requirements of this part;

"(iii) needs intervention in implementing the requirements of this part; or

"(iv) needs substantial intervention in implementing the requirements of this part.

"(B) NOTICE AND OPPORTUNITY FOR A HEARING.—For any determinations made under subparagraph (A), the Secretary shall provide reasonable notice and an opportunity for a hearing on such determination.

"(e) ENFORCEMENT.—

"(1) NEEDS ASSISTANCE.—If the Secretary determines, for 2 consecutive years, that a State needs assistance under subsection (d)(2)(ii) in implementing the requirements of this Act, the Secretary shall take 1 or more of the following actions:

"(A) Advise the State of available sources of technical assistance that may help the State address the areas in which the State needs assistance, which may include assistance from the Office of Special Education Programs, other offices of the Department of Education, other Federal agencies, technical assistance providers approved by the Secretary, and other federally funded nonprofit agencies, and require the State to partner with appropriate entities. Such technical assistance may include—

"(i) the provision of advice by experts to address the areas in which the State needs assistance, including explicit plans for addressing the area for concern within a specified period of time;

"(ii) assistance in identifying and implementing professional development, instructional strategies, and methods of instruction that are based on scientifically based research;

"(iii) designating and using distinguished superintendents, principals, special education administrators, special education teachers, and other teachers to provide advice, technical assistance, and support; and

"(iv) devising additional approaches to providing technical assistance, such as collaborating with institutions of higher education, educational service agencies, national centers of technical assistance supported under part D, and private providers of scientifically based technical assistance.

"(B) Direct the use of State level funds under section 611(e) on the area or areas in which the State needs assistance.

"(C) Identify the State as a high-risk grantee and impose special conditions on the State's grant under this part.

"(2) NEEDS INTERVENTION.—If the Secretary determines, for 3 or more consecutive years, that a State needs intervention under subsection (d)(2)(iii) in implementing the requirements of this Act, the following shall apply:

"(A) The Secretary may take any of the actions in (1), and

"(B) The Secretary shall take 1 or more of the following actions:

"(i) Require the State to prepare a corrective action plan or improvement plan if the Secretary determines that the State should be able to correct the problem within 1 year.

"(ii) Require the State to enter into a compliance agreement under section 457 of the General Education Provisions Act, if the Secretary has reason to believe that the State cannot correct the problem within 1 year.

"(iii) Each year of the determination withhold not less than 20 and not more than 50 percent of the State's funds under section 611(e), until the Secretary determines the State has sufficiently addressed the areas in which the State needs intervention.

"(iv) Seek to recover funds under section 452 of the General Education Provisions Act.

"(v) Withhold, in whole or in part, any further payments to the State under this part pursuant to paragraph (5).

"(vi) Refer the matter for appropriate enforcement action, which may include referral to the Department of Justice.

"(3) NEEDS SUBSTANTIAL INTERVENTION.—Notwithstanding paragraph (1) or (2), at any time that the Secretary determines that a State needs substantial intervention in implementing the requirements of this Act or that there is a substantial failure to comply with any condition of a State educational agency's or local educational agency's eligibility under this part, the Secretary shall take 1 or more of the following actions:

"(A) Recover funds under section 452 of the General Education Provisions Act.

"(B) Withhold, in whole or in part, any further payments to the State under this part.

"(C) Refer the case to the Office of the Inspector General at the Department of Education.

"(D) Refer the matter for appropriate enforcement action, which may include referral to the Department of Justice.

"(4) OPPORTUNITY FOR HEARING.—

"(A) WITHHOLDING OF FUNDS.—Prior to withholding any funds under this section, the Secretary shall provide reasonable notice and an opportunity for a hearing to the State educational agency involved.

"(B) SUSPENSION.—Pending the outcome of any hearing to withhold payments under subsection (b), the Secretary may suspend payments to a recipient, suspend the authority of the recipient to obligate funds under this part, or both, after such recipient has been given reasonable notice and an opportunity to show cause why future payments or authority to obligate funds under this part should not be suspended.

"(5) REPORT TO CONGRESS.—The Secretary shall report to the Committee on Education and the Workforce in the House of Representatives and the Committee on Health, Education, Labor, and Pensions in the Senate within 30 days of taking enforcement action pursuant to paragraph (1), (2) or (3), on the specific action taken and the reasons why enforcement action was taken.

"(6) NATURE OF WITHHOLDING.—

"(A) LIMITATION.—If the Secretary withholds further payments pursuant to paragraphs (2) or (3), the Secretary may determine—

"(i) that such withholding will be limited to programs or projects, or portions thereof, that affected the Secretary's determination in (d)(2); or

"(ii) that the State educational agency shall not make further payments under this part to specified State agencies or local educational agencies that caused or were involved in the Secretary's determination in subsection (d)(2).

"(B) WITHHOLDING UNTIL RECTIFIED.—Until the Secretary is satisfied that the conditions that caused the initial withholding has been substantially rectified—

"(i) payments to the State under this part shall be withheld in whole or in part; and

"(ii) payments by the State educational agency under this part shall be limited to State agencies and local educational agencies whose actions did not cause or were not involved in the Secretary's determination in (d)(2), as the case may be.

"(7) PUBLIC ATTENTION.—Any State educational agency that has received notice under subsection (d)(2) shall, by means of a public notice, take such measures as may be necessary to bring the pendency of an action pursuant to this subsection to the attention of the public within the State.

"(8) JUDICIAL REVIEW.—

"(A) IN GENERAL.—If any State is dissatisfied with the Secretary's action with respect to the eligibility of the State under section 612, such State may, not later than 60 days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings upon which the Secretary's action was based, as provided in section 2112 of title 28, United States Code.

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

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

"(f) STATE ENFORCEMENT.—If a State educational agency determines that a local educational agency is not meeting the requirements of this part, including the targets in the State's performance

plan, the State educational agency shall prohibit the local educational agency from reducing the local educational agency's maintenance of effort under this part as local funds under section 613(a)(2)(C) for any fiscal year.

"(g) RULE OF CONSTRUCTION.—Nothing under this section shall be construed to restrict the Secretary from utilizing any authority under the General Education Provisions Act to monitor and enforce the requirements of this Act."

Report language: "The Conferees believe that accurate decision making with regard to enforcement of the IDEA is required in order to: (1) ensure that federal dollars are being spent productively on education, and, (2) to ensure that monitoring and enforcement is administered fairly. It is our expectation that state performance plans, indicators, and targets will be developed with broad stakeholder input and public dissemination.

"The Secretary is directed to monitor states using rigorous targets and to request such information from states and stakeholders as is necessary to implement the purposes of IDEA, including the use of on-site monitoring visits and student file reviews, and to enforce the requirements of the IDEA.

"Conferees strongly encourage the Secretary to review all relevant and publicly available data, including the data gathered under Section 618, related to the targets and priority areas established for reviewing the efforts of States and local educational agencies to implement the requirements and purposes of IDEA. The Secretary is also authorized to use qualitative measures to inform his decision-making process in determining the efforts of the State or LEA in implementing IDEA.

"Conferees recommend that the Secretary diligently investigate any root causes prior to selecting enforcement options, so that enforcement options are appropriately selected and have the greatest likelihood in yielding improvement in that state. However, investigations must not unduly delay the enforcement action."

(259) The House bill includes this technical language as part of its structure. The Senate amendment replaces the entire existing law.

HR

(260) There are no differences between the House bill and Senate amendment.

