

Union Calendar No. 304

104<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

**H. R. 3268**

[Report No. 104-614]

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## **A BILL**

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

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JUNE 10, 1996

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

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### IN THE HOUSE OF REPRESENTATIVES

APRIL 18, 1996

Mr. CUNNINGHAM introduced the following bill; which was referred to the Committee on Economic and Educational Opportunities

JUNE 10, 1996

Additional sponsors: Mr. GUNDERSON, Mr. SAM JOHNSON of Texas, Mr. RIGGS, Mr. SOUDER, Mr. WELDON of Florida, Mr. GREENWOOD, Mr. BARRETT of Nebraska, Mr. BALLENGER, Mrs. MEYERS of Kansas, Mr. GRAHAM, and Mr. KNOLLENBERG

JUNE 10, 1996

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

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

[For text of introduced bill, see copy of bill as introduced on April 18, 1996]

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## A BILL

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

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

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “IDEA Improvement Act*  
 5 *of 1996”.*

6 **TITLE I—AMENDMENTS TO THE**  
 7 **INDIVIDUALS WITH DISABIL-**  
 8 **ITIES EDUCATION ACT**

9 **SEC. 101. AMENDMENTS TO THE INDIVIDUALS WITH DIS-**  
 10 **ABILITIES EDUCATION ACT.**

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

14 **“PART A—GENERAL PROVISIONS**

15 **“SEC. 601. SHORT TITLE; TABLE OF CONTENTS; FINDINGS;**  
 16 **PURPOSES.**

17 *“(a) SHORT TITLE.—This title may be cited as the ‘In-*  
 18 *dividuals with Disabilities Education Act’.*

19 *“(b) TABLE OF CONTENTS.—The table of contents for*  
 20 *this title is as follows:*

*“PART A—GENERAL PROVISIONS*

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

*“Sec. 602. Definitions.*

*“Sec. 603. Office of Special Education Programs.*

*“Sec. 604. Abrogation of State sovereign immunity.*

*“Sec. 605. Requirements for prescribing regulations.*

*“Sec. 606. Employment of individuals with disabilities.*

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

- “Sec. 611. Authorization; allotment; use of funds; authorization of appropriations.
- “Sec. 612. State requirements.
- “Sec. 613. Local educational agency requirements.
- “Sec. 614. Evaluations, reevaluations, individualized education programs, and educational placements.
- “Sec. 615. Procedural safeguards.
- “Sec. 616. Withholding and judicial review.
- “Sec. 617. Administration.
- “Sec. 618. Program information.
- “Sec. 619. Preschool grants.

“PART C—INFANTS AND TODDLERS WITH DISABILITIES

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

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

- “Sec. 651. Purpose of part.
- “Sec. 652. Eligibility for financial assistance.

“SUBPART 1—GENERAL PROVISIONS AND NATIONAL RESEARCH AND  
IMPROVEMENT ACTIVITIES

- “Sec. 661. Comprehensive plan.
- “Sec. 662. Priorities.
- “Sec. 663. Peer review.
- “Sec. 664. Eligible applicants.
- “Sec. 665. Applicant and recipient responsibilities.
- “Sec. 666. Indirect costs.
- “Sec. 667. Program evaluation.
- “Sec. 668. National assessment.
- “Sec. 669. Authorization of appropriations.

“SUBPART 2—PROFESSIONAL DEVELOPMENT

- “Sec. 671. Purpose.
- “Sec. 672. Finding.
- “Sec. 673. National activities.
- “Sec. 674. Professional development for personnel serving low-incidence populations.

“Sec. 675. *Leadership personnel.*

“Sec. 676. *Service obligation.*

“Sec. 677. *Outreach.*

“SUBPART 3—STATE PROGRAM IMPROVEMENT GRANTS FOR CHILDREN WITH  
DISABILITIES

“Sec. 681. *Purpose.*

“Sec. 682. *Eligibility and collaborative process.*

“Sec. 683. *State improvement plans.*

“Sec. 684. *Use of funds.*

“Sec. 685. *Minimum State allotments.*

“Sec. 686. *Authorization of appropriations.*

“SUBPART 4—PARENT TRAINING

“Sec. 691. *Grants for parent training and information centers.*

“Sec. 692. *Technical assistance for parent training and information centers.*

“Sec. 693. *Authorization of appropriations.*

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

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

10              “(2) *Before the date of the enactment of the Edu-*  
11       *cation for All Handicapped Children Act of 1975*  
12       *(Public Law 94–142)—*

13              “(A) *the special educational needs of chil-*  
14       *dren with disabilities were not being fully met;*

15              “(B) *more than one-half of the children*  
16       *with disabilities in the United States did not re-*  
17       *ceive appropriate educational services that would*

1           *enable such children to have full equality of op-*  
2           *portunity;*

3           “(C) 1,000,000 of the children with disabil-

4           *ities in the United States were excluded entirely*  
5           *from the public school system and did not go*  
6           *through the educational process with their peers;*

7           “(D) there were many children with disabil-

8           *ities throughout the United States participating*  
9           *in regular school programs whose disabilities*  
10          *prevented such children from having a successful*  
11          *educational experience because their disabilities*  
12          *were undetected; and*

13          “(E) because of the lack of adequate services

14          *within the public school system, families were*  
15          *often forced to find services outside the public*  
16          *school system, often at great distance from their*  
17          *residence and at their own expense.*

18          “(3) Since the enactment and implementation of

19          *the Education for All Handicapped Children Act of*  
20          *1975, this Act has been successful in ensuring chil-*  
21          *dren with disabilities and the families of such chil-*  
22          *dren access to a free appropriate public education*  
23          *and in improving educational results for children*  
24          *with disabilities.*

1           “(4) *However, the implementation of this Act*  
2           *has been impeded by low expectations, and an insuffi-*  
3           *cient focus on applying replicable research on proven*  
4           *methods of teaching and learning for children with*  
5           *disabilities.*

6           “(5) *20 years of research and experience has*  
7           *demonstrated that the education of children with dis-*  
8           *abilities can be made more effective by—*

9                   “(A) *having high expectations for such chil-*  
10                  *dren and ensuring their access in the general*  
11                  *curriculum to the maximum extent possible;*

12                  “(B) *ensuring that families of such children*  
13                  *have meaningful opportunities to participate in*  
14                  *the education of their children at school and at*  
15                  *home;*

16                  “(C) *coordinating this Act with other local,*  
17                  *State, and Federal school improvement efforts in*  
18                  *order to ensure that such children benefit from*  
19                  *such efforts and that special education can be-*  
20                  *come a service for such children rather than a*  
21                  *place where they are sent;*

22                  “(D) *providing appropriate special edu-*  
23                  *cation and related services and aids and sup-*  
24                  *ports in the regular classroom to such children,*  
25                  *whenever appropriate;*

1           “(E) supporting high-quality, intensive pro-  
2           fessional development for all personnel who work  
3           with such children in order to ensure that they  
4           have the skills and knowledge necessary to enable  
5           them—

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

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

13           “(F) providing incentives for whole-school  
14           approaches and early intervention to reduce the  
15           need to label children as disabled in order to ad-  
16           dress their learning needs; and

17                   “(G) focusing resources on teaching and  
18                   learning while reducing paperwork and require-  
19                   ments that do not assist in improving edu-  
20                   cational results.

21           “(6) While States and local educational agencies  
22           are responsible for providing an education for all  
23           children with disabilities, it is in the national inter-  
24           est that the Federal Government have a role in assist-  
25           ing State and local efforts to educate children with

1        *disabilities in order to improve results for such chil-*  
2        *dren and to ensure equal protection of the law.*

3            *“(7)(A) The Federal Government must be respon-*  
4        *sive to the growing needs of an increasingly more di-*  
5        *verse society. A more equitable allocation of resources*  
6        *is essential for the Federal Government to meet its re-*  
7        *sponsibility to provide an equal educational oppor-*  
8        *tunity for all individuals.*

9            *“(B) America’s racial profile is rapidly chang-*  
10       *ing. While the rate of increase for white Americans is*  
11       *3.2 percent, the rate of increase for racial and ethnic*  
12       *minorities is much higher: 38.6 percent for His-*  
13       *panics, 14.6 percent for African-Americans, and 40.1*  
14       *percent for Asians and other ethnic groups.*

15           *“(C) By the year 2000, this Nation will have*  
16       *260,000,000 people, one of every three of whom will*  
17       *be either African-American, Hispanic, or Asian-*  
18       *American.*

19           *“(D) Taken together as a group, it is a more fre-*  
20       *quent phenomenon for minorities to comprise the ma-*  
21       *jority of public school students. Large city school pop-*  
22       *ulations are overwhelmingly minority, e.g., Miami,*  
23       *71 percent; Philadelphia, 73 percent; Baltimore, 80*  
24       *percent.*

1           “(E) Recruitment efforts within special edu-  
2           cation at the level of preservice, continuing education,  
3           and practice must focus on bringing larger numbers  
4           of minorities into the profession in order to provide  
5           appropriate practitioner knowledge, role models, and  
6           sufficient manpower to address the clearly changing  
7           demography of special education.

8           “(F) The limited English proficient population  
9           is the fastest growing in our Nation, and the growth  
10          is occurring in many parts of our Nation. In the Na-  
11          tion’s 2 largest school districts, limited English stu-  
12          dents make up almost half of all students initially en-  
13          tering school at the kindergarten level. Studies have  
14          documented apparent discrepancies in the levels of re-  
15          ferral and placement of limited English proficient  
16          children in special education. The Department of  
17          Education has found that services provided to limited  
18          English proficient students often do not respond pri-  
19          marily to the pupil’s academic needs. These trends  
20          pose special challenges for special education in the re-  
21          ferral, assessment, and services for our Nation’s stu-  
22          dents from non-English language backgrounds.

23          “(8)(A) Greater efforts are needed to prevent the  
24          intensification of problems connected with mislabeling

1       *and high dropout rates among minority children with*  
2       *disabilities.*

3               “(B) *More minority children continue to be*  
4       *served in special education than would be expected*  
5       *from the percentage of minority students in the gen-*  
6       *eral school population.*

7               “(C) *Poor African-American children are 3.5*  
8       *times more likely to be identified by their teacher as*  
9       *mentally retarded than their white counterpart.*

10              “(D) *Although African-Americans represent 12*  
11       *percent of elementary and secondary enrollments, they*  
12       *constitute 28 percent of total enrollments in special*  
13       *education.*

14              “(E) *The drop out rate is 68 percent higher for*  
15       *minorities than for whites.*

16              “(F) *More than 50 percent of minority students*  
17       *in large cities drop out of school.*

18              “(9)(A) *The opportunity for full participation in*  
19       *awards for grants and contracts; boards of organiza-*  
20       *tions receiving funds under this Act; and peer review*  
21       *panels; and training of professionals in the area of*  
22       *special education by minority individuals, organiza-*  
23       *tions, and historically Black colleges and universities*  
24       *is essential if we are to obtain greater success in the*  
25       *education of minority children with disabilities.*

1           “(B) In 1989, of the 661,000 college and univer-  
2           sity professors, 4.6 percent were African-American  
3           and 3.1 percent were Hispanic. Of the 3,600,000  
4           teachers, prekindergarten through high school, 9.4 per-  
5           cent were African-American and 3.9 percent were  
6           Hispanic.

7           “(C) Students from minority groups comprise  
8           more than 50 percent of K–12 public school enroll-  
9           ment in seven States yet minority enrollment in  
10          teacher training programs is less than 15 percent in  
11          all but six States.

12          “(D) As the number of African-American and  
13          Hispanic students in special education increases, the  
14          number of minority teachers and related service per-  
15          sonnel produced in our colleges and universities con-  
16          tinues to decrease.

17          “(E) Ten years ago, 12.5 percent of the United  
18          States teaching force in public elementary and sec-  
19          ondary schools were members of a minority group.  
20          Minorities comprised 21.3 percent of the national  
21          population at that time and were clearly underrep-  
22          resented then among employed teachers. Today, the el-  
23          ementary and secondary teaching force is 3 to 5 per-  
24          cent minority, while one-third of the students in pub-  
25          lic schools are minority children.

1           “(F) *As recently as 1984–85, Historically Black*  
2           *Colleges and Universities supplied nearly half of the*  
3           *African-American teachers in the Nation. However, in*  
4           *1988, Historically Black Colleges and Universities re-*  
5           *ceived only 2 percent of the discretionary funds for*  
6           *special education and related services personnel train-*  
7           *ing.*

8           “(G) *While African-American students constitute*  
9           *28 percent of total enrollment in special education,*  
10          *only 11.2 percent of individuals enrolled in preservice*  
11          *training programs for special education are African-*  
12          *American.*

13          “(H) *In 1986–87, of the degrees conferred in*  
14          *education at the B.A., M.A., and Ph.D levels, only 6,*  
15          *8, and 8 percent, respectively, were awarded to Afri-*  
16          *can-American or Hispanic students.*

17          “(10) *Minorities and underserved persons are so-*  
18          *cially disadvantaged because of the lack of opportuni-*  
19          *ties in training and educational programs, under-*  
20          *girded by the practices in the private sector that im-*  
21          *pede their full participation in the mainstream of so-*  
22          *ciety.*

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

24                 “(1) *to ensure that all children with disabilities*  
25                 *have available to them a free appropriate public edu-*

1 *cation that emphasizes special education and related*  
2 *services designed to meet their unique needs and pre-*  
3 *pare them for employment and independent living;*

4 *“(2) to ensure that the rights of children with*  
5 *disabilities and parents of such children are protected;*

6 *“(3) to assist States, localities, and Federal*  
7 *agencies to provide for the education of all children*  
8 *with disabilities; and*

9 *“(4) to assess, and ensure the effectiveness of, ef-*  
10 *forts to educate children with disabilities.*

11 **“SEC. 602. DEFINITIONS.**

12 *“As used in this title:*

13 *“(1) ASSISTIVE TECHNOLOGY DEVICE.—The term*  
14 *‘assistive technology device’ means any item, piece of*  
15 *equipment, or product system, whether acquired com-*  
16 *mercially off the shelf, modified, or customized, that*  
17 *is used to increase, maintain, or improve functional*  
18 *capabilities of a child with a disability.*

19 *“(2) ASSISTIVE TECHNOLOGY SERVICE.—The*  
20 *term ‘assistive technology service’ means any service*  
21 *that directly assists a child with a disability in the*  
22 *selection, acquisition, or use of an assistive technology*  
23 *device. Such term includes—*

1           “(A) *the evaluation of the needs of such*  
2 *child, including a functional evaluation of the*  
3 *child in the child’s customary environment;*

4           “(B) *purchasing, leasing, or otherwise pro-*  
5 *viding for the acquisition of assistive technology*  
6 *devices by such child;*

7           “(C) *selecting, designing, fitting, customiz-*  
8 *ing, adapting, applying, maintaining, repairing,*  
9 *or replacing of assistive technology devices;*

10          “(D) *coordinating and using other thera-*  
11 *pies, interventions, or services with assistive*  
12 *technology devices, such as those associated with*  
13 *existing education and rehabilitation plans and*  
14 *programs;*

15          “(E) *training or technical assistance for*  
16 *such child, or, where appropriate, the family of*  
17 *such child; and*

18          “(F) *training or technical assistance for*  
19 *professionals (including individuals providing*  
20 *education and rehabilitation services), employ-*  
21 *ers, or other individuals who provide services to,*  
22 *employ, or are otherwise substantially involved*  
23 *in the major life functions of such child.*

24          “(3) *CHILD WITH A DISABILITY.—*

1           “(A) *IN GENERAL.*—*The term ‘child with a*  
2           *disability’ means a child—*

3                   “(i) *with mental retardation, hearing*  
4                   *impairments (including deafness), speech or*  
5                   *language impairments, visual impairments*  
6                   *(including blindness), serious emotional dis-*  
7                   *turbance, orthopedic impairments, autism,*  
8                   *traumatic brain injury, other health im-*  
9                   *pairments, or specific learning disabilities;*  
10                  *and*

11                  “(ii) *who, by reason thereof, needs spe-*  
12                  *cial education and related services.*

13           “(B) *CHILD AGED 3 TO 9.*—*The term ‘child*  
14           *with a disability’ for a child aged 3 to 9, inclu-*  
15           *sive, may, at the discretion of the State and the*  
16           *local educational agency, include a child—*

17                   “(i) *experiencing developmental delays,*  
18                   *as defined by the State and as measured by*  
19                   *appropriate diagnostic instruments and*  
20                   *procedures, in one or more of the following*  
21                   *areas: physical development, cognitive devel-*  
22                   *opment, communication development, social*  
23                   *or emotional development, or adaptive de-*  
24                   *velopment; and*

1                   “(ii) *who, by reason thereof, needs spe-*  
2                   *cial education and related services.*

3                   “(4) *EDUCATIONAL SERVICE AGENCY.—The term*  
4                   *‘educational service agency’—*

5                   “(A) *means a regional public multiservice*  
6                   *agency—*

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

10                  “(ii) *recognized as an administrative*  
11                  *agency for purposes of the provision of spe-*  
12                  *cial education and related services provided*  
13                  *within public elementary and secondary*  
14                  *schools of the State; and*

15                  “(B) *includes any other public institution*  
16                  *or agency having administrative control and di-*  
17                  *rection over a public elementary or secondary*  
18                  *school.*

19                  “(5) *ELEMENTARY SCHOOL.—The term ‘elemen-*  
20                  *tary school’ means a day or residential school which*  
21                  *provides elementary education, as determined under*  
22                  *State law, policy, or procedure.*

23                  “(6) *EQUIPMENT.—The term ‘equipment’ in-*  
24                  *cludes—*

1           “(A) machinery, utilities, and built-in  
2           equipment and any necessary enclosures or  
3           structures to house such machinery, utilities, or  
4           equipment; and

5           “(B) all other items necessary for the func-  
6           tioning of a particular facility as a facility for  
7           the provision of educational services, including  
8           items such as instructional equipment and nec-  
9           essary furniture, printed, published, and audio-  
10          visual instructional materials, telecommuni-  
11          cations, sensory, and other technological aids  
12          and devices, and books, periodicals, documents,  
13          and other related materials.