HR

(261) The House bill prohibits the Federal Government from dictating the content of curriculum or instruction. The Senate amendment does not include that provision.

SR

(262) The Senate amendment, but not the House bill, includes authorization for the Secretary to hire personnel to carry out the Secretary's duties under section 664.

SR

(263) The House bill allows the Secretary to grant waivers to 10 States to reduce paperwork. The Senate amendment includes this provision in note 46.

HR

(264) The Senate amendment requires the development of a model IFSP form, the House bill does not include that provision.

HR

(265) The House bill includes this technical language as part of its structure. The Senate amendment replaces the entire existing law.

HR

(266) The House bill and Senate amendment contain similar requirements regarding data collection, except the House bill, and not the Senate amendment requires LEAs to submit the same data as States, and requires data on voluntary binding arbitration and children served with early intervening funds under 613(f). The Senate amendment, but not the House bill, requires disaggregation by gender, and by LEP status and gender on several indicators, data collection on students suspended for one day or more, the numbers of students sent to alternate settings due to discipline violations, the number of due process complaints and hearings held, and other data regarding discipline provisions.

HR with an amendment:

Strike (L).

(267) The House bill allows the Secretary to obtain information through sampling. The Senate amendment requires that the data not be able to identify individual children.

HR with an amendment:

Include both.

(268) The Senate amendment allows the Secretary to provide technical assistance to States to collect data. The House bill does not include this provision.

HR

(269) The House bill and Senate amendment contain similar language, except the House bill requires data to be examined on ethnicity as well.

The House bill also requires States to use funds for prereferral services to address disproportionality if any is found and requires the LEA to publicly report on any revisions.

SR with an amendment:

Strike "preferral" and insert "early intervening" in (2)(B).

Report language: "The Conferees believe that early intervening services should make use of supplemental instructional materials, where appropriate, to support student learning. Children targeted

for early intervening services under IDEA are the very students who are most likely to need additional reinforcement to the core curriculum used in the regular classroom. These are in fact the additional instructional materials that have been developed to supplement and therefore strengthen the efficacy of comprehensive core curriculum. Per the requirements of NCLB, core curriculum must meet standards of scientific rigor. As supplementary materials to these core programs, they are aligned with and designed to reinforce the skills taught in these comprehensive research-based texts.''

(270) The House bill includes this technical language as part of its structure. The Senate amendment replaces the entire existing law.

HR/LC

(271) There are no differences between the House bill and Senate amendment.

LC

(272) There are no significant differences between the House bill and Senate amendment.

LC

(273) There are no significant differences between the House bill and Senate amendment.

LC

(274) There are no differences between the House bill and Senate amendment.

SR with an amendment:

Strike '', if the State educational agency is the lead agency for the State under that part'' in (e)(2).

(275) The House bill, but not the Senate amendment, allows funds to support the implementation of a State plan under Part D if the State receives a grant. The Senate amendment, but not the House bill, allows funds to be used to provide services to children with disabilities under the Part C program until the child attends kindergarten.

HR with an amendment:

LC on ''it retains'' versus ''the State reserves''.

HR with an amendment:

Insert new paragraph (6) to read as follows:

''(6) at the State's discretion, to continue service coordination or case management for families who receive services under part C.''

(276) There are no significant differences between the House bill and Senate amendment.

LC

(277) There are no differences between the House bill and Senate amendment.

LC

(278) The House bill authorizes $500 million for FY 04 and such sums thereafter, while the Senate amendment authorizes such sums.

HR

Part C

(279) The House bill includes this technical language as part of its structure. The Senate amendment replaces the entire existing law.

HR

(280) The House bill and Senate amendment have virtually the same findings, but the Senate amendments contains additional language on brain development.

HR

(281) There are no significant differences between the House and Senate amendments.

LC

(282) There are no differences between the House bill and Senate amendment.

LC

(283) The House bill requires services to be designed to address family-identified priorities, while the Senate amendment requires services to be designed to meet the developmental needs of the infant or toddler.

HR with an amendment to read as follows:

> "(C) are designed to meet the developmental needs of an infant or toddler with a disability as identified by the individualized family service plan team in any 1 or more of the following areas:".

(284) The House bill and Senate amendment include minor differences in the services provided with the House bill adding family therapy and the Senate amendment adding sign language and cued language services.

HR

Report language: "Conferees commend the Office of Special Education & Rehabilitative Services for developing updated early intervention materials that set out the full range of options for families with deaf and hard of hearing children who now have the potential to develop age appropriate language in whatever modality their parents choose. Dramatic improvements in hearing technology, both hearing aids and cochlear implants, provide new opportunities for families who wish to pursue spoken language for

their child with hearing loss. These new materials and efforts further the goals of the IDEA that early intervention personnel actively provide comprehensive and bias-free information on the range of language options available to a child with hearing loss, including the benefits of early amplification and/or early implantation of a cochlear implant.''

(285) The House bill and Senate amendment include minor differences in the personnel authorized to provide services with the House bill authorizing registered dietitians and the Senate amendment authorizing nutritionists. The Senate amendment also adds teachers of the deaf as a listed provider while the House bill does not.

SR

Report Language: ''The conferees intend that the term 'special educators' includes teachers of the deaf. The conferees recognize that with the recent dramatic rise in newborn hearing screening, more infants are being identified with hearing loss early and they need the services of teachers of the deaf who can meet their language and communication needs.''

(286) The House bill allows the State to use the Part C program to provide services to infants and toddlers up through age 5 if the services include an educational component and parents are advised of their rights to choose to move to the Section 619 program. The Senate amendment contains a similar program for children ages 3–5. See Section 635(b) of the Senate amendment.

HR with an amendment:

HR on structure of (5)(B) with an amendment to (5)(B)(ii) to read as follows:

> ''(ii) children with disabilities who are eligible for services under section 619 and who previously received services under this part until such children enter, or are eligible under state law to enter, kindergarten; provided that any programs under this part serving these children shall include—
>
> ''(I) an educational component that promotes school readiness and incorporates pre-literacy, language and numeracy skills, and
>
> ''(II) a written notification to parents of their rights and responsibilities in determining whether their child will continue to receive services under this part or participate in preschool programs under section 619.''

(287) The Senate amendment, but not the House bill, includes language regarding homeless children, wards of the State, and military children.

SR with an amendment:

Insert '', infants or toddlers with disabilities who are homeless children, infants or toddlers with disabilities who are wards of the State,'' after ''including Indian infants and toddlers with disabilities

and their families residing on a reservation geographically located in the State,".

(288) The Senate amendment establishes minimum levels of developmental delay that States must cover. The House bill does not include this language.

SR with an amendment:

Amend section 635(a)(1) to read "A rigorous definition of the term developmental delay that will be used for the state in carrying out programs under this part in order to appropriately identify infants and toddlers that are in need of services under this part".

Report language: "The Conferees intend that States establish rigorous standards for identifying and serving infants and toddlers with developmental delays. The Conferees believe that these standards should encompass a sufficient scope of developmental delays to ensure that these infants and toddlers receive the benefit of Part C services designed to lessen the infant or toddler's need for future or more extensive services."

(289) The House bill, but not the Senate amendment, requires that early intervention services be based on scientifically based research.

SR with an amendment:

Rewrite (2) to read as follows:

"(2) A State policy that is in effect and that ensures that appropriate early intervention services based on scientifically based research, to the extent practicable, are available to all infants and toddlers with disabilities and their families, including Indian infants and toddlers with disabilities and their families and homeless infants and toddlers with disabilities and their families."