14          “(7) *EXCESS COSTS*.—The term ‘excess costs’  
15          means those costs which are in excess of the average  
16          annual per student expenditure in a local educational  
17          agency during the preceding school year for an ele-  
18          mentary or secondary school student, as may be ap-  
19          propriate, and which shall be computed after deduct-  
20          ing—

21                 “(A) amounts received—

22                         “(i) under part B of this title;

23                         “(ii) under part A of title I of the Ele-  
24                         mentary and Secondary Education Act of  
25                         1965; or

1                   “(iii) under part A of title VII of such  
2                   Act; and

3                   “(B) any State or local funds expended for  
4                   programs that would qualify for assistance under  
5                   any such part.

6                   “(8) *FREE APPROPRIATE PUBLIC EDUCATION.*—  
7                   The term ‘free appropriate public education’ means  
8                   special education and related services that—

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

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

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

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

20                  “(9) *INDIAN.*—The term ‘Indian’ means an indi-  
21                  vidual who is a member of an Indian tribe.

22                  “(10) *INDIAN TRIBE.*—The term ‘Indian tribe’  
23                  means any Federal or State Indian tribe, band,  
24                  rancheria, pueblo, colony, or community, including  
25                  any Alaskan native village or regional village cor-

1        *poration (as defined in or established under the Alas-*  
2        *ka Native Claims Settlement Act).*

3                *“(11) INDIVIDUALIZED EDUCATION PROGRAM.—*  
4        *The term ‘individualized education program’ or ‘IEP’*  
5        *means a written statement for each child with a dis-*  
6        *ability that is developed, reviewed, and revised in ac-*  
7        *cordance with section 614(d) and that includes—*

8                *“(A) a statement of the child’s present levels*  
9        *of educational performance, including—*

10                *“(i) how the child’s disability affects*  
11        *the child’s involvement and progress in the*  
12        *general curriculum; or*

13                *“(ii) for preschool children, as appro-*  
14        *priate, how the disability affects the child’s*  
15        *participation in appropriate activities;*

16                *“(B) a statement of measurable annual*  
17        *goals, including benchmarks or short-term objec-*  
18        *tives, related to—*

19                *“(i) meeting the child’s needs that re-*  
20        *sult from the child’s disability to enable the*  
21        *child to be involved in and progress in the*  
22        *general curriculum; and*

23                *“(ii) meeting each of the child’s other*  
24        *educational needs that result from the*  
25        *child’s disability;*

1           “(C) a statement of how the classroom was  
2 adapted before the student was referred for iden-  
3 tification as a child with a disability;

4           “(D) a justification of the extent, if any, to  
5 which the child will not be educated with non-  
6 disabled children;

7           “(E) a statement of the special education  
8 and related services and supplementary aids and  
9 services to be provided to the child, or on behalf  
10 of the child, and any program modifications or  
11 support for school personnel necessary for the  
12 child—

13           “(i) to progress toward the attainment  
14 of the annual goals described in subpara-  
15 graph (B); and

16           “(ii) to be involved and progress in the  
17 general curriculum in accordance with sub-  
18 paragraph (A) and to participate in extra-  
19 curricular and other nonacademic activi-  
20 ties;

21           “(F)(i) a statement of any individual modi-  
22 fications in the administration of State or dis-  
23 trictwide assessments of student achievement that  
24 are needed in order for the child to participate  
25 in such assessment; and

1           “(ii) if the individualized education pro-  
2           gram team determines that the child will not  
3           participate in a particular State or districtwide  
4           assessment of student achievement (or part of  
5           such an assessment), a statement of—

6                   “(I) why that assessment is not appro-  
7                   priate for the child; and

8                   “(II) how the child will be assessed;

9                   “(G) the projected date for the beginning of  
10                  the services and modifications described in sub-  
11                  paragraph (E), and the anticipated frequency,  
12                  location, and duration of those services and  
13                  modifications;

14                  “(H)(i) beginning at age 14, and updated  
15                  annually, a statement of the transition service  
16                  needs of the child under the applicable compo-  
17                  nents of the child’s IEP that focuses on the  
18                  child’s courses of study (such as participation in  
19                  advanced-placement courses or a vocational edu-  
20                  cation or school-to-work program);

21                  “(ii) beginning at age 16 (or younger, if de-  
22                  termined appropriate by the IEP Team), a state-  
23                  ment of needed transition services for the child,  
24                  including, when appropriate, a statement of the

1           *interagency responsibilities or any needed link-*  
2           *ages; and*

3           “(iii) *beginning at least one year before the*  
4           *child reaches the age of majority under State*  
5           *law, a statement that the child has been in-*  
6           *formed of his or her rights under this title, if*  
7           *any, that will transfer to the child on reaching*  
8           *the age of majority under section 615(m); and*

9           “(I) *a statement of—*

10           “(i) *how the child’s progress toward the*  
11           *annual goals described in subparagraph (B)*  
12           *will be measured; and*

13           “(ii) *how the child’s parents will be*  
14           *regularly informed (by such means as peri-*  
15           *odic report cards), at least as often as par-*  
16           *ents are informed of their nondisabled chil-*  
17           *dren’s progress, of—*

18           “(I) *their child’s progress toward*  
19           *the annual goals described in subpara-*  
20           *graph (B); and*

21           “(II) *the extent to which that*  
22           *progress is sufficient to enable the child*  
23           *to achieve the objectives by the end of*  
24           *the year.*

1           “(12) *INDIVIDUALIZED EDUCATION PROGRAM*  
2           *TEAM.*—*The term ‘individualized education program*  
3           *team’ or ‘IEP Team’ means a group of individuals*  
4           *composed of—*

5                     “(A) *the parents of a child with a disabil-*  
6                     *ity;*

7                     “(B) *at least one regular education teacher*  
8                     *of such child (if the child is, or may be, partici-*  
9                     *pating in the regular education environment);*

10                    “(C) *at least one special education teacher,*  
11                    *or where appropriate, at least one special edu-*  
12                    *cation provider of such child;*

13                    “(D) *a representative of the local edu-*  
14                    *cational agency who—*

15                             “(i) *is qualified to provide, or super-*  
16                             *viser the provision of, specially designed in-*  
17                             *struction to meet the unique needs of chil-*  
18                             *dren with disabilities;*

19                             “(ii) *is knowledgeable about the general*  
20                             *curriculum; and*

21                             “(iii) *is knowledgeable about the avail-*  
22                             *ability of resources of the local educational*  
23                             *agency;*

24                             “(E) *whenever appropriate, the child with a*  
25                             *disability; and*

1           “(F) at the discretion of the parent or the  
2           agency, other individuals who have special ex-  
3           pertise or knowledge regarding the abilities and  
4           disability or disabilities of the child, including,  
5           as appropriate, related services personnel who  
6           are or who will be working with the child.

7           “(13) INSTITUTION OF HIGHER EDUCATION.—  
8           The term ‘institution of higher education’—

9           “(A) has the meaning given that term in  
10           section 1201(a) of the Higher Education Act of  
11           1965; and

12           “(B) also includes any community college  
13           receiving funding from the Secretary of the Inte-  
14           rior under the Tribally Controlled Community  
15           College Assistance Act of 1978.

16           “(14) LOCAL EDUCATIONAL AGENCY.—The term  
17           ‘local educational agency’ means—

18           “(A) a public board of education or other  
19           public authority legally constituted within a  
20           State for either administrative control or direc-  
21           tion of, or to perform a service function for, pub-  
22           lic elementary or secondary schools in a city,  
23           county, township, school district, or other politi-  
24           cal subdivision of a State, or for a combination  
25           of school districts or counties as are recognized

1           *in a State as an administrative agency for its*  
2           *public elementary or secondary schools;*

3           “(B) *any other public institution or agency*  
4           *having administrative control and direction of a*  
5           *public elementary or secondary school; or*

6           “(C) *an educational service agency.*

7           “(15) *NATIVE LANGUAGE.—The term ‘native lan-*  
8           *guage’, when used with reference to an individual of*  
9           *limited English proficiency, means the language nor-*  
10          *mally used by the individual, or in the case of a*  
11          *child, the language normally used by the parents of*  
12          *the child, and includes American Sign Language.*

13          “(16) *NONPROFIT.—The term ‘nonprofit’ as ap-*  
14          *plied to a school, agency, organization, or institution*  
15          *means a school, agency, organization, or institution*  
16          *owned and operated by one or more nonprofit cor-*  
17          *porations or associations no part of the net earnings*  
18          *of which inures, or may lawfully inure, to the benefit*  
19          *of any private shareholder or individual.*

20          “(17) *PARENT.—The term ‘parent’ includes a*  
21          *legal guardian or surrogate parent.*

22          “(18) *PARENT ORGANIZATION.—The term ‘par-*  
23          *ent organization’ means a private nonprofit organiza-*  
24          *tion (but not including an institution of higher edu-*  
25          *cation) that—*

1                   “(A) has a board of directors—

2                   “*(i) the majority of whom are parents*  
3                   *of children with disabilities;*

4                   “*(ii) that includes—*

5                   “*(I) individuals working in the*  
6                   *fields of special education, related serv-*  
7                   *ices, and early intervention; and*

8                   “*(II) individuals with disabilities;*  
9                   *and*

10                  “*(iii) the parent and professional*  
11                  *members of which are broadly representa-*  
12                  *tive of the population to be served; or*

13                  “*(B)(i) represents the interests of individ-*  
14                  *uals with disabilities and has established a spe-*  
15                  *cial governing committee which meets the re-*  
16                  *quirements of subparagraph (A); and*

17                  “*(ii) has a memorandum of understanding*  
18                  *between the special governing committee and the*  
19                  *board of directors of the organization which*  
20                  *clearly outlines the relationship between the*  
21                  *board and the committee and the decisionmaking*  
22                  *responsibilities and authority of each.*

23                  “(19) PARENT TRAINING AND INFORMATION CEN-  
24                  TER.—The term ‘parent training and information  
25                  center’ means a center that—

1           “(A) provides training and information  
2           that meets the training and information needs of  
3           parents of children with disabilities living in the  
4           area served by the center; and

5           “(B) assists parents—

6           “(i) to better understand the nature of  
7           their children’s disabilities and their edu-  
8           cational and developmental needs;

9           “(ii) to communicate effectively with  
10          personnel responsible for providing special  
11          education, early intervention, and related  
12          services;

13          “(iii) to participate in decisionmaking  
14          processes and the development of the IEP;

15          “(iv) to obtain appropriate informa-  
16          tion about the range of options, programs,  
17          services, and resources available to assist  
18          children with disabilities and their families;

19          “(v) to understand the programs under  
20          this title for the education of, and the provi-  
21          sion of early intervention services to, chil-  
22          dren with disabilities; and

23          “(vi) to participate in school reform  
24          activities.

1           “(20) *RELATED SERVICES*.—The term ‘related  
2           services’ means transportation, and such developmen-  
3           tal, corrective, and other supportive services (includ-  
4           ing speech-language pathology and audiology services,  
5           psychological services, physical and occupational ther-  
6           apy, recreation, including therapeutic recreation, so-  
7           cial work services, counseling services, including reha-  
8           bilitation counseling, orientation and mobility serv-  
9           ices, and medical services, except that such medical  
10          services shall be for diagnostic and evaluation pur-  
11          poses only) as may be required to assist a child with  
12          a disability to benefit from special education, and in-  
13          cludes the early identification and assessment of dis-  
14          abling conditions in children.

15          “(21) *SECONDARY SCHOOL*.—The term ‘second-  
16          ary school’ means a day or residential school which  
17          provides secondary education, as determined under  
18          State law, policy, or procedure, except that it does not  
19          include any education provided beyond grade 12.

20          “(22) *SECRETARY*.—The term ‘Secretary’ means  
21          the Secretary of Education.

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

1           “(A) *instruction conducted in the classroom,*  
2           *in the home, in hospitals and institutions, and*  
3           *in other settings; and*

4           “(B) *instruction in physical education.*

5           “(24) *SPECIFIC LEARNING DISABILITY.—*

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

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

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

23           “(25) *STATE.—The term ‘State’ means each of*  
24           *the 50 States, the District of Columbia, the Common-*  
25           *wealth of Puerto Rico, and each of the territories.*

1           “(26) *STATE EDUCATIONAL AGENCY*.—*The term*  
2           ‘*State educational agency*’ *means the State board of*  
3           *education or other agency or officer primarily respon-*  
4           *sible for the State supervision of public elementary*  
5           *and secondary schools, or, if there is no such officer*  
6           *or agency, an officer or agency designated by the Gov-*  
7           *ernor or by State law.*

8           “(27) *SUPPLEMENTARY AIDS AND SERVICES*.—  
9           *The term ‘supplementary aids and services’ means,*  
10          *aids, services, and other supports that are provided in*  
11          *regular education classes or other education-related*  
12          *settings to enable children with disabilities to be edu-*  
13          *cated with nondisabled children to the maximum ex-*  
14          *tent appropriate in accordance with section*  
15          *612(a)(4).*

16          “(28) *TERRITORY*.—*The term ‘territory’ means*  
17          *American Samoa, the Commonwealth of the Northern*  
18          *Mariana Islands, Guam, and the Virgin Islands.*

19          “(29) *TRANSITION SERVICES*.—*The term ‘transi-*  
20          *tion services’ means a coordinated set of activities for*  
21          *a child with a disability that—*

22                 “(A) *are designed within an outcome-ori-*  
23                 *ented process, which promotes movement from*  
24                 *school to post-school activities, including post-*  
25                 *secondary education, vocational training, inte-*

1           *grated employment (including supported employ-*  
2           *ment), continuing and adult education, adult*  
3           *services, independent living, or community par-*  
4           *ticipation;*

5           *“(B) are based upon the individual child’s*  
6           *needs, taking into account the child’s preferences*  
7           *and interests; and*

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

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

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

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

1 *Assistant Secretary for Special Education and Rehabilitative*  
2 *Services.*

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

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

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

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

18       “(c) *EFFECTIVE DATE.*—*The provisions of subsections*  
19 *(a) and (b) apply with respect to violations that occur in*  
20 *whole or part after the date of the enactment of the Edu-*  
21 *cation of the Handicapped Act Amendments of 1990.*

22 **“SEC. 605. REQUIREMENTS FOR PRESCRIBING REGULA-**  
23 **TIONS.**

24       “(a) *PUBLIC-COMMENT PERIOD.*—*The Secretary shall*  
25 *provide a public-comment period of at least 90 days on any*

1 *regulation proposed under part B or part C of this title*  
2 *on which an opportunity for public comment is otherwise*  
3 *required by law.*

4       “(b) *PROTECTIONS PROVIDED TO CHILDREN.—The*  
5 *Secretary may not implement, or publish in final form, any*  
6 *regulation prescribed pursuant to this title which would*  
7 *procedurally or substantively lessen the protections pro-*  
8 *vided to children with disabilities under this title, as em-*  
9 *bodied in regulations in effect on July 20, 1983 (particu-*  
10 *larly as such protections relate to parental consent to initial*  
11 *evaluation or initial placement in special education, least*  
12 *restrictive environment, related services, timeliness, attend-*  
13 *ance of evaluation personnel at individualized education*  
14 *program meetings, or qualifications of personnel), except to*  
15 *the extent that such regulation reflects the clear and un-*  
16 *equivocal intent of the Congress in legislation.*

17       “(c) *CORRESPONDENCE FROM DEPARTMENT OF EDU-*  
18 *CATION DESCRIBING INTERPRETATIONS OF THIS PART.—*

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

1       *Education of this Act or the regulations implemented*  
2       *pursuant to this Act.*