SR with an amendment:

Add at the end of (5) "and that ensures rigorous standards for appropriately identifying infants and toddlers for services under this part that will reduce the need for future services"

(290) The House bill, but not the Senate amendment, requires an emphasis on informing parents of infants with risk factors on the availability of early intervention services.

The Senate amendment, but not the House bill, expands the list of places the public awareness program should focus on delivering information.

SR

Report Language: "The Conferees intend that the public awareness program include a broad range of referral sources such as homeless family shelters, clinics and other health service related offices, public schools and officials and staff in the child welfare system."

(291) There are no differences between the House bill and Senate amendment.

LC

(292) The House bill requires States to focus on three areas of personnel and allows States to focus on rural and inner city areas and emotional and social development areas. The Senate amendment permits States to focus on these areas and rural/urban areas.

SR

(293) The Senate amendment, but not the House bill, includes a provision allowing States to allow paraprofessionals to provide services in accordance with State law, regulation, or written policy.

HR

(294) There are no differences between the House bill and Senate amendment.

LC

(295a) The House bill requires that services be provided in a setting other than the natural environment only when intervention cannot be achieved satisfactorily in that setting. The Senate amendment requires that services be provided in the natural setting unless a specific outcome cannot be met.

SR with an amendment to read as follows:

> "(B) the provision of early intervention services for any infant or toddler occurs in a setting other than a natural environment that is most appropriate, as determined by the parent and the individualized family service plan team, only when early intervention cannot be achieved satisfactorily for the infant or toddler in a natural environment."

Report language: "The legislation amends current law to recognize that there may be instances when a child's individualized family service plan cannot be implemented satisfactorily in the natural environment. The Conferees intend that in these instances, the child's parents and the other members of the individualized family service plan team will together make this determination and then identify the most appropriate setting in which early intervention services can be provided."

(295b) The Senate amendment, but not the House bill, requires procedures for homeless children and wards of the State.

SR

(296) The Senate amendment does not include this requirement.

SR with an amendment to strike "consistent with State law within 3 years."

(297) Both the House bill and the Senate amendment allow States to continue to provide services to children aged 3–5 in the Part C program, if the parent chooses to keep their child in that system. The Senate amendment consolidates its language in this section. The House bill incorporates language in multiple areas.

HR with an amendment to read as follows:

"(b) FLEXIBILITY TO SERVE CHILDREN 3 YEARS OF AGE UNTIL ENTRANCE INTO ELEMENTARY SCHOOL.—

"(1) IN GENERAL.—A statewide system described in section 633 may include a State policy, developed and implemented jointly by the lead agency and the State educational agency, under which parents of children with disabilities who are eligible for services under section 619 and previously received services under this part, may choose the continuation of early intervention services (which shall include an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills) for such children under this part until such children enter, or are eligible under State law to enter, kindergarten.

"(2) REQUIREMENTS.—If a statewide system includes a State policy described in paragraph (1), the statewide system shall ensure—

"(A) that parents of children served pursuant to this subsection are provided with annual notice that provides—

"(i) a description of such parents' right to elect services pursuant to this subsection or under part B; and

"(ii) an explanation of the differences between receiving services pursuant to this subsection and receiving services under part B, including—

"(I) the types and location of services available under both provisions;

"(II) applicable procedural safeguards under both provisions; and

"(III) the possible costs, if any (including any fees to be charged to families as described in section 632(4)(B)) to parents under both provisions;

"(B) that services provided pursuant to this subsection include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills;

"(C) that the State policy will not affect the right of any child served pursuant to this subsection to instead receive a free appropriate public education under part B;

"(D) the continuance of all early intervention services outlined in the child's individualized family service plan under section 636 while any eligibility determination is being made for services under this subsection;

"(E) that parents of infants or toddlers with disabilities (as defined in section 632(5)(A)) provide informed written consent to the State, before such infants and toddlers reach 3 years of age, as to whether such parents intend to choose the continuation of early intervention services pursuant to the subsection for such infants or toddlers; and

"(F) that the requirements under section 637(a)(9) are deferred if the child is receiving services in accordance with this subsection until not less than 90 days (and at the discretion of the parties to the conference under section

637(a)(9)(A), not more than 9 months) before, the time the child will no longer receive services under this subsection.

"(G) the referral for evaluation for early intervention services of a child who experiences a substantiated case of trauma due to exposure to family violence, as defined in section 309(1) of the Family Violence and Protection Services Act.

"(3) REPORTING REQUIREMENT.—If a statewide system includes a State policy described in paragraph (1), the State shall submit to the Secretary, in the State's report under section 637(b)(4)(A), a report on the number and percentage of children with disabilities who are eligible for services under section 619 but whose parents choose for such children to continue to receive early intervention services under this part; and

"(4) RULES OF CONSTRUCTION.—

"(A) If a statewide system includes a State policy described in paragraph (1), a State that provides services in accordance with this subsection to a child who is eligible for services under section 619, shall not be required to provide such child with a free appropriate public education under part B for the length of time in which such children are receiving services under this part.

"(B) Nothing in this subsection shall be construed to require a provider of services under this part to provide a child served under this part with a free appropriate public education.

"(5) AVAILABLE FUNDS.—If a Statewide system includes a State policy described in paragraph (1), the policy shall describe the funds (including an identification as Federal, State, or local funds) that will be used to ensure that the option described in paragraph (1) is available to eligible children and families who provide the consent described in paragraph (2)(E), including fees (if any) to be charged to families as described in section 632(4)(B)."

(298) The Senate amendment, but not the House bill, includes this rule of construction regarding payment for certain procedures.

SR

(299) There are no differences between the House bill and Senate amendment.

HR

(300) There are no differences between the House bill and Senate amendment.

LC

(301) There are no significant differences between the House bill and Senate amendment, except the House bill refers to major goals while the Senate amendment refers to measurable outcomes.

SR with an amendment:

In paragraph (3), strike "major" and insert "measurable", and strike all references to "goals" and insert "results or outcomes"

(302) There are no differences between the House bill and Senate amendment.

LC

(303) The Senate amendment, but not the House bill requires States to demonstrate that they have in effect the statewide system required in section 633.

The House bill specifically references effects of fetal exposure to alcohol, the Senate amendment does not.

The House bill, but not the Senate amendment, requires a description of collaboration efforts with other early childhood programs in the State.

HR with an amendment:

Strike "for evaluation" after "require the referral" and insert "under this part" after "intervention services" in (6) and insert:

> "(11) a description of State efforts to promote collaboration between Early Head Start programs, early education and child care programs, and services under part C of this Act."

Report language: "The Conferees intend that every child described in 637(a)(6)(A) and (B) will be screened by a Part C provider or designated primary referral source to determine whether a referral for an evaluation for early intervention services under Part C is warranted. If the screening indicates the need for a referral, the Conferees expect a referral to be made. However, the Conferees do not intend this provision to require every child described in Section 637(a)(6)(A) and (B) to receive an evaluation or early intervention services under Part C."

(304) The House bill gives discretion of up to 6 months to develop a transition plan. The Senate amendment provides up to 9 months.

HR

(305) Senate transition plan includes reference to "as appropriate, steps to exit from the program."

HR

The Senate amendment, but not the House bill, includes a requirement for policies and procedures regarding homeless children and wards of the State.

SR

(306) The Senate amendment, but not the House bill, requires assurances regarding homeless children and wards of the State.

HR

(307) There are no significant differences between the House bill and Senate amendment.

LC

(308) Both the House bill and the Senate amendment allow States to continue to provide services to children aged 3–5 in the Part C program, if the parent chooses to keep their child in that

system. The Senate amendment requires the written consent of parents to continue to provide early intervention services.

HR with an amendment to (4) to read as follows:

"(4) with the written consent of the parents, to continue to provide early intervention services under this part to children with disabilities from their 3rd birthday until such children enter, or are eligible under State law to enter, kindergarten, in lieu of a free appropriate public education provided in accordance with part B; and".

(309) Neither the House bill nor the Senate amendment make any changes in this section to current law.

HR

(310) The House bill makes no changes to current law. The Senate amendment adds a provision requiring States to ensure that interagency agreements are in place to ensure that services are paid for by appropriate State agencies.

HR with an amendment to (b) to read as follows:

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

"(1) ESTABLISHING FINANCIAL RESPONSIBILITY FOR SERVICES.—

"(A) IN GENERAL.—The Chief Executive Officer of a State or designee of the officer shall ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each public agency and the designated lead agency, in order to ensure—

"(i) the provision of, and financial responsibility for, services provided under this part; and

"(ii) such services are consistent with the requirements of section 635 and the State's application pursuant to section 637, including the provision of such services during the pendency of any such dispute.

"(B) CONSISTENCY BETWEEN AGREEMENTS OR MECHANISMS UNDER PART B.—The Chief Executive Officer of a State or designee of the officer shall ensure that the terms and conditions of such agreement or mechanism are consistent with the terms and conditions of the State's agreement or mechanism under Section 612(a)(12), where appropriate.

"(2) REIMBURSEMENT FOR SERVICES BY PUBLIC AGENCY.—

"(A) IN GENERAL.—If a public agency other than an educational agency fails to provide or pay for the services pursuant to an agreement required under paragraph (1) the local educational agency or State agency (as determined by the Chief Executive Officer or designee) shall provide or pay for the provision of such services to the child.

"(B) REIMBURSEMENT.—Such local educational agency or State agency is authorized to claim reimbursement for the services from the public agency that failed to provide or pay for such services and such public agency shall reim-

burse the local educational agency or State agency pursuant to the terms of the interagency agreement or other mechanism required under paragraph (1).

"(3) SPECIAL RULE.—The requirements of paragraph (1) may be met through—

"(A) State statute or regulation;

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

"(C) other appropriate written methods as determined by the Chief Executive Officer of the State or designee of the officer and approved by the Secretary through the review and approval of the State's application pursuant to section 637."

(311) The House bill includes this technical language as part of its structure. The Senate amendment replaces the entire existing law.

HR

(312) There are no differences between the House bill and Senate amendment.

LC

(313) The House bill, but not the Senate amendment, requires the addition of representatives from the State mental health agency, child welfare agency, and the Office of the Coordinator of homeless children and youth to the State council.

The Senate amendment, but not the House bill, requires parents of homeless children and representatives of wards of the State to be on the panel.

The Senate amendment, but not the House bill, requires the addition of representatives from the State Medicaid agency to the State council, homeless children, the welfare agency, and foster children.

HR with an amendment:

Strike 1(A) and replace with 1(A) from House bill and strike 1(M) and insert 1(J) from House bill.

(314) There are no differences between the House bill and Senate amendment.

LC

(315) There are no differences between the House bill and Senate amendment.

LC

(316) There are no differences between the House bill and Senate amendment.

LC

(317) There are no differences between the House bill and Senate amendment.

LC

(318) The House bill requires the BIA to submit an annual report and the Senate amendment requires a biennial report.

HR

(319) The Senate amendment includes the authorization of a new State bonus grant to States that develop birth -6 programs, otherwise the State formulas are the same.

HR with an amendment:

Amend (e) to read as follows:

"(e) RESERVATION FOR STATE INCENTIVE GRANTS.—

"(1) The Secretary shall reserve 15 percent of the amount appropriated under section 644 for any fiscal year that such amount exceeds $460,000,000 to make allotments to States that are carrying out the policy described in section 635(b), by allotting to each State an amount that bears the same ratio to the amount of such reservation as the number of infants and toddlers in the State bears to the number of infants and toddlers in all participating States, without regard to subsections (c)(2) and (3).

"(2) MAXIMUM.—No State may receive an allotment greater than 20 percent of the reservation pursuant to this subsection.

"(3) CARRYOVER OF FUNDS BY STATES.—Notwithstanding section 421(b) of the General Education Provisions Act or any other provision of law, a State may carryover funds received from the Secretary under this for one additional fiscal year."

(320) The House bill establishes a specific authorization level for the first year and such sums for the life of the authorization. The Senate amendment authorizes such sums for the entire authorization.

HR

Part D

(321) The House bill includes this technical language as part of its structure. The Senate amendment replaces the entire existing law.

HR/LC

(322) Except for minor wording differences, there are no differences between the House bill and Senate amendment.

HR

(323) The House bill focuses on training for existing personnel while the Senate amendment also allows for education of future personnel and defines the term personnel.

HR with an amendment:

Amend title to "State Personnel Development Grants".

(324) The Senate amendment authorizes a formula grant program if the appropriation exceeds $100 million. The House bill keeps the program as a competitive grant.

HR with an amendment:

Insert new (4) as follows and renumber accordingly:

"(4) DIRECT BENEFIT.—In utilizing the amount provided under paragraph (1) and not reserved pursuant to subsection (e), a State educational agency shall, through grants, contracts, or cooperative agreements, undertake activities that significantly and directly benefit the local educational agencies in the State."

(325) The Senate amendment, but not the House bill, requires the inclusion as a partner of a State agency for teacher preparation and certification, if it is outside of the SEA. The Senate amendment also requires the inclusion of the State agency responsible for administering Part C, child care, and VR programs.

HR with an amendment:

Strike "institutions of higher education" and insert "at least one institution of higher education" in (b)(1).

HR with an amendment:

Strike "child care" and insert "early education, child care" in (b)(1).

Report language: "This provision requires State educational agencies to establish partnerships with local educational agencies and other State agencies involved in, or concerned with, the education of children with disabilities, including at least one institution of higher education and the State agencies responsible for administering part C, child care, and vocational rehabilitation programs. The Conferees encourage State educational agencies, when establishing such partnerships and where feasible, to establish partnerships with multiple institutions of higher education."

(326) The House bill and Senate amendment have similar, but differing descriptions of PTIs (E), the State advisory panel, and personnel.

HR

(327) Current law in Senate amendment lists other partners, the House bill lists optional partners.

HR

(328) The Senate amendment includes a requirement that the plan assess vacancies and shortages, and the existence of preservice programs.

HR with an amendment:

Insert "and inservice" after "preservice" in (a)(2)(B)(ii).

(329) The House bill specifically mentions related services personnel, while the Senate amendment does not.

HR

(330) The Senate amendment references meeting personnel requirements of Part C, while the House bill does not.

HR

(331) The Senate amendment includes a requirement that the State will carry out each of the strategies in the plan. The House bill includes this requirement in (b)(5).

HR

(332) The Senate amendment, but not the House bill, includes requirements relating to highly qualified teachers and teacher qualifications for poor and minority students.

HR with an amendment:

Amend heading to ''Elements of State Personnel Development Plan''.