3               “(2) *ADDITIONAL INFORMATION.—For each item*  
4       *of correspondence published in a list under paragraph*  
5       *(1), the Secretary shall identify the topic addressed by*  
6       *the correspondence and shall include such other sum-*  
7       *mary information as the Secretary determines to be*  
8       *appropriate.*

9               “(3) *RESTRICTIONS ON USE OF CORRESPOND-*  
10       *ENCE.—*

11               “(A) *IN GENERAL.—Except as provided in*  
12       *subparagraph (B), an item of correspondence*  
13       *published and disseminated under paragraph (1)*  
14       *may not be used in the following:*

15                       “(i) *An administrative or due process*  
16                       *action commenced under section 615.*

17                       “(ii) *A compliance review or other ac-*  
18                       *tion relating to a State educational agency*  
19                       *conducted by the Department of Education.*

20                       “(iii) *A compliance review or other ac-*  
21                       *tion relating to a local educational agency*  
22                       *or other agency conducted by a State edu-*  
23                       *cational agency.*

24               “(B) *EXCEPTIONS.—A restriction on the use*  
25       *of an item of correspondence under subpara-*

1           *graph (A) shall not apply if the item of cor-*  
2           *respondence—*

3                   *“(i) is directly related to the particular*  
4                   *fact situation, practice, or policy at issue*  
5                   *under clause (i) or (iii) of subparagraph*  
6                   *(A);*

7                   *“(ii)(I) was originally directed to one*  
8                   *of the parties to the action under subpara-*  
9                   *graph (A)(i); or*

10                   *“(II) was originally directed to the*  
11                   *particular local educational agency or other*  
12                   *agency under subparagraph (A)(iii); or*

13                   *“(iii) was originally directed to the*  
14                   *particular State educational agency under*  
15                   *subparagraph (A)(ii).*

16   **“SEC. 606. EMPLOYMENT OF INDIVIDUALS WITH DISABIL-**  
17                   **ITIES.**

18           *“The Secretary shall assure that each recipient of as-*  
19           *sistance under this Act shall make positive efforts to employ*  
20           *and advance in employment qualified individuals with dis-*  
21           *abilities in programs assisted under this Act.*

1   **“PART B—ASSISTANCE FOR EDUCATION OF ALL**  
2                   **CHILDREN WITH DISABILITIES**

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

5           “(a) *AUTHORIZATION.*—*The Secretary of Education*  
6 *shall provide grants to States and provide amounts to the*  
7 *Secretary of the Interior for the purpose of providing spe-*  
8 *cial education and related services to children with disabil-*  
9 *ities in accordance with this part.*

10          “(b) *ALLOTMENT AMONG STATES.*—

11               “(1) *RESERVATION FOR THE TERRITORIES.*—

12                   “(A) *IN GENERAL.*—*Of the amount appro-*  
13 *priated pursuant to subsection (e) to carry out*  
14 *this part for a fiscal year, the Secretary shall*  
15 *allot not more than one percent among the terri-*  
16 *tries in accordance with this paragraph.*

17                   “(B) *BASIS FOR ALLOTMENT.*—*The Sec-*  
18 *retary shall allot to each territory an amount*  
19 *that bears the same proportion to the amount*  
20 *appropriated pursuant to subsection (e) for a fis-*  
21 *cal year as the number of individuals aged 3 to*  
22 *21, inclusive, residing in such territory bears to*  
23 *the aggregate number of such individuals resid-*  
24 *ing in all such territories.*

25                   “(C) *PROHIBITION ON CONSOLIDATION OF*  
26 *GRANTS.*—*The provisions of section 501 of Public*

1           *Law 95–134 (48 U.S.C. 1469a; relating to the*  
2           *consolidation of one or more grants provided to*  
3           *certain territories) shall not apply with respect*  
4           *to amounts provided to a territory under a grant*  
5           *under this part.*

6           “(2) *SECRETARY OF THE INTERIOR.—Of the*  
7           *amount appropriated pursuant to subsection (e) to*  
8           *carry out this part for a fiscal year, the Secretary*  
9           *shall provide to the Secretary of the Interior an*  
10           *amount equal to 1.226 percent to carry out subsection*  
11           *(d) (relating to special education and related services*  
12           *for Indian children with disabilities).*

13           “(3) *STATES.—*

14           “(A) *IN GENERAL.—After determining the*  
15           *amount to be allotted to the territories under*  
16           *paragraph (1) and the amount to be provided to*  
17           *the Secretary of the Interior under paragraph*  
18           *(2) for a fiscal year, the Secretary shall allot the*  
19           *remaining amount to the remaining States in*  
20           *accordance with this paragraph.*

21           “(B) *BASIS FOR ALLOTMENT.—Except as*  
22           *provided in subparagraph (D), the Secretary*  
23           *shall allot to each State an amount equal to the*  
24           *sum of the following amounts:*

25           “(i) *The amount equal to—*

1                   “(I) 85 percent of the remaining  
2 amount described in subparagraph (A);  
3 multiplied by

4                   “(II) the child population percent-  
5 age of the State (as determined under  
6 subparagraph (C)(i)).

7                   “(ii) The amount equal to—

8                   “(I) 15 percent of the remaining  
9 amount described in subparagraph (A);  
10 multiplied by

11                   “(II) the child poverty percentage  
12 of the State (as determined under sub-  
13 paragraph (C)(ii)).

14                   “(C) DETERMINATION OF CHILD POPU-  
15 LATION PERCENTAGE AND CHILD POVERTY PER-  
16 CENTAGE.—

17                   “(i) CHILD POPULATION PERCENT-  
18 AGE.—The child population percentage  
19 shall be determined by comparing—

20                   “(I) the number of children aged 3  
21 to 21, inclusive, in the State who are  
22 of the same age as children with dis-  
23 abilities for whom the State ensures the  
24 availability of a free appropriate pub-  
25 lic education; to

1                   “(II) *the number of such children*  
2                   *in all States.*

3                   “(ii) *CHILD POVERTY PERCENTAGE.—*  
4                   *The child poverty percentage shall be deter-*  
5                   *mined by comparing—*

6                   “(I) *the number of children aged 3*  
7                   *to 21, inclusive, in the State living in*  
8                   *poverty who are of the same age as*  
9                   *children with disabilities for whom the*  
10                   *State ensures the availability of a free*  
11                   *appropriate public education; to*

12                   “(II) *the number of such children*  
13                   *in all States.*

14                   “(D) *TRANSITION FORMULA.—For each of*  
15                   *the fiscal years 1997 through 2005, the Secretary*  
16                   *shall allot the remaining amount to the remain-*  
17                   *ing States in accordance with the following:*

18                   “(i) *FISCAL YEAR 1997.—For fiscal*  
19                   *year 1997, the Secretary shall allot to each*  
20                   *remaining State the sum of—*

21                   “(I) *10 percent multiplied by the*  
22                   *amount determined for such State*  
23                   *under subparagraph (B); and*

1                   “(II) 90 percent multiplied by the  
2                   amount determined for such State  
3                   under subparagraph (E).

4                   “(ii) FISCAL YEAR 1998.—For fiscal  
5                   year 1998, the Secretary shall allot to each  
6                   remaining State the sum of—

7                   “(I) 20 percent multiplied by the  
8                   amount determined for such State  
9                   under subparagraph (B); and

10                  “(II) 80 percent multiplied by the  
11                  amount determined for such State  
12                  under subparagraph (E).

13                  “(iii) FISCAL YEAR 1999.—For fiscal  
14                  year 1999, the Secretary shall allot to each  
15                  remaining State the sum of—

16                  “(I) 30 percent multiplied by the  
17                  amount determined for such State  
18                  under subparagraph (B); and

19                  “(II) 70 percent multiplied by the  
20                  amount determined for such State  
21                  under subparagraph (E).

22                  “(iv) FISCAL YEAR 2000.—For fiscal  
23                  year 2000, the Secretary shall allot to each  
24                  remaining State the sum of—

1                   “(I) 40 percent multiplied by the  
2                   amount determined for such State  
3                   under subparagraph (B); and

4                   “(II) 60 percent multiplied by the  
5                   amount determined for such State  
6                   under subparagraph (E).

7                   “(v) FISCAL YEAR 2001.—For fiscal  
8                   year 2001, the Secretary shall allot to each  
9                   remaining State the sum of—

10                   “(I) 50 percent multiplied by the  
11                   amount determined for such State  
12                   under subparagraph (B); and

13                   “(II) 50 percent multiplied by the  
14                   amount determined for such State  
15                   under subparagraph (E).

16                   “(vi) FISCAL YEAR 2002.—For fiscal  
17                   year 2002, the Secretary shall allot to each  
18                   remaining State the sum of—

19                   “(I) 60 percent multiplied by the  
20                   amount determined for such State  
21                   under subparagraph (B); and

22                   “(II) 40 percent multiplied by the  
23                   amount determined for such State  
24                   under subparagraph (E).

1           “(vii) *FISCAL YEAR 2003.*—*For fiscal*  
2           *year 2003, the Secretary shall allot to each*  
3           *remaining State the sum of—*

4                   “(I) *70 percent multiplied by the*  
5                   *amount determined for such State*  
6                   *under subparagraph (B); and*

7                   “(II) *30 percent multiplied by the*  
8                   *amount determined for such State*  
9                   *under subparagraph (E).*

10           “(viii) *FISCAL YEAR 2004.*—*For fiscal*  
11           *year 2004, the Secretary shall allot to each*  
12           *remaining State the sum of—*

13                   “(I) *80 percent multiplied by the*  
14                   *amount determined for such State*  
15                   *under subparagraph (B); and*

16                   “(II) *20 percent multiplied by the*  
17                   *amount determined for such State*  
18                   *under subparagraph (E).*

19           “(ix) *FISCAL YEAR 2005.*—*For fiscal*  
20           *year 2005, the Secretary shall allot to each*  
21           *remaining State the sum of—*

22                   “(I) *90 percent multiplied by the*  
23                   *amount determined for such State*  
24                   *under subparagraph (B); and*

1                   “(II) 10 percent multiplied by the  
2                   amount determined for such State  
3                   under subparagraph (E).

4                   “(E) *BASE AMOUNT FOR 1996.*—

5                   “(i) *IN GENERAL.*—Subject to clause  
6                   (ii), the amount determined under this sub-  
7                   paragraph for a State is the amount that  
8                   bears the same proportion to the remaining  
9                   amount (described in subparagraph (A)) for  
10                  the fiscal year under subparagraph (D) as  
11                  the amount received by the State under this  
12                  section for fiscal year 1996 bears to the ag-  
13                  gregate of the amounts received by the re-  
14                  maining States (described in subparagraph  
15                  (A)) under this section for fiscal year 1996.

16                  “(ii) *REDUCTION IN AMOUNT.*—If the  
17                  State received an amount under this section  
18                  for fiscal year 1996 on the basis of children  
19                  aged 3 to 5, inclusive, in such State, but the  
20                  State does not make a free appropriate pub-  
21                  lic education available to all children with  
22                  disabilities aged 3 to 5, inclusive, in the  
23                  State at the time a determination is made  
24                  under subparagraph (C), the Secretary shall  
25                  reduce, on a proportional basis, the amount

1           *under clause (i) for purposes of allotting*  
2           *amounts under such subparagraph.*

3           “(F) *MINIMUM ALLOTMENT.*—*For fiscal*  
4           *year 1997 and each subsequent fiscal year, the*  
5           *amount allotted to each remaining State (de-*  
6           *scribed in subparagraph (A)) shall not be less*  
7           *than an amount equal to one-third of one percent*  
8           *of the remaining amount (described in subpara-*  
9           *graph (A)) for the fiscal year.*

10           “(G) *MAXIMUM ALLOTMENT.*—

11           “(i) *IN GENERAL.*—*For fiscal year*  
12           *1997 and each subsequent fiscal year, the*  
13           *amount allotted to each remaining State*  
14           *(described in subparagraph (A)) under this*  
15           *paragraph shall not be more than an*  
16           *amount equal to*

17                   “(I) *the sum of—*

18                           “(aa) *the number of children*  
19                           *with disabilities in the State, aged*  
20                           *6 through 21, who are receiving*  
21                           *special education and related*  
22                           *services, as determined under*  
23                           *clause (ii); and*

24                           “(bb) *if the State is eligible*  
25                           *for a grant under section 619, the*

1                    *number of such children in the*  
2                    *State, aged 3 through 5; multi-*  
3                    *plied by*

4                    *“(II) 40 percent of the average*  
5                    *per-pupil expenditure in public ele-*  
6                    *mentary and secondary schools in the*  
7                    *United States.*

8                    *“(ii) DETERMINATION OF NUMBER OF*  
9                    *CHILDREN.—The number of children with*  
10                    *disabilities receiving special education and*  
11                    *related services in any fiscal year shall be*  
12                    *equal to the number of such children receiv-*  
13                    *ing special education and related services*  
14                    *on December 1 of the fiscal year preceding*  
15                    *the fiscal year for which the determination*  
16                    *is made.*

17                    *“(iii) AVERAGE PER PUPIL EXPENDI-*  
18                    *TURE.—For purposes of clause (i)(II), the*  
19                    *term ‘average per pupil expenditure’, in the*  
20                    *United States, means the aggregate current*  
21                    *expenditures, during the second fiscal year*  
22                    *preceding the fiscal year for which the com-*  
23                    *putation is made (or, if satisfactory data*  
24                    *for such year are not available at the time*  
25                    *of computation, then during the most recent*

1           *preceding fiscal year for which satisfactory*  
2           *data are available) of all local educational*  
3           *agencies in the United States (which, for*  
4           *purposes of this subparagraph, means the*  
5           *fifty States and the District of Columbia),*  
6           *as the case may be, plus any direct expendi-*  
7           *tures by the State for operation of such*  
8           *agencies (without regard to the source of*  
9           *funds from which either of such expendi-*  
10           *tures are made), divided by the aggregate*  
11           *number of children in average daily attend-*  
12           *ance to whom such agencies provided free*  
13           *public education during such preceding*  
14           *year.*

15           “(4) *SPECIAL RULE WITH RESPECT TO PUERTO*  
16           *RICO.—*

17           “(A) *IN GENERAL.—Notwithstanding any*  
18           *other provision of this subsection, the amount al-*  
19           *lotted to Puerto Rico for a fiscal year shall bear*  
20           *the same or lower proportion to the remaining*  
21           *amount (described in paragraph (3)(A)) as the*  
22           *amount received by Puerto Rico under this sec-*  
23           *tion for fiscal year 1996 bears to the aggregate*  
24           *of the amounts received by the remaining States*

1           *(as described in paragraph (3)(A)) under this*  
2           *section for fiscal year 1996.*

3           “(B) *ADJUSTMENT IN AMOUNTS TO REMAIN-*  
4           *ING STATES.—If the amount allotted to Puerto*  
5           *Rico for a fiscal year is determined under sub-*  
6           *paragraph (A), the Secretary shall reallocate to the*  
7           *remaining States (as described in paragraph*  
8           *(3)(A)), on a proportional basis, any amount not*  
9           *otherwise allotted to Puerto Rico.*

10          “(5) *USE OF MOST RECENT POPULATION DATA.—*  
11          *For the purpose of providing grants under this part,*  
12          *the Secretary shall use the most recent population*  
13          *data and data on children aged 3 to 21, inclusive, liv-*  
14          *ing in poverty that are available and satisfactory to*  
15          *the Secretary.*

16          “(c) *USE OF FUNDS BY STATE.—*

17                 “(1) *RESERVATION FOR STATE ACTIVITIES.—*

18                         “(A) *IN GENERAL.—Subject to subpara-*  
19                         *graph (D), a State may reserve not more than*  
20                         *25 percent of the amount allotted to the State*  
21                         *under paragraph (1) or (3) of subsection (b) for*  
22                         *a fiscal year for administration and other State-*  
23                         *level activities in accordance with subparagraphs*  
24                         *(B) and (C).*

25                         “(B) *STATE ADMINISTRATION.—*

1           “(i) *IN GENERAL.*—*For the purpose of*  
2           *administering programs under this part,*  
3           *including the coordination of activities*  
4           *under this part with, and providing tech-*  
5           *nical assistance to, other programs that pro-*  
6           *vide services to children with disabilities—*

7                   “(I) *each territory may use up to*  
8                   *3 percent of the amount allotted to the*  
9                   *territory for a fiscal year, or \$35,000,*  
10                  *whichever is greater; and*

11                  “(II) *each remaining State may*  
12                  *use up to 3 percent of the amount al-*  
13                  *lotted to the State for a fiscal year, or*  
14                  *\$450,000, whichever is greater.*