(333) The House bill and Senate amendment have differing provisions on coordination of other public and private resources.

HR

(334) The Senate amendment, but not the House bill, requires State plans to include information on integration with other activities (4)(B), provide technical assistance (5) and (6), recruit and retain highly qualified teachers (7), teachers of poor and minority children (8), and meeting performance goals in Section 612(a)(15).

HR with an amendment:

Strike ''preservice and inservice''.

(335) The House bill maintains this program as a competitive grant program. The Senate amendment converts this to a formula grant program if funds exceed $100 million.

HR

(336) There are no significant differences between the House bill and Senate amendment, except the Senate language only applies if the program is competitive.

HR

(337) The House bill, but not the Senate amendment, includes a requirement that the annual report identify necessary changes to the State plan to improve performance.

SR with an amendment to read as follows:

''(3) identify changes in such strategies, if any, to improve its performance''.

(338) Similar provisions with the Senate amendment adding as an allowable activity the ability to improve personnel preparation programs, and including functional standards. The Senate amendment also includes principals as eligible personnel, while the House bill includes early intervention and related services personnel. The Senate amendment also includes training in implementing effective IEPs.

HR

(339) The House bill and Senate amendment are similar except the Senate amendment refers to " or more" of the activities while the House bill does not.

HR

(340) There are no significant differences between the House and Senate amendments.

HR/LC

(341) The House bill requires that 90% of funds be spent on professional development, while the Senate amendment requires 75% be spent on professional development.

SR

(342) There are no differences between the House bill and Senate amendment.

LC

(343) The House bill maintains this as a competitive grant program and establishes a lower maximum grant award.

HR

(344) The House bill authorizes $44 million for the first year while the Senate amendment authorizes "such sums."

HR

(345) The Senate amendment, but not the House bill, includes a purpose to help SEAs and LEAs improve their educational systems.

HR with an amendment:

Add term "personnel prep" to paragraph (1) and the term "for children with disabilities" in paragraph (2).

Report language: "The committee believes that information and assistance to States and LEAs on the effective implementation of responsiveness to intervention models must be developed and made widely available as quickly as possible. Large-scale implementation of improved methodologies for the determination of and appropriate intervention for specific learning disabilities will be crucial to making needed reforms in this area. The Secretary is strongly encouraged to collaborate with leading organizations and researchers in the field of learning disabilities to assist with development and dissemination activities, including information and assistance for educators and parents. Such an entity would have existing capacity for national dissemination activities, proven effectiveness and efficiency in developing and delivering large-scale research-based informational and assistance programs, and have well established relationships with the education and parent communities."

(346) The Senate amendment requires the comprehensive plan be coordinated with the ESRA plan and that the Secretary solicit input from interested individuals. The House bill does not include these provisions.

The Senate amendment also allows public comment of 60 days, while the House bill requires 30 days for public comment.

HR with an amendment:

Strike "60" and insert "45" in paragraph (2).

(347) The House bill, but not the Senate amendment, allows the Secretary to determine whether to include for-profit entities in the competition.

HR

(348) The House bill requires 2% of funds to be reserved for HBCU's, while the Senate amendment requires 1% of funds to be reserved. The Senate amendment, but not the House bill, expands the pool of funds that are eligible to include subparts 3 and 4.

SR

(349) The Senate amendment, but not the House bill, adds priorities for geographic diversity universal design and assistive technology, and gifted and talented children.

SR with an amendment:

Insert the following definition at note 32:

"(34) UNIVERSAL DESIGN.—The term 'universal design' has the meaning given that term under paragraph (1) of section 3 of the Assistive Technology Act of 1998, (29 U.S.C. Sec. 3002)."

The Senate amendment, but not the House bill, includes homeless children and wards of the State and Impact Aid children as being included in the list of children the Department can address the needs with projects under Part D.

SR on Senate 3(L) and (8)

(350) There are no differences between the House bill and Senate amendment.

LC

(351) The Senate amendment, but not the House bill, requires the Secretary to ensure that products are available in accessible formats for people with disabilities.

SR

Report language: "The Conferees intend that the Secretary shall ensure that recipients of grants under this part make products available in alternate formats, including electronically."

(352) The Senate amendment, but not the House bill, expands the pool of funds considered as part of the amount for a ratable reduction, if necessary.

HR

(353) The House bill and Senate amendment contain similar provisions creating a National Center for Special Education Research at the Institute for Education Science. However, the Senate amendment contains this language in Title III.

HR

(354) The House bill and Senate amendment include similar provisions regarding authorized research activities with the House bill adding a focus on limited English proficient children with disabilities and the Senate amendment adding a focus on transition services. The Senate language is in Title III.

HR/SR to accept both new activities

(355) The House bill and Senate amendment contain similar provisions regarding a research plan, with the House bill adds implementation criteria to ensure the plan is carried out. The Senate language is in Title III.

HR

(356) The House bill and Senate amendment include similar provisions with the House bill adding as an allowable activity the ability to test and apply research findings in typical classroom settings.

SR with an amendment:

Strike ''service'' and insert ''where children with disabilities receive services'' after ''settings'' in (c)(1).

Report language: ''The conferees recognize that research-based structured learning systems that are capable of using fine grained diagnostics to generate prescriptions, and incorporate community members and parents as mentors are highly effective in preventing school failure for children with disabilities. These programs are particularly effective as an early intervention strategy for children with disabilities, especially in reading and mathematics. When aligned to state standards such programs create a high level of accountability for local programs serving children with disabilities.

''The HOSTS Language Arts program, which is used widely in Texas, Ohio, Florida, Delaware, Michigan, Louisiana, and other states, is an example of such a program. HOSTS Learning programs have assisted schools in significantly improving student achievement and test results for all children, including children with disabilities. Research conducted by Bowling Green University has specifically demonstrated the efficacy of HOSTS Learning with children with disabilities and with children whose low achievement might otherwise cause them to be mislabeled as disabled.

''It has been demonstrated that these programs reduce academic failure, promote the integration of children with disabilities into the mainstream of educational success, decrease the incidence of school dropout, substance abuse, teen pregnancy, crime, and unemployment. This is instrumental in restoring trust in America's schools. Specifically, the conferees believe these intensive, research-based learning systems, that utilize teacher oversight, diagnostic and prescriptive tools, and community engagement, dramatically increase student achievement and implement the recommendations of the National Reading Panel for all children.''

(357) The House bill and Senate amendment contain similar provisions with the Senate amendment adding activities to ensure

the training of highly qualified teachers, and training on technology and transition services.

HR with an amendment:

Move Sec. 664 to Note 353 and renumber Sections accordingly.

(358) The House bill and Senate amendment include similar provisions with the Senate amendment adding activities to allow programs to support continuous personnel preparation, parental involvement, rural and high poverty schools, and highly qualified teachers.

HR with an amendment to read as follows:

"(b) PERSONNEL DEVELOPMENT; ENHANCED SUPPORT FOR BEGINNING SPECIAL EDUCATORS.—

(1) IN GENERAL.—In carrying out this section, the Secretary shall support activities

"(A) for personnel development, including activities for the preparation of personnel who will serve children with high-incidence and low-incidence disabilities, to prepare special education and general education teachers, principals, administrators, and related services personnel (and school board members, when appropriate) to meet the diverse and individualized instructional needs of children with disabilities and improve early intervention, educational, and transitional services and results for children with disabilities, consistent with the objectives described in subsection (a); and

"(B) for enhanced support for beginning special educators, consistent with the objectives described in subsection (a).