15           “(ii) *USE OF AMOUNTS FOR ADMINIS-*  
16           *TRATION OF PART C.*—*If the State edu-*  
17           *cational agency is the lead agency for the*  
18           *State under part C, amounts described in*  
19           *clause (i) may also be used for the adminis-*  
20           *tration of part C.*

21           “(C) *OTHER STATE-LEVEL ACTIVITIES.*—*A*  
22           *State shall use any amounts reserved under sub-*  
23           *paragraph (A) for a fiscal year that are not used*  
24           *for administration under subparagraph (B) for*  
25           *such fiscal year—*

1           “(i) for support and direct services, in-  
2           cluding technical assistance and personnel  
3           development and training;

4           “(ii) for administrative costs of mon-  
5           itoring and complaint investigation, but  
6           only to the extent that such costs exceed the  
7           costs incurred for those activities during fis-  
8           cal year 1985;

9           “(iii) to establish and implement the  
10          mediation process required by section  
11          615(d), including providing for the costs of  
12          mediators and support personnel;

13          “(iv) to assist local educational agen-  
14          cies in meeting personnel shortages;

15          “(v) to develop a State improvement  
16          plan under part D;

17          “(vi) for activities at the State and  
18          local levels to meet the performance goals es-  
19          tablished by the State under section  
20          612(a)(14) and to support implementation  
21          of the State improvement plan under part  
22          D if the State receives funds under that  
23          part; or

24          “(vii) to supplement other amounts  
25          used to develop and implement a Statewide

1           *coordinated services system designed to im-*  
2           *prove results for children and families, in-*  
3           *cluding children with disabilities and their*  
4           *families, but not to exceed one percent of the*  
5           *amount received by the State under this sec-*  
6           *tion (such system shall be coordinated with*  
7           *and, to the extent appropriate, build on the*  
8           *system of coordinated services developed by*  
9           *the State under part C).*

10           “(D) *REPORT ON USE OF AMOUNTS.*—*The*  
11           *State shall, as part of the information required*  
12           *to be submitted under section 612, submit a de-*  
13           *scription of—*

14                   “(i) *how amounts reserved under sub-*  
15                   *paragraph (A) will be used to meet the re-*  
16                   *quirements of this part;*

17                   “(ii) *how such amounts will be allo-*  
18                   *cated among the activities described in sub-*  
19                   *paragraphs (B) and (C) to meet State pri-*  
20                   *orities based on input from local edu-*  
21                   *cational agencies; and*

22                   “(iii) *what percentage of such*  
23                   *amounts, if any, will be distributed to local*  
24                   *educational agencies by formula.*

1           “(2) *SUBGRANTS TO LOCAL EDUCATIONAL AGEN-*  
2           *CIES AND CERTAIN STATE AGENCIES.*—

3           “(A) *IN GENERAL.*—*The State shall provide*  
4           *at least 75 percent of the amount received under*  
5           *a grant for a fiscal year to local educational*  
6           *agencies in the State that have established their*  
7           *eligibility under section 613, and to State agen-*  
8           *cies that received funds under section 614A(a)*  
9           *(as such section was in effect on the day before*  
10           *the date of the enactment of the IDEA Improve-*  
11           *ment Act of 1996) for fiscal year 1996 and have*  
12           *established their eligibility under section 613, for*  
13           *use in accordance with this part.*

14           “(B) *METHODS OF DISTRIBUTION.*—*A State*  
15           *may provide amounts under subparagraph (A)*  
16           *to local educational agencies and State agencies*  
17           *described under such subparagraph on the basis*  
18           *of—*

19                   “(i) *school-age population;*

20                   “(ii) *school enrollment;*

21                   “(iii) *numbers of children with disabili-*  
22                   *ties receiving a free appropriate public*  
23                   *education;*

24                   “(iv) *allocations for previous fiscal*  
25                   *years;*

1                   “(v) any two or more of the factors de-  
2                   scribed in clauses (i) through (iv); or

3                   “(vi) poverty, in combination with one  
4                   or more of the factors described in clauses  
5                   (i) through (iv).

6                   “(C) FORMER CHAPTER 1 STATE AGEN-  
7                   CIES.—

8                   “(i) IN GENERAL.—To the extent nec-  
9                   essary for each of the fiscal years 1997,  
10                  1998, and 1999, the State shall use amounts  
11                  that are available under paragraph (1)(A)  
12                  to ensure that each State agency that re-  
13                  ceived amounts in fiscal year 1994 under  
14                  subpart 2 of part D of chapter 1 of title I  
15                  of the Elementary and Secondary Edu-  
16                  cation Act of 1965 (as such subpart was in  
17                  effect on the day before the date of the enact-  
18                  ment of the Improving America’s Schools  
19                  Act of 1994) receives, from the combination  
20                  of funds under paragraph (1)(A) and funds  
21                  provided under subparagraph (A), an  
22                  amount equal to—

23                               “(I) the number of children with  
24                               disabilities, aged 6 to 21, inclusive, to  
25                               whom the agency was providing spe-

1                    *cial education and related services on*  
2                    *December 1 of the fiscal year for which*  
3                    *the funds were appropriated, subject to*  
4                    *the methods of distribution under sub-*  
5                    *paragraph (B); multiplied by*

6                    *“(II) the per-child amount pro-*  
7                    *vided under such subpart for fiscal*  
8                    *year 1994.*

9                    *“(ii) ADDITIONAL USE OF AMOUNTS.—*

10                    *The State may use amounts described in*  
11                    *clause (i) to ensure that each local edu-*  
12                    *cational agency that received fiscal year*  
13                    *1994 funds under that subpart for children*  
14                    *who had transferred from a State-operated*  
15                    *or State-supported school or program as-*  
16                    *sisted under that subpart receives, from the*  
17                    *combination of funds available under para-*  
18                    *graph (1)(A) and funds provided under sub-*  
19                    *paragraph (A), an amount for each such*  
20                    *child, aged 3 to 21, inclusive, to whom the*  
21                    *agency was providing special education and*  
22                    *related services on December 1 of the fiscal*  
23                    *year for which the funds were appropriated,*  
24                    *equal to the per-child amount the agency re-*

1           *ceived under that subpart for fiscal year*  
2           *1994.*

3           “(iii) *DETERMINATION OF NUMBER OF*  
4           *CHILDREN.—The number of children count-*  
5           *ed under clause (i)(I) shall not exceed the*  
6           *number of children aged 3 to 21, inclusive,*  
7           *for whom the agency received amounts in*  
8           *fiscal year 1994 under subpart 2 of part D*  
9           *of chapter 1 of title I of the Elementary and*  
10           *Secondary Education Act of 1965 (as such*  
11           *subpart was in effect on the day before the*  
12           *date of the enactment of the Improving*  
13           *America’s Schools Act of 1994).*

14           “(D) *REALLOCATION OF AMOUNTS.—If a*  
15           *State educational agency determines that a local*  
16           *educational agency is adequately providing a*  
17           *free appropriate public education to all children*  
18           *with disabilities residing in the area served by*  
19           *that agency with State and local funds, the State*  
20           *educational agency may reallocate any portion*  
21           *of amounts received under a grant under this*  
22           *part that are not needed by that local agency to*  
23           *other local educational agencies in the State that*  
24           *are not adequately providing special education*

1           *and related services to all children with disabili-*  
2           *ties residing in the areas they serve.*

3           “(d) *USE OF AMOUNTS BY SECRETARY OF THE INTE-*  
4           *RIOR.—*

5           “(1) *PROVISION OF AMOUNTS FOR ASSIST-*  
6           *ANCE.—*

7           “(A) *IN GENERAL.—The Secretary of Edu-*  
8           *cation shall provide amounts to the Secretary of*  
9           *the Interior to meet the need for assistance for*  
10           *the education of children with disabilities on res-*  
11           *ervations aged 5 to 21, inclusive, enrolled in ele-*  
12           *mentary and secondary schools for Indian chil-*  
13           *dren operated or funded by the Secretary of the*  
14           *Interior. The amount of such payment for any*  
15           *fiscal year shall be equal to 80 percent of the*  
16           *amount allotted under subsection (b)(2) for that*  
17           *fiscal year.*

18           “(B) *CALCULATION OF NUMBER OF CHIL-*  
19           *DREN.—In the case of Indian students ages 3 to*  
20           *5, inclusive, who are enrolled in programs affili-*  
21           *ated with Bureau of Indian Affairs (hereafter in*  
22           *this subsection referred to as ‘BIA’) schools and*  
23           *that are required by the States in which such*  
24           *schools are located to attain or maintain State*  
25           *accreditation, and which schools have such ac-*

1           *creditation prior to the date of enactment of the*  
2           *Individuals with Disabilities Education Act*  
3           *Amendments of 1991, the school shall be allowed*  
4           *to count those children for the purpose of dis-*  
5           *tribution of the funds provided under this para-*  
6           *graph to the Secretary of the Interior. The Sec-*  
7           *retary of the Interior shall be responsible for*  
8           *meeting all of the requirements of this part for*  
9           *these children, in accordance with paragraph*  
10          *(2).*

11           “(C) *ADDITIONAL REQUIREMENT.*—*With re-*  
12          *spect to all other children aged 3 to 21, inclusive,*  
13          *on reservations, the State educational agency*  
14          *shall be responsible for ensuring that all of the*  
15          *requirements of this part are implemented.*

16           “(2) *SUBMISSION OF INFORMATION.*—*The Sec-*  
17          *retary of Education may provide the Secretary of the*  
18          *Interior amounts under paragraph (1) for a fiscal*  
19          *year only if the Secretary of the Interior submits to*  
20          *the Secretary of Education information that—*

21           “(A) *demonstrates that the Department of*  
22          *the Interior meets the appropriate requirements,*  
23          *as determined by the Secretary of Education, of*  
24          *sections 612 (including monitoring and evalua-*  
25          *tion activities) and 613;*

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

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

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

18          “(E) includes an assurance that the Sec-  
19          retary of the Interior and the Secretary of  
20          Health and Human Services have entered into a  
21          memorandum of agreement, to be provided to the  
22          Secretary of Education, for the coordination of  
23          services, resources, and personnel between their  
24          respective Federal, State, and local offices and  
25          with State and local educational agencies and

1           *other entities to facilitate the provision of serv-*  
2           *ices to Indian children with disabilities residing*  
3           *on or near reservations (such agreement shall*  
4           *provide for the apportionment of responsibilities*  
5           *and costs including, but not limited to, child*  
6           *find, evaluation, diagnosis, remediation or thera-*  
7           *peutic measures, and (where appropriate) equip-*  
8           *ment and medical or personal supplies as needed*  
9           *for a child to remain in school or a program);*  
10          *and*

11           *“(F) includes an assurance that the Depart-*  
12           *ment of the Interior will cooperate with the De-*  
13           *partment of Education in its exercise of monitor-*  
14           *ing and oversight of this application, and any*  
15           *agreements entered into between the Secretary of*  
16           *the Interior and other entities under this part,*  
17           *and will fulfill its duties under this part.*

18          *Section 616(a) shall apply to the information de-*  
19          *scribed in this paragraph.*

20           *“(3) PAYMENTS FOR EDUCATION AND SERVICES*  
21          *FOR INDIAN CHILDREN WITH DISABILITIES AGED 3 TO*  
22          *5.—*

23           *“(A) IN GENERAL.—With funds appro-*  
24           *priated under subsection (e), the Secretary of*  
25           *Education shall make payments to the Secretary*

1           *of the Interior to be distributed to tribes or tribal*  
2           *organizations (as defined under section 4 of the*  
3           *Indian Self-Determination and Education As-*  
4           *istance Act) or consortia of the above to provide*  
5           *for the coordination of assistance for special edu-*  
6           *cation and related services for children with dis-*  
7           *abilities aged 3 to 5, inclusive, on reservations*  
8           *served by elementary and secondary schools for*  
9           *Indian children operated or funded by the De-*  
10          *partment of the Interior. The amount of such*  
11          *payments under subparagraph (B) for any fiscal*  
12          *year shall be equal to 20 percent of the amount*  
13          *allotted under subsection (b)(2).*

14                 “(B) *DISTRIBUTION OF FUNDS.*—*The Sec-*  
15                 *retary of the Interior shall distribute the total*  
16                 *amount of the payment under subparagraph (A)*  
17                 *by allocating to each tribe or tribal organization*  
18                 *an amount based on the number of children with*  
19                 *disabilities, ages 3 to 5, inclusive, residing on*  
20                 *reservations as reported annually divided by the*  
21                 *total of such children served by all tribes or trib-*  
22                 *al organizations.*

23                 “(C) *SUBMISSION OF INFORMATION.*—*To re-*  
24                 *ceive a payment under this paragraph, the tribe*  
25                 *or tribal organization shall submit such figures*

1           to the Secretary of the Interior as required to de-  
2           termine the amounts to be allocated under sub-  
3           paragraph (B). This information shall be com-  
4           piled and submitted to the Secretary of Edu-  
5           cation.

6           “(D) USE OF FUNDS.—The funds received  
7           by a tribe or tribal organization shall be used to  
8           assist in child find, screening, and other proce-  
9           dures for the early identification of children aged  
10          3 to 5, inclusive, parent training, and the provi-  
11          sion of direct services. These activities may be  
12          carried out directly or through contracts or coop-  
13          erative agreements with the BIA, local edu-  
14          cational agencies, and other public or private  
15          nonprofit organizations. The tribe or tribal orga-  
16          nization is encouraged to involve Indian parents  
17          in the development and implementation of these  
18          activities. The above entities shall, as appro-  
19          priate, make referrals to local, State, or Federal  
20          entities for the provision of services or further di-  
21          agnosis.

22          “(E) BIENNIAL REPORT.—To be eligible to  
23          receive a grant pursuant to subparagraph (A),  
24          the tribe or tribal organization shall provide to  
25          the Secretary of the Interior a biennial report of

1           *activities undertaken under this paragraph, in-*  
2           *cluding the number of contracts and cooperative*  
3           *agreements entered into, the number of children*  
4           *contacted and receiving services for each year*  
5           *and the estimated number of children needing*  
6           *services during the 2 years following the one in*  
7           *which the report is made. The Secretary of the*  
8           *Interior shall include a summary of this infor-*  
9           *mation on a biennial basis in the report to the*  
10          *Secretary of Education required under this sub-*  
11          *section. The Secretary of Education may require*  
12          *any additional information from the Secretary*  
13          *of the Interior.*

14                 “(F) *PROHIBITIONS.*—None of the funds al-  
15                 located under this paragraph may be used by the  
16                 Secretary of the Interior for administrative pur-  
17                 poses, including child count and the provision of  
18                 technical assistance.

19                 “(4) *PLAN FOR COORDINATION OF SERVICES.*—  
20                 The Secretary of the Interior shall develop and imple-  
21                 ment a plan for the coordination of services for all  
22                 Indian children with disabilities residing on reserva-  
23                 tions covered under this Act. Such plan shall provide  
24                 for the coordination of services benefiting these chil-  
25                 dren from whatever source, including tribes, the In-

1        *dian Health Service, other BIA divisions, and other*  
2        *Federal agencies. In developing such a plan, the Sec-*  
3        *retary of the Interior shall consult with all interested*  
4        *and involved parties. It shall be based upon the needs*  
5        *of the children and the system best suited for meeting*  
6        *those needs, and may involve the establishment of co-*  
7        *operative agreements between the BIA, other Federal*  
8        *agencies, and other entities. Such plan shall also be*  
9        *distributed upon request to States, State and local*  
10       *educational agencies, and other agencies providing*  
11       *services to infants, toddlers, children, and youth with*  
12       *disabilities, to tribes, and to other interested parties.*

13                *“(5) ESTABLISHMENT OF ADVISORY BOARD.—To*  
14        *meet the requirements of section 612(a)(18), the Sec-*  
15        *retary of the Interior shall establish, not later than 6*  
16        *months after the date of the enactment of the IDEA*  
17        *Improvement Act of 1996, under the Bureau of In-*  
18        *dian Affairs (BIA), an advisory board composed of*  
19        *individuals involved in or concerned with the edu-*  
20        *cation and provision of services to Indian infants,*  
21        *toddlers, children, and youth with disabilities, includ-*  
22        *ing Indians with disabilities, Indian parents or*  
23        *guardians of such children, teachers, service providers,*  
24        *State and local educational officials, representatives*  
25        *of tribes or tribal organizations, representatives from*

1     *State Interagency Coordinating Councils in States*  
2     *having reservations, and other members representing*  
3     *the various divisions and entities of the BIA. The*  
4     *chairperson shall be selected by the Secretary of the*  
5     *Interior. The advisory board shall—*

6             “(A) *assist in the coordination of services*  
7             *within BIA and with other local, State, and*  
8             *Federal agencies in the provision of education*  
9             *for infants, toddlers, children, and youth with*  
10            *disabilities;*

11            “(B) *advise and assist the Secretary of the*  
12            *Interior in the performance of the Secretary’s re-*  
13            *sponsibilities described in this subsection;*

14            “(C) *develop and recommend policies con-*  
15            *cerning effective inter- and intra-agency collabo-*  
16            *ration, including modifications to regulations,*  
17            *and the elimination of barriers to inter- and*  
18            *intra-agency programs and activities;*

19            “(D) *provide assistance and disseminate in-*  
20            *formation on best practices, effective program co-*  
21            *ordination strategies, and recommendations for*  
22            *improved educational programming for Indian*  
23            *infants, toddlers, children, and youth with dis-*  
24            *abilities; and*

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

3           “(6) ANNUAL REPORTS.—

4           “(A) IN GENERAL.—The advisory board es-  
5 tablished under paragraph (5) shall prepare and  
6 submit to the Secretary of the Interior and to the  
7 Congress an annual report containing a descrip-  
8 tion of the activities of the advisory board for the  
9 preceding year.