"(2) PERSONNEL DEVELOPMENT.—In carrying out paragraph (1)(A) the Secretary shall support not less than 1 of the following activities:

"(A) Support effective existing, improve existing, or develop new collaborative personnel preparation activities undertaken by institutions of higher education, local educational agencies, and other local entities that incorporate best practices and scientifically based research, where applicable, in providing special education and general education teachers, principals, administrators, and related services personnel with the knowledge and skills to effectively support students with disabilities, including—

"(i) Working collaboratively in regular classroom settings.

"(ii) Using appropriate supports, accommodations, and curriculum modifications.

"(iii) Implementing effective teaching strategies, classroom-based techniques, and interventions to ensure appropriate identification of students who may be eligible for special education services, and to prevent the misidentification, overidentification, or underidentification of children as having a disability, especially minority and limited English proficient children.

"(iv) Effectively working with and involving parents in the education of such parents' children.

"(v) Utilizing strategies, including positive behavioral interventions, for addressing the conduct of children with disabilities that impedes their learning and that of others in the classroom.

"(vi) Effectively constructing IEPs, participating in IEP meetings, and implementing IEPs.

"(vii) Preparing children with disabilities to participate in statewide assessments (with or without accommodations) and alternate assessments, as appropriate, and to ensure that all children with disabilities are a part of all accountability systems under the Elementary and Secondary Education Act of 1965.

"(viii) Working in high need elementary schools and secondary schools, including urban schools, rural schools, and schools operated by an entity described in section 7113(d)(1)(A)(ii) of the Elementary and Secondary Education Act of 1965, and schools that serve high numbers or percentages of limited English proficient children.

"(B) Developing, evaluating, and disseminating innovative models for the recruitment, induction, retention, and assessment of new, highly qualified teachers to reduce teacher shortages, especially from groups that are underrepresented in the teaching profession, including individuals with disabilities.

"(C) Providing continuous personnel preparation, training, and professional development designed to provide support and ensure retention of special education and general education teachers and personnel who teach and provide related services to children with disabilities.

"(D) Developing and improving programs for paraprofessionals to become special education teachers, related services personnel, and early intervention personnel, including interdisciplinary training to enable the paraprofessionals to improve early intervention, educational, and transitional results for children with disabilities.

"(E) In the case of principals and superintendents, providing activities to promote instructional leadership and improved collaboration between general educators, special education teachers, and related services personnel.

"(F) Supporting institutions of higher education with minority enrollments of at least 25 percent for the purpose of preparing personnel to work with children with disabilities.

"(G) Developing and improving programs to train special education teachers to develop an expertise in autism spectrum disorders.

"(3) ENHANCED SUPPORT FOR BEGINNING SPECIAL EDUCATORS.—In carrying out paragraph (1)(B) the Secretary shall support not less than 1 of the following activities:

"(A) Enhancing and restructuring existing programs or developing preservice teacher education programs to pre-

pare special education teachers, at colleges or departments of education within institutions of higher education, by incorporating an extended (such as an additional 5th year) clinical learning opportunity, field experience, or supervised practicum into such programs; or

"(B) Creating or supporting teacher-faculty partnerships (such as professional development schools) that—

"(i) consist of at least—

"(I) 1 or more institutions of higher education with special education personnel preparation programs;

"(II) 1 or more local educational agencies that serve high numbers or percentages of low-income students;

"(III) 1 or more elementary or secondary schools, particularly schools that have failed to make adequate yearly progress on the basis, in whole and in part, of the assessment results of the disaggregated subgroup of students with disabilities; and

"(ii) may include other entities eligible for assistance under this part; and

"(iii) provide—

"(I) high-quality mentoring and induction opportunities with ongoing support for beginning special education teachers; or

"(II) inservice professional development to beginning and veteran special education teachers through the ongoing exchange of information and instructional strategies with faculty."

(359) The House bill and Senate amendment include similar provisions with the House bill adding as an allowable activity to focus on LEP students with low-incidence disabilities and the Senate amendment adding a new emphasis on communication and significant cognitive disabilities and multiple disabilities.

HR/SR to accept both

(360) The House bill, but not the Senate amendment, adds as an allowable activity services that benefit leadership personnel that serve LEP students.

SR

(361) The Senate amendment adds a new program to provide funds to colleges and universities to support and train special education teachers.

SR

(362) The Senate amendment adds a new program to provide funds to colleges and universities to support and train general education teachers to work with students with disabilities.

SR

(363) The House bill, but not the Senate amendment, adds a required assurance that the State needs personnel in the area of support.

SR with an amendment:

Strike (3)(B).

(364) The Senate amendment but not House bill allows the Secretary to give preferences to underrepresented groups.

HR

(365) The House bill requires a service obligation of 2 years for every year of assistance provided while the Senate amendment requires 1 year of service for one year of support. The House bill also contains a provision on leadership preparation. The Senate amendment, but not the House bill, allows scholarships for its new general educator program.

HR with an amendment to read as follows:

> "(i) SERVICE OBLIGATION.—
>
> "(I) IN GENERAL.—Each application for funds under subsections (b), (c), and (d) shall include an assurance that the applicant will ensure that individuals who receive a scholarship under the proposed project will subsequently provide special education and related services to children with disabilities for a period of 2 years for every year for which assistance was received or repay all or part of the cost of that assistance, in accordance with regulations issued by the Secretary.
>
> "(II) SPECIAL RULE.—Notwithstanding paragraph (1) of this subsection, the Secretary may reduce or waive the service obligation requirement if the Secretary determines that the service obligation is acting as a deterrent to the recruitment of students into special education or a related field.
>
> "(III) Oversight.—The Secretary shall be responsible for ensuring that individuals participating in these programs fulfill their service obligations."

(366) The Senate amendment includes a separate authorization for this section, while the House bill contains an authorization for the entire subpart.

HR

(367) The House bill and Senate amendment include similar provisions, except the Senate's list of authorized activities falls in subsection (e).

HR

(368) The House bill and Senate amendment contain similar provisions, with the House bill requiring a comprehensive plan to

be published for public comment and the Senate amendment requiring consultation with specified groups.

The House bill requires an interim report be published in 2 and ½ years while the Senate amendment requires the interim report in 3 years.

SR with an amendment:

Amend heading of (b) to "Assessment of National Activities".

HR on 3 years for interim report

(369) The Senate amendment, but not the House bill, requires a study on alternate assessments and alternative achievement standards.

HR

(370) There are no differences between the House bill and Senate amendment.

LC

(371) The House bill and Senate amendment include similar provisions, except the House's list of authorized activities is in (b).

The Senate amendment, but not the House bill, requires a study on the 0–6 program in Part C.

HR

(372) The Senate amendment allows the Secretary to reserve funds under Parts B and C to pay for the studies and evaluations, while the House bill requires studies and evaluations to be paid out of the authorizations of appropriations for this subpart.

SR

(373) The House bill includes one authorization of appropriations for this subpart, while the Senate amendment included authorizations for each section.

HR

(374) There are no significant differences between the House and Senate amendments.

HR with an amendment:

Insert a new paragraph (1) to read as follows and renumber accordingly:

> "(1) children with disabilities and their parents receive training and information designed to assist the children in meeting developmental and functional goals and challenging academic achievement goals, and in preparing to lead productive independent adult lives;".

(375) The House bill and Senate amendment contain similar provisions with the House bill adding as a required activity to meet the needs of low-income and limited English proficient students and the Senate amendment adding requirements for the center to explain mediation requirements to parents, assist parents and children of their rights upon reaching their majority, partner with

community parent resource centers, and report on the number of parents served through alternative dispute resolution.

HR with an amendment:

Insert as a new paragraph (3) to read as follows and renumber accordingly:

"(3) ensure that the training and information provided meets the needs of low-income parents and parents of children with limited English proficiency;".

HR with an amendment:

Strike "research based practices and interventions" and insert "practices and interventions based on scientifically based research, to the extent practicable," in (3)(D).

HR with an amendment:

Insert as a new (F) to read as follows and reorder accordingly:

"(F) participate in activities at the school level that benefit their children;".

HR with an amendment:

Insert in paragraph (10) [not renumbered]: "and the Institute of Education Sciences" after "section 663".

HR with an amendment:

Add "as appropriate under state law" after "majority" in paragraph (6).

HR with an amendment:

Insert at the end of paragraph (7) [not renumbered]: ", including the resolution session described in section 615(e);".

(376) The House bill allows as an optional activity information to assist parents and children of their rights upon reaching their majority.

HR

(377) The Senate amendment, but not the House bill, requires coordination of grantees in a large State.

HR with an amendment:

Insert ", including those that work with low-income parents and parents of children with limited English proficiency" at the end of (d)(2).

(378) The House bill, but not the Senate amendment, requires the advising board to advise the governing board of the organization.

HR

(379) The House bill, but not the Senate amendment, requires that the board ensure that members include low-income parents and parents of limited English proficient students.

The Senate amendment, but not the House bill, eliminates special governing committees. The House bill, but not the Senate

amendment, requires the development of a memorandum explaining the role of the board and the center while the Senate amendment requires the center to develop a specific mission.

HR with an amendment:

Insert ", including low-income parents and parents of children with limited English proficiency" at the end of (g)(1)(C).

(380) The Senate amendment, but not the House bill, includes functional goals, and requires that a majority of members are parents of children with disabilities age birth through 26.

HR

(381) The Senate amendment limits the national technical assistance grantee to one parent organization while the House bill allows multiple grants and a variety of eligible agencies.

SR

(382) The Senate amendment, but not the House bill, includes extra requirements for a national and regional network of parent training and information technical assistance centers.

SR with amendment:

Add Senate (d) to House bill.

(383) The House bill, but not the Senate amendment, adds the support of implementation of research and the uses of technology and the Senate amendment, but not the House bill, adds support of internet based communications for students with cognitive disabilities.

HR with an amendment as follows:

Strike "and" and insert ", (c) and (d)" after "subsections (b)" in subsection (a).

(384) The House bill allows the Secretary to support these activities and the Senate amendment requires the Secretary to support these activities. The Senate amendment also limits the captioning of programs only if captioning has not previously been provided or paid for.

HR with an amendment as follows:

Insert "; AND INSTRUCTIONAL MATERIALS" after "ACTIVITIES" in the heading of subsection (c).

HR with an amendment as follows:

Strike (1)(D).

HR with an amendment as follows:

Insert subsection (e) to read as follows:

"(e) NATIONAL INSTRUCTIONAL MATERIALS ACCESS CENTER.—

"(1) IN GENERAL.—Notwithstanding subsection (d), in carrying out this section, the Secretary shall support, through the American Printing House for the Blind, a center known as the Instructional Materials Access Center not later than one year after the date of enactment.

"(2) RESPONSIBILITIES.—The duties of the National Instructional Materials Access Center are the following:

"(A) To receive and maintain a catalog of print instructional materials prepared in the national instructional materials accessibility standard, as established by the Secretary, made available to the center by the textbook publishing industry, State educational agencies, and local educational agencies;

"(B) To provide access to print instructional materials, including textbooks, in accessible media, free of charge, to visually impaired and print disabled students in elementary schools and secondary schools, in accordance with such terms and procedures as the National Instructional Materials Access Center may prescribe; and

"(C) To develop, adopt and publish procedures to protect against copyright infringement, with respect to the print instructional materials provided under 612(a)(22) and section 613(a)(6).

"(3) DEFINITIONS.—In this section—

"(A) NATIONAL INSTRUCTIONAL MATERIALS ACCESSIBILITY STANDARD.—The term 'National Instructional Materials Accessibility Standard' means the technical standards described in paragraph (2), to be used in the preparation of electronic files suitable and used solely for efficient conversion into specialized formats.

"(B) BLIND OR OTHER PERSONS WITH PRINT DISABILITIES.—The term 'blind or other persons with print disabilities' means children served under this Act and who may qualify in accordance with the Act entitled 'An Act to provide books for the adult blind,' approved March 3, 1931 (2 U.S.C. 135a; 46 Stat. 1487) to receive books and other publications produced in specialized formats.

"(C) SPECIALIZED FORMATS.—The term 'specialized formats' has the meaning given the term in section 121(c)(3) of title 17, United States Code.

"(D) PRINT INSTRUCTIONAL MATERIALS.—The term 'print instructional materials' means printed textbooks and related printed core materials that are written and published primarily for use in elementary school and secondary school instruction and are required by a State educational agency or local educational agency for use by students in the classroom.

"(4) APPLICABILITY.—This section shall apply to print instructional materials published after the date on which the final rule establishing the National Instructional Materials Accessibility Standard is published in the Federal Register.

"(5) LIABILITY OF THE SECRETARY.—Nothing in this subsection shall be construed to establish a private right of action against the Secretary of Education for failure to provide instructional materials directly, or for failure by the National Instructional Materials Access Center to perform the functions of such Center, or to otherwise authorize a private right of action related to the performance by the Center, including through

the application of the rights of children and parents established under this Act.''

HR with an amendment as follows:

Insert ''not'' before ''been fully funded by other sources'' in paragraph (2).

(385) The House bill, but not the Senate amendment, contains more specific requirements for eligible entities of the distributors of textbooks.

HR with an amendment as follows:

Redesignate subsection (e) as subsection (f).

(386) The House bill lays out set figures for authorizations for the subpart and for each section, while the Senate authorizes such sums for the section.

HR

(387) The Senate amendment requires the Secretary to establish an electronic standard for the preparation of electronic files for instructional materials and creates a national center to disseminate instructional materials to some students with disabilities. The House bill does not include this provision.

SR with an amendment:

Add at the end of this Act the following technical amendments in the miscellaneous provisions section to amend 17 U.S.C. § 121 as follows:

Redesignate subsection (c) to (d)

Insert new paragraph (c) to read as follows:

''(c) Notwithstanding the provisions of section 106, it is not an infringement of copyright for a publisher of print instructional materials for use in elementary and secondary schools to create and distribute to the National Instructional Materials Access Center copies of the electronic files described in sections 612(a)(22)(B), 613(a)(6), and section 674(d) of the Individuals with Disabilities Education Reform Act of 2004, containing the contents of print instructional materials using the Instructional Material Accessibility Standard (as defined in section 674(d) of said Act, when required to do so by any State or local educational agency, if the publisher had the right to publish such print instructional materials in print formats and if such copies are used solely for reproduction or distribution of the contents of such print instructional materials in specialized formats.''

SR with amendment as follows:

Amend the definition of ''specialized formats'' in subsection (d) (currently subsection (c)) and add the definition from ''print instructional materials'' as follows:

'' 'Specialized formats' means braille, audio, or digital text which is exclusively for use by blind or other persons with disabilities. With respect to instructional materials, 'specialized formats' also means large print formats when they are distributed exclusively for use by blind or other persons with disabilities.