10           “(B) AVAILABILITY.—The Secretary of the  
11 Interior shall make available to the Secretary of  
12 Education the report described in subparagraph  
13 (A).

14           “(e) AUTHORIZATION OF APPROPRIATIONS.—For the  
15 purpose of carrying out this part (except for section 619;  
16 relating to preschool grants), there are authorized to be ap-  
17 propriated to the Secretary such sums as may be necessary.

18           **“SEC. 612. STATE REQUIREMENTS.**

19           “(a) IN GENERAL.—A State shall be eligible to receive  
20 a grant under this part for a fiscal year if, except as pro-  
21 vided in subsection (c), the State submits to the Secretary  
22 information that demonstrates to the satisfaction of the Sec-  
23 retary that the State has in effect policies and procedures  
24 to ensure that it meets each of the following requirements:

25           “(1) FREE APPROPRIATE PUBLIC EDUCATION.—

1           “(A) *IN GENERAL.*—A free appropriate pub-  
2           lic education is available to all children with  
3           disabilities residing in the State between the ages  
4           of 3 and 21, inclusive.

5           “(B) *LIMITATION.*—Subparagraph (A) shall  
6           not apply with respect to children with disabili-  
7           ties aged 3 to 5 and children with disabilities  
8           aged 18 to 21 to the extent that such application  
9           to those children would be inconsistent with  
10          State law or practice, or the order of any court,  
11          relating to the provision of public education to  
12          children in such age ranges.

13          “(2) *CHILD FIND.*—All children with disabilities  
14          residing in the State, including children with disabili-  
15          ties attending private schools, regardless of the sever-  
16          ity of such disabilities, and who are in need of special  
17          education and related services, are identified, located,  
18          and evaluated and that a practical method is devel-  
19          oped and implemented to determine which children  
20          with disabilities are currently receiving needed spe-  
21          cial education and related services.

22          “(3) *INDIVIDUALIZED EDUCATION PROGRAM.*—  
23          An individualized education program, or an individ-  
24          ualized family service plan that meets the require-  
25          ments of section 636(d), is developed, reviewed, and

1       *revised for each child with a disability in accordance*  
2       *with section 614(d).*

3           “(4) *LEAST RESTRICTIVE ENVIRONMENT.*—

4               “(A) *IN GENERAL.*—*To the maximum ex-*  
5       *tent appropriate—*

6                   “(i) *children with disabilities, includ-*  
7       *ing children in public or private institu-*  
8       *tions or other care facilities, are educated*  
9       *with children who are not disabled; and*

10                  “(ii) *special classes, separate schooling,*  
11       *or other removal of children with disabil-*  
12       *ities from the regular educational environ-*  
13       *ment occurs only when the nature or sever-*  
14       *ity of the disability of a child means that*  
15       *education in regular classes with the use of*  
16       *supplementary aids and services cannot be*  
17       *achieved satisfactorily.*

18               “(B) *ADDITIONAL REQUIREMENT.*—

19                   “(i) *IN GENERAL.*—*The State’s method*  
20       *of distributing funds shall not result in*  
21       *placements that violate the requirements of*  
22       *subparagraph (A).*

23                   “(ii) *EXCEPTION.*—*If the State does*  
24       *not have policies and procedures to ensure*  
25       *compliance with clause (i), the State shall*

1           *provide the Secretary an assurance that it*  
2           *will revise the funding mechanism as soon*  
3           *as feasible to ensure that such mechanism*  
4           *does not result in such placements.*

5           “(5) *PROCEDURAL SAFEGUARDS.*—

6           “(A) *IN GENERAL.*—*Children with disabili-*  
7           *ties and their parents are afforded the proce-*  
8           *dural safeguards required by section 615.*

9           “(B) *ADDITIONAL PROCEDURAL SAFE-*  
10          *GUARDS.*—*Procedures to assure that testing and*  
11          *evaluation materials and procedures utilized for*  
12          *the purposes of evaluation and placement of chil-*  
13          *dren with disabilities will be selected and admin-*  
14          *istered so as not to be racially or culturally dis-*  
15          *criminatory. Such materials or procedures shall*  
16          *be provided and administered in the child’s na-*  
17          *tive language or mode of communication, unless*  
18          *it clearly is not feasible to do so, and no single*  
19          *procedure shall be the sole criterion for determin-*  
20          *ing an appropriate educational program for a*  
21          *child.*

22          “(6) *EVALUATION.*—*Children with disabilities*  
23          *are evaluated in accordance with subsections (a)*  
24          *through (c) of section 614.*

1           “(7) *CONFIDENTIALITY.*—*Agencies in the State*  
2           *comply with section 617(c) (relating to the confiden-*  
3           *tiality of records and information).*

4           “(8) *TRANSITION FROM PART C TO PRESCHOOL*  
5           *PROGRAMS.*—*Children participating in early-inter-*  
6           *vention programs assisted under part C, and who will*  
7           *participate in preschool programs assisted under this*  
8           *part, experience a smooth transition to those preschool*  
9           *programs in a manner consistent with section*  
10           *637(a)(7). By the third birthday of such a child, an*  
11           *individualized education program or, if consistent*  
12           *with sections 614(d)(1)(B) and 636(d), an individual-*  
13           *ized family service plan, has been developed and is*  
14           *being implemented for the child. The local educational*  
15           *agency will participate in transition planning con-*  
16           *ferences by the designated lead agency under section*  
17           *637(a)(7).*

18           “(9) *CHILDREN IN PRIVATE SCHOOLS.*—

19           “(A) *IN GENERAL.*—*To the extent consistent*  
20           *with the number and location of children with*  
21           *disabilities in the State who are enrolled in pri-*  
22           *vate elementary and secondary schools, provision*  
23           *is made for the participation of such children in*  
24           *the program assisted or carried out under this*  
25           *part by providing for such children special edu-*

1            *cation and related services, except if the Sec-*  
2            *retary has arranged for services to such children*  
3            *under subsection (f).*

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

6            *“(i) IN GENERAL.—Children with dis-*  
7            *abilities in private schools and facilities are*  
8            *provided special education and related serv-*  
9            *ices, in accordance with an individualized*  
10           *education program, at no cost to their par-*  
11           *ents, if they are placed in, or referred to,*  
12           *such schools or facilities by the State or a*  
13           *local educational agency in order to comply*  
14           *with this part or with any other provision*  
15           *of law requiring the provision of special*  
16           *education and related services to all chil-*  
17           *dren with disabilities in the State.*

18           *“(ii) ADDITIONAL REQUIREMENTS.—In*  
19           *all cases described in clause (i)—*

20           *“(I) children with disabilities are*  
21           *placed in, or referred to, only those*  
22           *private schools and facilities that the*  
23           *State educational agency determines*  
24           *meet standards that apply to State*  
25           *and local educational agencies; and*

1                   “(II) children served in such pri-  
2                   vate schools or facilities retain access  
3                   to a free appropriate public education  
4                   in accordance with this part.

5                   “(C) PAYMENT FOR EDUCATION OF CHIL-  
6                   DREN PLACED IN PRIVATE SCHOOLS WITHOUT  
7                   CONSENT OF OR REFERRAL BY THE PUBLIC  
8                   AGENCY.—

9                   “(i) IN GENERAL.—If the parents of a  
10                  child with a disability that had previously  
11                  received special education and related serv-  
12                  ices under the authority of a public agency  
13                  have enrolled their child in a private ele-  
14                  mentary or secondary school without the  
15                  consent of or referral by the public agency,  
16                  as a result of mediation described in section  
17                  615(d), or as a result of a decision rendered  
18                  under the procedural safeguards of section  
19                  615, the public agency may be required to  
20                  reimburse the parents for the cost of the en-  
21                  rollment, except that the cost of the reim-  
22                  bursement may be reduced or denied—

23                  “(I) if, at least 10 school days  
24                  prior to the removal of the child from  
25                  the public school, the parents did not

1           *give a written statement of their con-*  
2           *cerns to the public agency and notice*  
3           *that they intend to place their child in*  
4           *a private school at public expense;*

5           “(II) *if, prior to the removal of*  
6           *the child from the public school, the*  
7           *parents did not make the child avail-*  
8           *able for an initial assessment and eval-*  
9           *uation by the local educational agency*  
10          *prior to enrollment in the private*  
11          *school; or*

12          “(III) *at the discretion of the*  
13          *judge.*

14          “(ii)    *EXCEPTION.—Notwithstanding*  
15          *the notice requirement in clause (i)(I), the*  
16          *cost of the reimbursement may not be re-*  
17          *duced or denied for failure to provide such*  
18          *notice if—*

19                “(I) *the parent is illiterate or*  
20                *cannot write in English;*

21                “(II) *compliance with clause*  
22                *(i)(I) would likely result in physical or*  
23                *serious emotional harm to the child;*

24                “(III) *the school prevented the*  
25                *parent from providing such notice; or*

1                   “(IV) the parent had not received  
2                   notice, pursuant to section 615(d), of  
3                   the notice requirement in clause (i)(I).

4                   “(10) STATE EDUCATIONAL AGENCY RESPON-  
5                   SIBLE FOR GENERAL SUPERVISION.—

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

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

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

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

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

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

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

3           “(11) *OBLIGATIONS RELATED TO AND METHODS*  
4           *OF ENSURING SERVICES.—*

5                   “(A) *ESTABLISHING RESPONSIBILITY FOR*  
6                   *SERVICES.—The Chief Executive Officer or des-*  
7                   *ignee of the officer shall ensure that an inter-*  
8                   *agency agreement or other mechanism for inter-*  
9                   *agency coordination is in effect between each*  
10                   *public agency described in subparagraph (B)*  
11                   *and the appropriate educational agency within*  
12                   *the State, in order to ensure that all services de-*  
13                   *scribed in subparagraph (B)(i) that are needed*  
14                   *to ensure a free appropriate public education are*  
15                   *provided, including the provision of such services*  
16                   *during the pendency of any dispute under clause*  
17                   *(iii). Such agreement or mechanism shall include*  
18                   *the following:*

19                           “(i) *AGENCY FINANCIAL RESPONSIBIL-*  
20                           *ITY.—An identification of, or a method for*  
21                           *defining, the financial responsibility of each*  
22                           *agency for providing services described in*  
23                           *subparagraph (B)(i) to ensure a free appro-*  
24                           *priate public education to children with*  
25                           *disabilities provided that the financial re-*

1           *sponsibility of each public agency described*  
2           *in subparagraph (B), including the State*  
3           *Medicaid agency and other public insurers*  
4           *of children with disabilities, shall precede*  
5           *the financial responsibility of the local edu-*  
6           *cation agency (or the State agency respon-*  
7           *sible for developing the child’s IEP).*

8           “(ii) *CONDITIONS AND TERMS OF RE-*  
9           *IMBURSEMENT.—The conditions, terms, and*  
10           *procedures under which a local educational*  
11           *agency shall be reimbursed by other agen-*  
12           *cies.*

13           “(iii) *INTERAGENCY DISPUTES.—Pro-*  
14           *cedures for resolving interagency disputes*  
15           *(including procedures under which local*  
16           *education agencies may initiate proceed-*  
17           *ings) under the agreement or other mecha-*  
18           *nism to secure reimbursement from other*  
19           *agencies or otherwise implement the provi-*  
20           *sions of the agreement or mechanism.*

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

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

3           “(B) *OBLIGATION OF PUBLIC AGENCY.—*

4                   “(i) *IN GENERAL.—If any public agen-*  
5           *cy other than an educational agency is oth-*  
6           *erwise obligated under Federal or State law,*  
7           *or assigned responsibility under State pol-*  
8           *icy or pursuant to subparagraph (A), to*  
9           *provide or pay for any services that are*  
10          *considered special education or related serv-*  
11          *ices (such as, but not limited to, services de-*  
12          *scribed in sections 602(1) relating to*  
13          *assistive technology devices, 602(2) relating*  
14          *to assistive technology services, 602(20) re-*  
15          *lating to related services, 602(27) related to*  
16          *supplementary aids and services, and*  
17          *602(29) relating to transition services) that*  
18          *are necessary for ensuring a free appro-*  
19          *priate public education to children with*  
20          *disabilities within the State, such public*  
21          *agency shall fulfill that obligation or re-*  
22          *sponsibility, either directly or through con-*  
23          *tract or other arrangement.*

24                   “(ii) *REIMBURSEMENT FOR SERVICES*  
25          *BY PUBLIC AGENCY.—If a public agency*

1            *other than an educational agency fails to*  
2            *provide or pay for the special education and*  
3            *related services described in clause (i), the*  
4            *local educational agency (or State agency*  
5            *responsibility for developing the child’s*  
6            *IEP) shall provide or pay for such services*  
7            *to the child. Such local education agency or*  
8            *State agency may then claim reimburse-*  
9            *ment for the services from the public agency*  
10           *that failed to provide or pay for such serv-*  
11           *ices and such public agency shall reimburse*  
12           *the local education agency or State agency*  
13           *pursuant to the terms of the interagency*  
14           *agreement described in subparagraph (A)(i)*  
15           *according to the procedures established in*  
16           *such agreement pursuant to subparagraph*  
17           *(A)(ii).*

18           *“(C) SPECIAL RULE.—The requirements of*  
19           *subparagraph (A) may be met through—*

20                    *“(i) State statute or regulation;*

21                    *“(ii) signed agreements between respec-*  
22                    *tive agency officials that clearly identify the*  
23                    *responsibilities of each agency relating to*  
24                    *the provision of services; or*

1                   “(iii) other appropriate methods as de-  
2                   termined by the Chief Executive Officer or  
3                   designee of the officer.

4                   “(12) *PROCEDURAL REQUIREMENTS RELATING*  
5                   *TO LOCAL EDUCATIONAL AGENCY ELIGIBILITY.*—*The*  
6                   *State educational agency will not make a final deter-*  
7                   *mination that a local educational agency is not eligi-*  
8                   *ble for assistance under this part without first afford-*  
9                   *ing that agency reasonable notice and an opportunity*  
10                  *for a hearing.*

11                  “(13) *COMPREHENSIVE SYSTEM OF PERSONNEL*  
12                  *DEVELOPMENT.*—*The State has established and imple-*  
13                  *mented, consistent with the purposes of this title and*  
14                  *section 635(a)(7), a comprehensive system of person-*  
15                  *nel development that is designed to ensure an ade-*  
16                  *quate supply of qualified special education and relat-*  
17                  *ed services personnel necessary to carry out this part,*  
18                  *including—*

19                         “(A) *a statewide, coordinated personnel-de-*  
20                         *velopment plan that meets the personnel develop-*  
21                         *ment requirements of a State improvement plan*  
22                         *under section 683; or*

23                         “(B) *a personnel-development plan, devel-*  
24                         *oped in consultation with parents of children*  
25                         *with disabilities, State and local educational*

1 agencies, institutions of higher education, and  
2 professional associations that—

3 “(i) addresses current and projected  
4 needs for special education and related serv-  
5 ices personnel throughout the State;

6 “(ii) addresses the need for the pre-  
7 service and in-service preparation of per-  
8 sonnel throughout the State, including regu-  
9 lar education personnel, to provide edu-  
10 cational services to children with disabil-  
11 ities;

12 “(iii) includes a system or procedures  
13 for recruiting, preparing, and retaining  
14 qualified personnel, including personnel  
15 with disabilities and personnel from groups  
16 that are underrepresented in the field of  
17 special education and related services; and

18 “(iv) is integrated, to the maximum  
19 extent possible, with other professional de-  
20 velopment plans and activities.