"PRINT INSTRUCTIONAL MATERIALS.—The term 'print instructional materials' has the meaning given to it under section 674(d)(3)((D) of the Individuals with Disabilities Education Reform Act of 2004.

(388) The Senate amendment creates a new $50 million competitive program to make grants to LEAs to establish alternative educational settings and provide behavioral supports to students with disabilities. The House bill does not include this program.

HR with amendment:

Insert the following at the end of Subpart 2:

"SEC. 674. INTERIM ALTERNATIVE EDUCATIONAL SETTINGS, BEHAVIORAL SUPPORTS, AND SYSTEMIC SCHOOL INTERVENTIONS.

"(a) PROGRAM AUTHORIZED.—The Secretary may award grants to, and enter into contracts and cooperative agreements to support safe learning environments that support academic achievement for all students by improving the quality of interim alternative educational settings, and providing increased behavioral supports and research-based, systemic interventions in schools.

"(b) AUTHORIZED ACTIVITIES.—In carrying out this section, the Secretary may support activities to

"(1) establish, expand or increase the scope of behavioral supports and systemic interventions by providing for effective, research-based practices, including—

"(A) training for school staff on early identification, prereferral, and referral procedures;

"(B) training for administrators, teachers, related services personnel, behavioral specialists, and other school staff in positive behavioral interventions and supports, behavioral intervention planning, and classroom and student management techniques;

"(C) joint training for administrators, parents, teachers, related services personnel, behavioral specialists, and other school staff on effective strategies for positive behavioral interventions and behavior management strategies that focus on the prevention of behavior problems;

"(D) developing or implementing specific curricula, programs, or interventions aimed at addressing behavioral problems;

"(E) stronger linkages between school based services and community-based resources, such as community mental health and primary care providers; or

"(F) using behavioral specialists, related services personnel, and other staff necessary to implement behavioral supports; or

"(2) to improve interim alternative educational settings by—

"(A) improving the training of administrators, teachers, related services personnel, behavioral specialists, and other school staff (including ongoing mentoring of new teachers) in behavioral supports and interventions;

"(B) attracting and retaining a high quality, diverse staff;

"(C) providing for referral to counseling services;

"(D) utilizing research-based interventions, curriculum, and practices;

"(E) allowing students to use instructional technology that provides individualized instruction;

"(F) ensuring that the services are fully consistent with the goals of the individual student's IEP;

"(G) promoting effective case management and collaboration among parents, teachers, physicians, related services personnel, behavioral specialists, principals, administrators, and other school staff;

"(H) promoting interagency coordination and coordinated service delivery among schools, juvenile courts, child welfare agencies, community mental health providers, primary care providers, public recreation agencies, and community-based organizations; or

"(I) providing for behavioral specialists to help students transitioning from interim alternative educational settings reintegrate into their regular classrooms.

"(c) DEFINITION OF ELIGIBLE ENTITY.—In this section, the term 'eligible entity' means—

"(1) a local educational agency; or

"(2) a consortium consisting of a local educational agency and 1 or more of the following entities:

"(A) another local educational agency;

"(B) a community-based organization with a demonstrated record of effectiveness in helping children with disabilities who have behavioral challenges succeed;

"(C) an institution of higher education;

"(D) a community mental health provider; or

"(E) an educational service agency.

"(d) APPLICATIONS.—Any eligible entity that wishes to receive a grant, or enter into a contract or cooperative agreement, under this section shall

"(1) submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require; and

"(2) involve parents of participating students in the design and implementation of the activities funded under this section.

"(e) REPORT AND EVALUATION.—Each eligible entity receiving a grant under this Act shall prepare and submit annually to the Secretary of Education a report on the outcomes of the activities assisted under the grant."

Report language: "The Conferees intend for this program to have a systemic impact on a school environment rather than provide isolated assistance to children with disabilities. The Conferees believe a systemic, research-based approach can greatly benefit special needs children while also providing an incidental benefit to non-disabled children, school staff, parents and others in the school community.

"The Conferees instruct the Department of Education to establish an easily accessible website with information on best practices for interim alternative educational settings, behavior supports, and

systemic school interventions to help children with behavioral and emotional disabilities.''

Title II

(389) The Senate amendment includes a new $50 million reservation of Rehabilitation Act State grants for States to provide transition services to students with disabilities through the VR system (beginning in the first year the amount appropriated exceeds the FY04 amount by $100,000,000). The House bill does not include this provision.

SR

Title V (House bill)

(390) The House bill includes a sense of Congress that safe and drug free schools are essential for the learning and development of children with disabilities. The Senate amendment does not include this provision.

HR

(391) The House bill requires a study on the costs to States of complying with IDEA. The Senate amendment does not include this provision.

HR

Title III

(392) The House bill and Senate amendment contain similar provisions creating a National Center for Special Education Research at the Institute for Education Science. However, the House bill contains this language in Section 663.

HR

(393) The Senate amendment, but not the House bill, contains a separate provision on the mission of the NCSER. The House bill and Senate amendment have differing language on the grant application process.

HR

(394) The House bill lists similar authorized activities as the Senate amendment, which contains those activities under the ''duties'' section.

HR

(395) The Senate amendment, but not the House bill, contains a ''standards'' section.

HR

(396) The Senate amendment contains more detailed plan provisions than the House bill, and contains an implementation provision while the House does not.

HR

Title IV

(397) The Senate amendment creates a commission on universal design and requires reports to be submitted to Congress on universal design and accessibility of instructional materials. The House bill does not include this provision.

SR

Title V

(398) The Senate amendment, but not the House bill, includes an amendment to the Children's Health Act to include the Secretary of Education as a required partner in the longitudinal study and requires that the study be in compliance with FERPA requirements.

HR

(399) The Senate amendment, but not the House bill, includes this required study on medication.

SR

General

(400) Add enactment clause.

LC

From the Committee on Education and the Workforce, for consideration of the House bill and the Senate amendment, and modifications committed to conference:

JOHN BOEHNER,
MICHAEL N. CASTLE,
VERNON J. EHLERS,
RIC KELLER,
JOE WILSON,
GEORGE MILLER,
LYNN C. WOOLSEY,
MAJOR R. OWENS,

From the Committee on Energy and Commerce, for consideration of sec. 101 and title V of the Senate amendment, and modifications committed to conference:

JOE BARTON,
MICHAEL BILIRAKIS,
JOHN D. DINGELL,

From the Committee on the Judiciary, for consideration of sec. 205 of the House bill, and sec. 101 of the Senate amendment, and modifications committed to conference:

F. JAMES SENSENBRENNER, Jr.,
LAMAR SMITH,
JOHN CONYERS,

Managers on the Part of the House.

JUDD GREGG,
BILL FRIST,
MICHAEL B. ENZI,

LAMAR ALEXANDER,
CHRISTOPHER BOND,
MIKE DEWINE,
PAT ROBERTS,
JEFF SESSIONS,
JOHN ENSIGN,
LINDSEY GRAHAM,
JOHN WARNER,
EDWARD KENNEDY,
CHRISTOPHER J. DODD,
TOM HARKIN,
BARBARA A. MIKULSKI,
JEFF BINGAMAN,
PATTY MURRAY,
JACK REED,
JOHN EDWARDS,
Managers on the Part of the Senate.

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