21 “(14) PERSONNEL STANDARDS.—

22 “(A) IN GENERAL.—The State educational  
23 agency has established and maintains standards  
24 to ensure that personnel necessary to carry out

1           *this part are appropriately and adequately pre-*  
2           *pared and trained.*

3           “(B) *STANDARDS DESCRIBED.*—*Such stand-*  
4           *ards shall—*

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

11                   “(ii) *to the extent the standards de-*  
12                    *scribed in subparagraph (A) are not based*  
13                    *on the highest requirements in the State ap-*  
14                    *plicable to a specific profession or dis-*  
15                    *cipline, the State is taking steps to require*  
16                    *retraining or hiring of personnel that meet*  
17                    *appropriate professional requirements in*  
18                    *the State; and*

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

1                   *and related services to children with disabili-*  
2                   *ties under this part.*

3                   “(C) *EXCEPTION.*—*If the State determines*  
4                   *that, within a geographic area of the State there*  
5                   *is a shortage of an appropriate number and type*  
6                   *of personnel to provide the special education and*  
7                   *related services to children with disabilities with-*  
8                   *in such area, and the appropriate public agency*  
9                   *has taken steps to recruit and hire such person-*  
10                   *nel, the State may, subject to public comment*  
11                   *and review, temporarily suspend the standards*  
12                   *of subparagraph (B)—*

13                    “(i) *consistent with State law, for the*  
14                    *purpose of recruiting and hiring for such*  
15                    *shortage areas the most qualified available*  
16                    *individuals who are making progress in ap-*  
17                    *plicable coursework; and*

18                    “(ii) *for a period not to exceed 3 years.*

19                   “(15) *PERFORMANCE GOALS AND INDICATORS.*—  
20                   *The State—*

21                    “(A) *has established goals for the perform-*  
22                    *ance of children with disabilities in the State*  
23                    *that—*

24                    “(i) *will promote the purposes of this*  
25                    *title, as stated in section 601(d); and*

1                   “(ii) are consistent, to the maximum  
2                   extent appropriate, with other goals and  
3                   standards established by the State;

4                   “(B) has established performance indicators  
5                   the State will use to assess progress toward  
6                   achieving those goals that, at a minimum, ad-  
7                   dress the performance of children with disabil-  
8                   ities on assessments, drop-out rates, and gradua-  
9                   tion rates;

10                  “(C) will, every two years, report to the  
11                  Secretary and the public on the progress of the  
12                  State, and of children with disabilities in the  
13                  State, toward meeting the goals established under  
14                  subparagraph (A); and

15                  “(D) based on its assessment of that  
16                  progress, will revise its State improvement plan  
17                  under part D as may be needed to improve its  
18                  performance, if the State receives assistance  
19                  under such part.

20                  “(16) PARTICIPATION IN ASSESSMENTS.—

21                  “(A) IN GENERAL.—Children with disabil-  
22                  ities are included in general State and district-  
23                  wide assessment programs, with appropriate ac-  
24                  commodations, where necessary. As appropriate,  
25                  the State or local educational agency—

1           “(i) develops guidelines for the partici-  
2           pation of children with disabilities in alter-  
3           nate assessments for those children who can-  
4           not participate in State and district-wide  
5           assessment programs; and

6           “(ii) develops and, beginning not later  
7           than July 1, 1999, conducts those alternate  
8           assessments.

9           “(B) *REPORTS.*—The State educational  
10          agency makes available to the public, and reports  
11          to the public with the same frequency and in the  
12          same detail as it reports on the assessment of  
13          nondisabled children, the following:

14          “(i) The number of children with dis-  
15          abilities participating in regular assess-  
16          ments.

17          “(ii) The number of those children par-  
18          ticipating in alternate assessments.

19          “(iii) The performance of those chil-  
20          dren on regular assessments (beginning not  
21          later than July 1, 1997) and on alternate  
22          assessments (not later than July 1, 1999), if  
23          doing so would be statistically sound and  
24          would not result in the disclosure of per-

1                    *formance results identifiable to individual*  
2                    *children.*

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

5                    *“(A) IN GENERAL.—The State ensures that*  
6                    *amounts provided under a grant to the State*  
7                    *under this part, except as provided in subpara-*  
8                    *graph (B), will be used to supplement State,*  
9                    *local, and other Federal funds (including funds*  
10                    *not under the direct control of State or local edu-*  
11                    *cational agencies) expended for special education*  
12                    *and related services, and not to supplant those*  
13                    *funds.*

14                    *“(B) WAIVER.—The Secretary may waive,*  
15                    *in whole or in part, the requirements of subpara-*  
16                    *graph (A) if the Secretary determines that the*  
17                    *State has provided clear evidence that all chil-*  
18                    *dren with disabilities in the State have available*  
19                    *a free appropriate public education or that, such*  
20                    *a waiver would allow the State to improve the*  
21                    *delivery of special education and related services*  
22                    *to children with disabilities in the State.*

23                    *“(18) PUBLIC PARTICIPATION.—Prior to the*  
24                    *adoption of any policies and procedures needed to*  
25                    *comply with this section (including any amendments*

1       to such policies and procedures), the State ensures  
2       that there are public hearings, adequate notice of the  
3       hearings, and an opportunity for comment available  
4       to the general public, including individuals with dis-  
5       abilities and parents of children with disabilities.

6               “(19) STATE ADVISORY PANEL.—

7                       “(A) IN GENERAL.—The State has estab-  
8                       lished and maintains an advisory panel for the  
9                       purpose of providing policy guidance with re-  
10                      spect to special education and related services for  
11                      children with disabilities in the State.

12                     “(B) MEMBERSHIP.—Such advisory panel  
13                     shall consist of members appointed by the Gov-  
14                     ernor, or any other official authorized under  
15                     State law to make such appointments, that is  
16                     representative of the State population and that  
17                     is composed of individuals involved in, or con-  
18                     cerned with, the education of children with dis-  
19                     abilities, including—

20                               “(i) parents of children with disabil-  
21                               ities;

22                               “(ii) individuals with disabilities;

23                               “(iii) teachers;

1           “(iv) representatives of institutions of  
2           higher education that prepare special edu-  
3           cation and related services personnel;

4           “(v) State and local education officials;

5           “(vi) administrators of programs for  
6           children with disabilities;

7           “(vii) representatives of other State  
8           agencies involved in the financing or deliv-  
9           ery of related services to children with dis-  
10          abilities;

11          “(viii) at least one representative of a  
12          vocational, community, or business organi-  
13          zation concerned with the provision of tran-  
14          sition services to children with disabilities;  
15          and

16          “(ix) representatives from the State ju-  
17          venile and adult corrections agencies.

18          “(C) *SPECIAL RULE.*—A majority of the  
19          members of the panel shall be individuals with  
20          disabilities or parents of children with disabili-  
21          ties.

22          “(D) *DUTIES.*—The advisory panel shall—

23               “(i) advise the State educational agen-  
24               cy of unmet needs within the State in the  
25               education of children with disabilities;

1           “(ii) comment publicly on any rules or  
2 regulations proposed by the State regard-  
3 ing—

4                   “(I) the education of children with  
5 disabilities; and

6                   “(II) the procedures for distribu-  
7 tion of amounts received by the State  
8 under a grant under this part;

9           “(iii) advise the State educational  
10 agency in developing evaluations and re-  
11 porting on data to the Secretary under sec-  
12 tion 618;

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

17           “(v) advise the State educational agen-  
18 cy in developing and implementing policies  
19 relating to the coordination of services for  
20 children with disabilities.

21           “(b) STATE EDUCATIONAL AGENCY AS PROVIDER OF  
22 FREE APPROPRIATE PUBLIC EDUCATION OR DIRECT SERV-  
23 ICES.—If the State educational agency provides free appro-  
24 priate public education to children with disabilities, or pro-  
25 vides direct services to such children, such agency—

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

4           “(2) may use amounts that are otherwise avail-  
5           able to such agency under this part to serve those chil-  
6           dren without regard to section 613(a)(2)(A)(i) (relat-  
7           ing to excess costs).

8           “(c) *EXCEPTION FOR PRIOR STATE PLANS.*—

9           “(1) *IN GENERAL.*—If a State has on file with  
10          the Secretary policies and procedures that dem-  
11          onstrate that such State meets any requirement of  
12          subsection (a), including any policies and procedures  
13          filed under this part as in effect before the date of the  
14          enactment of the IDEA Improvement Act of 1996, the  
15          Secretary shall consider such State to have met such  
16          requirement for purposes of receiving a grant under  
17          this part.

18          “(2) *MODIFICATIONS MADE BY STATE.*—Subject  
19          to paragraph (3), an application submitted by a  
20          State in accordance with this section shall remain in  
21          effect until the State submits to the Secretary such  
22          modifications as the State deems necessary. This sec-  
23          tion shall apply to a modification to an application  
24          to the same extent and in the same manner as this  
25          section applies to the original plan.

1           “(3) *MODIFICATIONS REQUIRED BY THE SEC-*  
2           *RETARY.—The Secretary may require a State to*  
3           *amend its application at any time as a result of the*  
4           *Secretary’s compliance reviews under parts B and C.*  
5           *The Secretary shall reduce or shall not provide any*  
6           *further payments to the State educational agency*  
7           *until the Secretary is satisfied that the State edu-*  
8           *cational agency is complying with that requirement.*

9           “(d) *APPROVAL BY THE SECRETARY.—*

10           “(1) *IN GENERAL.—If the Secretary determines*  
11           *that a State is eligible to receive a grant under this*  
12           *part, the Secretary shall notify the State of that deter-*  
13           *mination.*

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

18                   “(A) *with reasonable notice; and*

19                   “(B) *with an opportunity for a hearing.*

20           “(e) *ASSISTANCE UNDER OTHER FEDERAL PRO-*  
21           *GRAMS.—Nothing in this title permits a State to reduce*  
22           *medical and other assistance available, or to alter eligi-*  
23           *bility, under titles V and XIX of the Social Security Act*  
24           *with respect to the provision of a free appropriate public*  
25           *education for children with disabilities within the State.*

1       “(f) *BY-PASS FOR CHILDREN IN PRIVATE SCHOOLS.*—

2               “(1) *IN GENERAL.*—*If, on the date of enactment*  
3 *of the Education of the Handicapped Act Amend-*  
4 *ments of 1983, a State educational agency is prohib-*  
5 *ited by law from providing for the participation in*  
6 *special programs of children with disabilities enrolled*  
7 *in private elementary and secondary schools as re-*  
8 *quired by subsection (a)(9), the Secretary shall, not-*  
9 *withstanding such provision of law, arrange for the*  
10 *provision of services to such children through arrange-*  
11 *ments which shall be subject to the requirements of*  
12 *such subsection.*

13               “(2) *PAYMENTS.*—

14               “(A) *DETERMINATION OF AMOUNTS.*—*If the*  
15 *Secretary arranges for services pursuant to this*  
16 *subsection, the Secretary, after consultation with*  
17 *the appropriate public and private school offi-*  
18 *cials, shall pay to the provider of such services*  
19 *for a fiscal year an amount per child that does*  
20 *not exceed the amount determined by dividing—*

21                       “(i) *the total amount received by the*  
22 *State under this part for such fiscal year;*  
23 *by*

24                       “(ii) *the number of children with dis-*  
25 *abilities served in the prior year, as re-*

1           *ported to the Secretary by the State under*  
2           *section 618.*

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

12          “(C) *PERIOD OF PAYMENTS.—The period*  
13          *under which payments are made under subpara-*  
14          *graph (A) shall continue until the Secretary de-*  
15          *termines that there will no longer be any failure*  
16          *or inability on the part of the State educational*  
17          *agency to meet the requirements of subsection*  
18          *(a)(9).*

19          “(3) *NOTICE AND HEARING.—*

20          “(A) *IN GENERAL.—The Secretary shall not*  
21          *take any final action under this subsection until*  
22          *the State educational agency affected by such ac-*  
23          *tion has had an opportunity, for at least 45 days*  
24          *after receiving written notice thereof, to submit*  
25          *written objections and to appear before the Sec-*

1           *retary or the Secretary's designee to show cause*  
2           *why such action should not be taken.*

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

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

1           *new or modified findings of fact shall likewise be*  
2           *conclusive if supported by substantial evidence.*

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

13   **“SEC. 613. LOCAL EDUCATIONAL AGENCY REQUIREMENTS.**

14          “(a) *IN GENERAL.—A local educational agency shall*  
15          *be eligible for assistance under this part for any fiscal year*  
16          *if, except as provided in subsection (b), such agency submits*  
17          *to the State educational agency information that dem-*  
18          *onstrates to the satisfaction of the State educational agency*  
19          *the following:*

20                 “(1) *CONSISTENCY WITH STATE POLICIES.—The*  
21          *local educational agency, in providing for the edu-*  
22          *cation of children with disabilities within its jurisdic-*  
23          *tion, has in effect policies, procedures, and programs*  
24          *that are consistent with the State policies and proce-*  
25          *dures established under section 612.*

1           “(2) *USE OF AMOUNTS.*—

2                   “(A) *IN GENERAL.*—*Amounts provided to*  
3 *the local educational agency under this part—*

4                           “(i) *shall be used only to pay the excess*  
5 *costs of providing special education and re-*  
6 *lated services to children with disabilities;*

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

10                           “(iii) *except as provided in subpara-*  
11 *graph (B), may not be used to reduce the*  
12 *level of expenditures for the education of*  
13 *children with disabilities made by the local*  
14 *educational agency from State or local*  
15 *funds below the level of those expenditures*  
16 *for the preceding fiscal year;*

17                           “(iv) *may be used, notwithstanding*  
18 *clause (i) or any other provision of this*  
19 *part, for the costs of special education and*  
20 *related services provided in a regular class*  
21 *or other education related setting to a child*  
22 *with a disability in accordance with the*  
23 *child’s individualized education program,*  
24 *even if one or more nondisabled children*  
25 *benefit from those services; and*

1           “(v) may be used, in accordance with  
2           subsection (f) and notwithstanding clause  
3           (i) or any other provision of this part, to  
4           develop and implement a coordinated serv-  
5           ices system.

6           “(B) *EXCEPTION.*—Notwithstanding the re-  
7           striction in subparagraph (A)(iii), a local edu-  
8           cation agency may reduce the level of expendi-  
9           tures where such reduction is attributable to—

10           “(i) the departure, by retirement or  
11           otherwise, of special education personnel;

12           “(ii) a decrease in the enrollment of  
13           children with disabilities;

14           “(iii) the termination of the obligation  
15           of the agency, consistent with this part, to  
16           provide a program of special education to a  
17           particular child with a disability that is an  
18           exceptionally costly program, as determined  
19           by the State educational agency, because the  
20           child—

21           “(I) has left the jurisdiction of the  
22           agency;

23           “(II) has reached the age at which  
24           the obligation of the agency to provide

1                    *a free appropriate public education to*  
2                    *the child has terminated; or*

3                    *“(III) no longer needs such pro-*  
4                    *gram of special education; or*

5                    *“(iv) the termination of costly expendi-*  
6                    *tures for long-term purchases, such as the*  
7                    *acquisition of equipment or the construction*  
8                    *of school facilities.*

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

18                  *“(4) PUBLIC INFORMATION.—The local edu-*  
19                  *cational agency shall make available to parents of*  
20                  *children with disabilities and to the general public all*  
21                  *documents relating to the eligibility of such agency*  
22                  *under this part.*

23                  *“(b) EXCEPTION FOR PRIOR LOCAL PLANS.—*

24                  *“(1) IN GENERAL.—If a local educational agency*  
25                  *or State agency has on file with the State educational*

1        *agency policies and procedures that demonstrate that*  
2        *such local educational agency, or such State agency,*  
3        *as the case may be, meets any requirement of sub-*  
4        *section (a), including any policies and procedures*  
5        *filed under this part as in effect before the date of*  
6        *the enactment of IDEA Improvement Act of 1996, the*  
7        *State educational agency shall consider such local*  
8        *educational agency or State agency, as the case may*  
9        *be, to have met such requirement for purposes of re-*  
10       *ceiving assistance under this part.*

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

18                *“(3) MODIFICATIONS REQUIRED BY STATE EDU-*  
19                *CATIONAL AGENCY.—The State educational agency*  
20                *may require a local educational agency to amend its*  
21                *application at anytime as a result of the compliance*  
22                *reviews of the State educational agency under parts*  
23                *B and C. This paragraph shall apply to a modifica-*  
24                *tion to an application to the same extent and in the*

1        *same manner as this section applies to the original*  
2        *plan.*

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

12       “(d) *LOCAL EDUCATIONAL AGENCY COMPLIANCE.—*

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

1           “(2) *ADDITIONAL REQUIREMENT.*—Any State  
2           *educational agency, State agency, or local educational*  
3           *agency in receipt of a notice pursuant to the notice*  
4           *described in paragraph (1) shall, by means of public*  
5           *notice, take such measures as may be necessary to*  
6           *bring the pendency of an action pursuant to this sub-*  
7           *section to the attention of the public within the juris-*  
8           *isdiction of such agency.*

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

15           “(e) *JOINT ESTABLISHMENT OF ELIGIBILITY.*—

16           “(1) *IN GENERAL.*—A State educational agency  
17           *may require a local educational agency to establish*  
18           *its eligibility jointly with another local educational*  
19           *agency if the State educational agency determines*  
20           *that the local educational agency would be ineligible*  
21           *under this section because the local educational agen-*  
22           *cy would not be able to establish and maintain pro-*  
23           *grams of sufficient size and scope to effectively meet*  
24           *the needs of children with disabilities.*

1           “(2) *AMOUNT OF PAYMENTS.*—If a State edu-  
2           *cational agency requires the joint establishment of eli-*  
3           *gibility under paragraph (1), the total amount of*  
4           *funds made available to the affected local educational*  
5           *agencies shall be equal to the sum of the payments*  
6           *that each such local educational agency would have*  
7           *received under section 611(c) if such agencies were el-*  
8           *igible for such payments.*

9           “(3) *REQUIREMENTS.*—Local educational agen-  
10          *cies that establish joint eligibility under this sub-*  
11          *section shall—*

12                 “(A) *adopt policies and procedures that are*  
13                 *consistent with the State’s policies and proce-*  
14                 *dures under section 612(a); and*

15                 “(B) *be jointly responsible for implementing*  
16                 *programs that receive assistance under this part.*

17           “(4) *REQUIREMENTS FOR EDUCATIONAL SERVICE*  
18          *AGENCIES.*—

19                 “(A) *IN GENERAL.*—If an educational serv-  
20                 *ice agency is required by State law to carry out*  
21                 *programs under this part, the joint responsibil-*  
22                 *ities given to local educational agencies under*  
23                 *this subsection shall—*

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

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

6           “(B) *ADDITIONAL REQUIREMENT.*—Not-  
7           withstanding any other provision of this sub-  
8           section, an educational service agency shall pro-  
9           vide for the education of children with disabil-  
10          ities in the least restrictive environment, as re-  
11          quired by section 612(a)(4).

12          “(f) *COORDINATED SERVICES SYSTEM.*—

13           “(1) *IN GENERAL.*—A local educational agency  
14           may not use more than 5 percent of the amount such  
15           agency receives under this part for any fiscal year, in  
16           combination with other amounts (which shall include  
17           amounts other than education funds), to develop and  
18           implement a coordinated services system designed to  
19           improve results for children and families, including  
20           children with disabilities and their families.

21           “(2) *ACTIVITIES.*—In implementing a coordi-  
22           nated services system under this subsection, a local  
23           educational agency may carry out activities which  
24           include—

1           “(A) improving the effectiveness and effi-  
2           ciency of service delivery, including developing  
3           strategies that promote accountability for results;

4           “(B) service coordination and case manage-  
5           ment that facilitates the linkage of individual-  
6           ized education programs under this part and in-  
7           dividualized family service plans under part C  
8           with individualized service plans under multiple  
9           Federal and State programs, such as title I of  
10          the Rehabilitation Act of 1973 (vocational reha-  
11          bilitation), title XIX of the Social Security Act  
12          (Medicaid), and title XVI of the Social Security  
13          Act (supplemental security income);

14          “(C) developing and implementing inter-  
15          agency financing strategies for the provision of  
16          education, health, mental health, and social serv-  
17          ices, including transition services and related  
18          services under this title; and

19          “(D) interagency personnel development for  
20          individuals working on coordinated services.

21          “(3) COORDINATION WITH CERTAIN PROJECTS  
22          UNDER ELEMENTARY AND SECONDARY EDUCATION  
23          ACT OF 1965.—If a local educational agency is carry-  
24          ing out a coordinated services project under title XI  
25          of the Elementary and Secondary Education Act of

1       1965 and a coordinated services project under this  
2       part in the same schools, such agency shall use  
3       amounts under this subsection in accordance with the  
4       requirements of that title.

5       “(g) *DIRECT SERVICES BY THE STATE EDUCATIONAL*  
6 *AGENCY.*—

7               “(1) *IN GENERAL.*—A State educational agency  
8       shall use the payments that would otherwise have been  
9       available to a local educational agency or to a State  
10      agency to provide special education and related serv-  
11      ices directly to children with disabilities residing in  
12      the area served by that local agency, or for whom that  
13      State agency is responsible, if the State educational  
14      agency determines that the local education agency or  
15      State agency, as the case may be—

16               “(A) has not provided the information need-  
17      ed to establish the eligibility of such agency  
18      under this section;

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

22               “(C) is unable or unwilling to be consoli-  
23      dated with one or more local educational agen-  
24      cies in order to establish and maintain such pro-  
25      grams; or

1           “(D) *has one or more children with disabili-*  
2           *ties who can best be served by a regional or*  
3           *State program or service delivery system de-*  
4           *signed to meet the needs of such children.*

5           “(2) *MANNER AND LOCATION OF EDUCATION AND*  
6           *SERVICES.—The State educational agency may pro-*  
7           *vide special education and related services under*  
8           *paragraph (1) in such manner and at such locations*  
9           *(including regional or State centers) as the State*  
10          *agency considers appropriate. Such education and*  
11          *services shall be provided in accordance with this*  
12          *part.*

13          “(h) *STATE AGENCY ELIGIBILITY.—Any State agency*  
14          *that desires to receive a subgrant for any fiscal year under*  
15          *section 611(c) shall demonstrate to the satisfaction of the*  
16          *State educational agency that—*

17                 “(1) *all children with disabilities who are par-*  
18                 *ticipating in programs and projects funded under this*  
19                 *part receive a free appropriate public education, and*  
20                 *that those children and their parents are provided all*  
21                 *the rights and procedural safeguards described in this*  
22                 *part; and*

23                 “(2) *the agency meets such other conditions of*  
24                 *this section as the Secretary determines to be appro-*  
25                 *priate.*

1 **“SEC. 614. EVALUATIONS, REEVALUATIONS, INDIVIDUAL-**  
2 **IZED EDUCATION PROGRAMS, AND EDU-**  
3 **CATIONAL PLACEMENTS.**

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

5 *“(1) INITIAL EVALUATIONS.—*

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

13 *“(B) PROCEDURES.—Such initial evalua-*  
14 *tion shall consist of procedures—*

15 *“(i) to determine whether a child is a*  
16 *child with a disability (as defined in sec-*  
17 *tion 602(3)); and*

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

20 *“(C) PARENTAL CONSENT.—*

21 *“(i) IN GENERAL.—The agency propos-*  
22 *ing to conduct an initial evaluation to de-*  
23 *termine if the child qualifies as a child with*  
24 *a disability as defined in section 602(3)(A)*  
25 *or 602(3)(B) shall obtain an informed con-*  
26 *sent from the parent of such child before the*

1                   *evaluation is conducted. Parental consent*  
2                   *for evaluation shall not be construed as con-*  
3                   *sent for placement for receipt of special edu-*  
4                   *cation and related services.*

5                   “(ii) *REFUSAL.*—*If the parents of such*  
6                   *child refuse consent for the evaluation, the*  
7                   *agency may continue to pursue an evalua-*  
8                   *tion by utilizing the mediation and due*  
9                   *process procedures under section 615(e).*

10                  “(2) *REEVALUATIONS.*—*A local educational*  
11                  *agency shall ensure that a reevaluation of each child*  
12                  *with a disability is conducted—*

13                         “(A) *if conditions warrant a reevaluation*  
14                         *or if the child’s parent or teacher requests a re-*  
15                         *evaluation, but at least once every 3 years; and*

16                         “(B) *in accordance with subsections (b) and*  
17                         *(c).*

18                  “(b) *EVALUATION PROCEDURES.*—

19                         “(1) *NOTICE.*—*The local educational agency*  
20                         *shall provide notice to the parents of a child with a*  
21                         *disability, in accordance with subsections (b)(3),*  
22                         *(b)(4), and (c) of section 615, that describes any eval-*  
23                         *uation procedures such agency proposes to conduct.*

24                         “(2) *CONDUCT OF EVALUATION.*—*In conducting*  
25                         *the evaluation, the local educational agency shall—*

1           “(A) use a variety of assessment tools and  
2 strategies to gather relevant functional and de-  
3 velopmental information, including information  
4 provided by the parent, that may assist in deter-  
5 mining whether the child is a child with a dis-  
6 ability and the content of the child’s individual-  
7 ized education program, including information  
8 related to enabling the child to be involved in  
9 and progress in the general curriculum or, for  
10 preschool children, to participate in appropriate  
11 activities;

12           “(B) not use any single procedure as the  
13 sole criterion for determining whether a child is  
14 a child with a disability or determining an ap-  
15 propriate educational program for the child; and

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

20           “(3) *ADDITIONAL REQUIREMENTS.*—Each local  
21 educational agency shall ensure that—

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

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

4           “(ii) are provided and administered in  
5           the child’s native language or other mode of  
6           communication, unless it is clearly not fea-  
7           sible to do so; and

8           “(B) any standardized tests that are given  
9           to the child—

10           “(i) have been validated for the specific  
11           purpose for which they are used;

12           “(ii) are administered by qualified  
13           personnel; and

14           “(iii) are administered in accordance  
15           with any instructions provided by the pro-  
16           ducer of such tests; and

17           “(C) the child is assessed in all areas of sus-  
18           pected disability.

19           “(4) DETERMINATION OF ELIGIBILITY.—Upon  
20           completion of administration of tests and other eval-  
21           uation materials—

22           “(A) the determination of whether the child  
23           is a child with a disability as defined in section  
24           602(3) or section 602(3)(B) will be made by a

1           *team of qualified professionals and the parent of*  
 2           *the child in accordance with paragraph (5); and*

3           “*(B) a copy of the evaluation report and the*  
 4           *documentation of determination of eligibility*  
 5           *will be given to the parent.*

6           “*(5) SPECIAL RULE FOR ELIGIBILITY DETER-*  
 7           *MINATION.—In making a determination of eligibility*  
 8           *under paragraph (4)(A), a child shall not be deter-*  
 9           *mined to be a child with a disability based on any*  
 10          *of the following:*

11           “*(A) Lack of instruction, including instruc-*  
 12           *tion in reading or math.*

13           “*(B) Limited English proficiency.*

14           “*(C) Cultural or environmental factors.*

15           “*(D) Economic disadvantage.*

16          “*(c) REEVALUATION PROCEDURES.—*

17           “*(1) IN GENERAL.—As part of any reevaluation*  
 18           *to assess a child under this section, the individualized*  
 19           *education program team and other qualified profes-*  
 20           *sionals, as appropriate, shall—*

21           “*(A) review existing evaluation data on the*  
 22           *child, including current classroom-based assess-*  
 23           *ments and teacher and related services providers*  
 24           *observation; and*

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

4                   “(i) whether the child continues to have  
5                   a disability, as described in section  
6                   602(3)(A)(i) or section 602(3)(B);

7                   “(ii) the child’s present levels of per-  
8                   formance and educational needs; and

9                   “(iii)(I) whether the child continues to  
10                  need special education and related services;  
11                  and

12                  “(II) if so, any additions or modifica-  
13                  tions to the special education and related  
14                  services to enable the child to meet the objec-  
15                  tives set out in the individualized education  
16                  program of the child and to participate, as  
17                  appropriate, in the general curriculum.

18           “(2) TESTS AND OTHER EVALUATION MATE-  
19           RIALS.—The local educational agency shall admin-  
20           ister such tests and other evaluation materials as may  
21           be needed to produce the data identified by the IEP  
22           Team under paragraph (1)(B).

23           “(3) REQUIREMENTS IF ADDITIONAL DATA NOT  
24           NEEDED.—If the IEP Team and other qualified pro-  
25           fessionals, as appropriate, determines that no addi-

1        *tional data are needed to determine whether the child*  
2        *continues to be a child with a disability, the local*  
3        *educational agency—*

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

5                        *“(i) that determination and the rea-*  
6                        *sons for it; and*

7                        *“(ii) the right of such parents to re-*  
8                        *quest an assessment to determine whether*  
9                        *the child continues to be a child with a dis-*  
10                        *ability; and*

11                *“(B) shall not be required to conduct such*  
12                *an assessment unless requested to by the child’s*  
13                *parents.*

14        *“(d) INDIVIDUALIZED EDUCATION PROGRAMS.—*

15                *“(1) REQUIREMENT THAT PROGRAM BE IN EF-*  
16        *FECT.—*

17                        *“(A) IN GENERAL.—At the beginning of*  
18                        *each school year, each local educational agency,*  
19                        *or State educational agency, as the case may be,*  
20                        *shall have in effect, for each child with a disabili-*  
21                        *ty in its jurisdiction, an individualized edu-*  
22                        *cation program, as defined in section 602(11).*

23                        *“(B) PROGRAM FOR CHILD AGED 3 TO 5.—*  
24                        *In the case of a child with a disability aged 3*  
25                        *to 5, inclusive, an individualized family service*

1            *plan that contains the material described in sec-*  
2            *tion 636, and that is developed in accordance*  
3            *with this section, may serve as the IEP of the*  
4            *child if using that plan as the IEP is—*

5                    *“(i) consistent with State policy; and*

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

8            *“(2) DEVELOPMENT OF IEP.—*

9                    *“(A) IN GENERAL.—An individualized edu-*  
10            *cation program team shall develop the IEP de-*  
11            *scribed in paragraph (1). In developing such*  
12            *IEP, the IEP Team, subject to subparagraph*  
13            *(B), shall—*

14                    *“(i) consider the child’s strengths and*  
15                    *the parents’ concerns for enhancing their*  
16                    *child’s education;*

17                    *“(ii) consider the results of the initial*  
18                    *evaluation or most recent reevaluation;*

19                    *“(iii) in the case of a child whose be-*  
20                    *havior impedes his or her learning or that*  
21                    *of others, consider, when appropriate, strat-*  
22                    *egies, including positive behavior manage-*  
23                    *ment interventions and strategies to help*  
24                    *the child behave in an appropriate and re-*  
25                    *sponsible manner conducive to learning;*

1           “(iv) in the case of a child with lim-  
2           ited English proficiency, consider the lan-  
3           guage needs of the child as such needs relate  
4           to the child’s IEP;

5           “(v) in the case of a child who is blind  
6           or visually impaired, provide for instruc-  
7           tion in braille and the use of braille unless  
8           all members of the IEP Team concur that,  
9           after an evaluation of the child’s reading  
10          and writing skills, needs, and appropriate  
11          reading and writing media (including an  
12          evaluation of the child’s future needs for in-  
13          struction in braille or the use of braille), in-  
14          struction in braille or the use of braille is  
15          not appropriate for the child;

16          “(vi) consider the communication  
17          needs of the child, and in the case of a child  
18          who is deaf, hard-of-hearing, blind, or com-  
19          municatively disabled, consider the lan-  
20          guage and communication needs of the  
21          child; and

22          “(vii) consider whether the child re-  
23          quires assistive technology services or de-  
24          vices.

1           “(B) *REQUIREMENT WITH RESPECT TO*  
2           *REGULAR EDUCATION TEACHER.*—*The regular*  
3           *education teacher of the child, as a member of*  
4           *the IEP Team, shall, to the extent appropriate,*  
5           *participate in the development of the IEP of the*  
6           *child, including the determination of appro-*  
7           *priate behavior-management techniques consist-*  
8           *ent with subparagraph (A)(iii) of this para-*  
9           *graph, and the determination of supplementary*  
10           *aids and services, program modifications, and*  
11           *support for school personnel consistent with sec-*  
12           *tion 602(11)(E).*

13           “(3) *REVIEW AND REVISION OF IEP.*—

14           “(A) *IN GENERAL.*—*The local educational*  
15           *agency shall ensure that, subject to subpara-*  
16           *graphs (B) and (C), the IEP Team—*

17                   “(i) *reviews each IEP at least once a*  
18                   *year to determine whether the annual objec-*  
19                   *tives for the child are being achieved; and*

20                   “(ii) *revises the IEP to address—*

21                           “(I) *any lack of expected progress*  
22                           *toward the annual objectives and in*  
23                           *the general curriculum, where appro-*  
24                           *priate;*

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

3                   “(III) information about the child  
4                   provided to, or by, the parents, as de-  
5                   scribed in section 602(11)(F)(ii); or

6                   “(IV) the child’s anticipated needs  
7                   as otherwise appropriate.

8                   “(B) CERTAIN CHILDREN WITH DISABIL-  
9                   ITIES.—

10                   “(i) IN GENERAL.—In the case of a  
11                   child with a disability who has dem-  
12                   onstrated a pattern of behavior that signifi-  
13                   cantly impairs the education of the child, or  
14                   the education of the classmates of the child,  
15                   and the ability of the teacher of the child to  
16                   teach, if such teacher initiates or requests  
17                   an IEP meeting, then the appropriate au-  
18                   thority shall convene an IEP meeting to re-  
19                   view the child’s educational program, relat-  
20                   ed services, supplementary aids and serv-  
21                   ices, and placement.

22                   “(ii) REVIEW OF IEP.—In carrying out  
23                   a review of the IEP of the child, the IEP  
24                   Team shall determine—

1           “(I) the appropriateness of the  
2           current IEP of the child;

3           “(II) whether or not special edu-  
4           cation and related services have been  
5           appropriately provided to the child;

6           “(III) whether or not other sup-  
7           plementary aids or services, including  
8           teacher training, are needed to address  
9           the behavior of the child; and

10          “(IV) subject to clauses (iii) and  
11          (iv), whether or not the placement of  
12          the child should be changed.

13          “(iii) DETERMINATION OF CHANGE IN  
14          PLACEMENT.—Prior to proposing a change  
15          in the placement of the child, the IEP Team  
16          shall first consider and then document the  
17          following:

18                 “(I) The cumulative record over a  
19                 reasonable period of time describing  
20                 the frequent behaviors exhibited by the  
21                 child that significantly impairs the  
22                 education of the child, the education of  
23                 the classmates of the child, and the  
24                 ability of the teacher of the child to  
25                 teach.

1                   “(II) *Documentation of the efforts*  
2                   *made to address the behavior of the*  
3                   *child, the use of supplementary services*  
4                   *or strategies (including the use of be-*  
5                   *havior management plans) that have*  
6                   *been implemented over a reasonable pe-*  
7                   *riod of time and have failed to address*  
8                   *the behavior of the child in a manner*  
9                   *that would enable the child to remain*  
10                  *in the current educational placement of*  
11                  *the child without significantly impair-*  
12                  *ing the education of the child, the edu-*  
13                  *cation of the classmates of the child,*  
14                  *and the ability of the teacher of the*  
15                  *child to teach.*

16                   “(III) *The training made avail-*  
17                   *able to the teacher or teachers of the*  
18                   *child.*

19                   “(iv) *EXPEDITED DUE PROCESS HEAR-*  
20                   *ING.—If the IEP Team determines that a*  
21                   *change in placement of the child is appro-*  
22                   *priate, and the parents of the child disagree*  
23                   *with such determination, then either party*  
24                   *may request an expedited due process hear-*  
25                   *ing in accordance with section 615(f)(2).*

1           “(C) *REQUIREMENT WITH RESPECT TO*  
2           *REGULAR EDUCATION TEACHER.*—*The regular*  
3           *education teacher of the child, as a member of*  
4           *the IEP Team, shall, to the extent appropriate,*  
5           *participate in the review and revision of the IEP*  
6           *of the child.*

7           “(4) *FAILURE TO MEET TRANSITION OBJEC-*  
8           *TIVES.*—*If a participating agency, other than the*  
9           *local educational agency, fails to provide the transi-*  
10          *tion services described in the IEP in accordance with*  
11          *section 602(11)(F)(ii), the local educational agency*  
12          *shall reconvene the IEP Team to identify alternative*  
13          *strategies to meet the transition objectives for the*  
14          *child set out in that program.*

15          “(5) *RULE OF CONSTRUCTION.*—*Nothing in this*  
16          *subsection shall be construed—*

17                  “(A) *to decrease the amount of information*  
18                  *that a parent receives concerning the progress of*  
19                  *the child of such parent; or*

20                  “(B) *to increase the amount of paperwork*  
21                  *for the teachers, related services personnel, and*  
22                  *administrators of such child.*

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

1 *of any group that makes decisions on the educational place-*  
2 *ment of their child.*

3 **“SEC. 615. PROCEDURAL SAFEGUARDS.**

4       “(a) *ESTABLISHMENT OF PROCEDURES.*—*Any State*  
5 *educational agency or local educational agency that receives*  
6 *assistance under this part shall establish and maintain pro-*  
7 *cedures in accordance with this section to assure that chil-*  
8 *dren with disabilities and their parents are guaranteed pro-*  
9 *cedural safeguards with respect to the provision of free ap-*  
10 *propriate public education by such agencies.*

11       “(b) *TYPES OF PROCEDURES.*—*The procedures re-*  
12 *quired by this section shall include—*

13               “(1) *an opportunity for the parents of a child*  
14 *with a disability to examine all records relating to*  
15 *such child and to participate in meetings with respect*  
16 *to the identification, evaluation, and educational*  
17 *placement of the child, and the provision of a free ap-*  
18 *propriate public education to such child, and to ob-*  
19 *tain an independent educational evaluation of the*  
20 *child;*

21               “(2) *procedures to protect the rights of the child*  
22 *whenever the parents of the child are not known, the*  
23 *agency cannot, after reasonable efforts, locate the par-*  
24 *ents, or the child is a ward of the State, including the*  
25 *assignment of an individual (who shall not be an em-*

1     *ployee of the State educational agency, the local edu-*  
2     *catational agency, or any other agency that is involved*  
3     *in the education or care of the child) to act as a sur-*  
4     *rogate for the parents;*

5             *“(3) written prior notice to the parents of the*  
6     *child whenever such agency—*

7                     *“(A) proposes to initiate or change; or*

8                     *“(B) refuses to initiate or change;*

9     *the identification, evaluation, or educational place-*  
10    *ment of the child, in accordance with subsection (c),*  
11    *or the provision of a free appropriate public edu-*  
12    *cation to the child;*

13             *“(4) procedures designed to assure that the notice*  
14    *required by paragraph (3) is in the native language*  
15    *of the parents, unless it clearly is not feasible to do*  
16    *so;*

17             *“(5) an opportunity for mediation in accordance*  
18    *with subsection (e);*

19             *“(6) an opportunity to present complaints with*  
20    *respect to any matter relating to the identification,*  
21    *evaluation, or educational placement of the child, or*  
22    *the provision of a free appropriate public education*  
23    *to such child;*

24             *“(7) procedures that require the parent of a child*  
25    *with a disability, or the attorney representing the*

1 *child, to provide notice (which shall remain confiden-*  
2 *tial)—*

3 *“(A) to the State educational agency or*  
4 *local educational agency, as the case may be, in*  
5 *the complaint filed under paragraph (6); and*

6 *“(B) that shall include—*

7 *“(i) the name of the child, the address*  
8 *of the residence of the child, and the name*  
9 *of the school at which the child is attending;*

10 *“(ii) a description of the nature of the*  
11 *problem of the child relating to such pro-*  
12 *posed initiation or change, including facts*  
13 *relating to such problem; and*

14 *“(iii) the proposed resolution of the*  
15 *problem; and*

16 *“(8) procedures that require the State edu-*  
17 *cational agency to develop a model form to assist par-*  
18 *ents in filing a complaint in accordance with para-*  
19 *graph (7).*

20 *“(c) CONTENT OF PRIOR WRITTEN NOTICE.—The no-*  
21 *tice required by subsection (b)(3) shall include—*

22 *“(1) a description of the action proposed or re-*  
23 *fused by the agency;*

24 *“(2) an explanation of why the agency proposes*  
25 *or refuses to take the action;*

1           “(3) a description of any other options that the  
2 agency considered and the reasons why those options  
3 were rejected;

4           “(4) a description of each evaluation procedure,  
5 test, record, or report the agency used as a basis for  
6 the proposed or refused action;

7           “(5) a description of any other factors that are  
8 relevant to the agency’s proposal or refusal; and

9           “(6) a statement that the parents of a child with  
10 a disability have protection under the procedural  
11 safeguards of this title and, if this notice is not an  
12 initial referral for evaluation, the means by which a  
13 copy of a description of the procedural safeguards can  
14 be obtained.

15           “(d) *PROCEDURAL SAFEGUARDS NOTICE.*—

16           “(1) *IN GENERAL.*—A copy of the procedural  
17 safeguards available to the parents of a child with a  
18 disability shall be given to the parents, at a mini-  
19 mum—

20                   “(A) upon initial referral for evaluation;

21                   “(B) upon each notification of an individ-  
22 ualized education program meeting and upon re-  
23 evaluation of the child; and

24                   “(C) upon registration of a complaint  
25 under subsection (b)(6).

1           “(2) *CONTENTS.*—*The procedural safeguards no-*  
2           *tice shall include a full explanation of the procedural*  
3           *safeguards written in the native language of the par-*  
4           *ents, unless not feasible to do so, and written in an*  
5           *easily understandable manner, available under this*  
6           *section and under regulations promulgated by the*  
7           *Secretary relating to—*

8                     “(A) *independent educational evaluation;*

9                     “(B) *prior written notice;*

10                    “(C) *parental consent;*

11                    “(D) *access to educational records;*

12                    “(E) *opportunity to present complaints;*

13                    “(F) *the child’s placement during pendency*  
14           *of due process proceedings;*

15                    “(G) *procedures for students who are subject*  
16           *to placement in an interim alternative edu-*  
17           *cational setting;*

18                    “(H) *requirements for unilateral placement*  
19           *by parents of children in private schools at pub-*  
20           *lic expense;*

21                    “(I) *mediation;*

22                    “(J) *due process hearings, including re-*  
23           *quirements for disclosure of evaluation results*  
24           *and recommendations;*

1           “(K) *State-level appeals (if applicable in*  
2           *that State);*

3           “(L) *civil actions; and*

4           “(M) *attorney’s fees.*

5           “(e) *MEDIATION.—*

6           “(1) *IN GENERAL.—Any State educational agen-*  
7           *cy or local educational agency that receives assistance*  
8           *under this part shall ensure that procedures are estab-*  
9           *lished and implemented to allow parties to disputes*  
10           *involving the provision of free appropriate public*  
11           *education to children with disabilities by any such*  
12           *State educational agency or local educational agency*  
13           *to resolve such disputes through a mediation process.*

14           “(2) *REQUIREMENTS.—Such procedures shall*  
15           *meet the following requirements:*

16           “(A) *The procedures shall ensure that the*  
17           *mediation process—*

18           “(i) *is voluntary on the part of the*  
19           *parents and may be terminated by either*  
20           *party after a good faith effort has been*  
21           *made by the party terminating the medi-*  
22           *ation process; and*

23           “(ii) *is conducted by a qualified and*  
24           *impartial mediator who is trained in effec-*  
25           *tive mediation techniques.*

1           “(B) *The State shall maintain a list of in-*  
2           *dividuals who are qualified mediators and*  
3           *knowledgeable in laws and regulations relating*  
4           *to the provision of special education and related*  
5           *services.*

6           “(C) *The State shall bear the cost of the me-*  
7           *diation process.*

8           “(D) *Each session in the mediation process*  
9           *shall be scheduled in a timely manner and shall*  
10          *be held in a location that is convenient to the*  
11          *parties to the dispute.*

12          “(E) *An agreement reached by the parties*  
13          *to the dispute in the mediation process shall be*  
14          *set forth in a written mediation agreement.*

15          “(F) *Discussions that occur during the me-*  
16          *diation process shall be confidential and may*  
17          *not be used as evidence in any subsequent due*  
18          *process hearings or civil proceedings, and the*  
19          *parties to the mediation process may be required*  
20          *to sign a confidentiality pledge prior to the com-*  
21          *mencement of such process.*

22          “(G) *The State shall determine whether or*  
23          *not attorneys may attend or otherwise partici-*  
24          *pate in the mediation process after offering the*  
25          *opportunity for parents and representatives of*

1           *school districts to participate in the mediation*  
2           *process prior to any due process filing without*  
3           *attorneys present.*

4           “(f) *IMPARTIAL DUE PROCESS HEARING.*—

5           “(1) *IN GENERAL.*—*Whenever a complaint has*  
6           *been received under section 614(d)(3)(B), or sub-*  
7           *section (b)(6) or (k) of this section, the parents in-*  
8           *volved in such complaint shall have an opportunity*  
9           *for an impartial due process hearing which shall be*  
10           *conducted by the State educational agency or by the*  
11           *local educational agency, as determined by State law*  
12           *or by the State educational agency.*

13           “(2) *DISCLOSURE OF EVALUATIONS AND REC-*  
14           *COMMENDATIONS.*—

15           “(A) *IN GENERAL.*—*At least 10 school days*  
16           *prior to a hearing conducted pursuant to para-*  
17           *graph (1), each party shall disclose to all other*  
18           *parties all evaluations and recommendations*  
19           *based on the offering party’s evaluations which*  
20           *the party intends to use at the hearing.*

21           “(B) *PROHIBITION.*—*Any party which fails*  
22           *to meet the requirement of subparagraph (A)*  
23           *shall be barred from introducing such evalua-*  
24           *tions and recommendations at such hearing.*

1           “(3) *LIMITATION ON CONDUCT OF HEARING.*—A  
2           *hearing conducted pursuant to paragraph (1) may*  
3           *not be conducted by an employee of the State edu-*  
4           *cational agency or the local educational agency in-*  
5           *volved in the education or care of the child.*

6           “(4) *ADDITIONAL REQUIREMENTS WITH RESPECT*  
7           *TO HEARINGS FOR CERTAIN CHILDREN WITH DISABIL-*  
8           *ITIES.*—A hearing conducted pursuant to paragraph  
9           (1) that is based upon a complaint received under  
10           section 614(d)(3)(B) shall, in addition to the require-  
11           ments contained in this subsection, comply with the  
12           following additional requirements:

13                   “(A) *In determining whether or not the de-*  
14                   *cision by the IEP Team to change the placement*  
15                   *of the child is justified and appropriate, the*  
16                   *hearing officer shall, at a minimum, review the*  
17                   *information under clause (iii) of such section.*

18                   “(B) *The child shall remain in the current*  
19                   *educational placement of the child until the hear-*  
20                   *ing officer reaches a final decision under this*  
21                   *subsection.*

22                   “(C) *The hearing officer shall make a deter-*  
23                   *mination of findings and reach a final decision*  
24                   *not later than 20 days after the first day of the*  
25                   *hearing, or, at the discretion of the hearing offi-*

1           *cer, not later than 30 days after such first day*  
2           *of the hearing.*

3           “(D) *The placement of the child, including*  
4           *the placement of the child during any due proc-*  
5           *ess or judicial proceeding, shall be determined in*  
6           *accordance with the final decision of the hearing*  
7           *officer under this subsection, unless the parents*  
8           *and the State or local educational agency agree*  
9           *otherwise.*

10          “(g) *APPEAL.—If the hearing required by subsection*  
11         *(f) is conducted by a local educational agency, any party*  
12         *aggrieved by the findings and decision rendered in such a*  
13         *hearing may appeal such findings and decision to the State*  
14         *educational agency. Such agency shall conduct an impar-*  
15         *tial review of such decision. The officer conducting such re-*  
16         *view shall make an independent decision upon completion*  
17         *of such review.*

18          “(h) *SAFEGUARDS.—Any party to a hearing conducted*  
19         *pursuant to subsection (f), or an appeal conducted pursuant*  
20         *to subsection (g), shall be accorded—*

21                 “(1) *the right to be accompanied and advised by*  
22                 *counsel and by individuals with special knowledge or*  
23                 *training with respect to the problems of children with*  
24                 *disabilities;*

1           “(2) *the right to present evidence and confront,*  
2 *cross-examine, and compel the attendance of wit-*  
3 *nesses;*

4           “(3) *the right to a written, or, at the option of*  
5 *the parents, electronic verbatim record of such hear-*  
6 *ing; and*

7           “(4) *the right to written, or, at the option of the*  
8 *parents, electronic findings of fact and decisions*  
9 *(which findings and decisions shall be made available*  
10 *to the public consistent with the requirements of sec-*  
11 *tion 617(c) (relating to the confidentiality of data, in-*  
12 *formation, and records) and shall also be transmitted*  
13 *to the advisory panel established pursuant to section*  
14 *612(a)(18)).*

15           “(i) *ADMINISTRATIVE PROCEDURES.—*

16           “(1) *IN GENERAL.—A decision made in a hear-*  
17 *ing conducted pursuant to subsection (f) shall be*  
18 *final, except that any party involved in such hearing*  
19 *may appeal such decision under the provisions of sub-*  
20 *section (g) and paragraph (2) of this subsection.*

21           “(2) *RIGHT TO BRING CIVIL ACTION.—*

22           “(A) *IN GENERAL.—Any party aggrieved by*  
23 *the findings and decision made under subsection*  
24 *(f) who does not have the right to an appeal*  
25 *under subsection (g), and any party aggrieved*

1           *by the findings and decision under this sub-*  
2           *section, shall have the right to bring a civil ac-*  
3           *tion with respect to the complaint presented pur-*  
4           *suant to this section, which action may be*  
5           *brought in any State court of competent jurisdic-*  
6           *tion or in a district court of the United States*  
7           *without regard to the amount in controversy.*

8           “(B) *ADDITIONAL REQUIREMENTS.*—*In any*  
9           *action brought under this paragraph the court—*

10                   “(i) *shall receive the records of the ad-*  
11                   *ministrative proceedings;*

12                   “(ii) *may hear additional evidence at*  
13                   *the request of a party; and*

14                   “(iii) *basing its decision on the pre-*  
15                   *ponderance of the evidence, shall grant such*  
16                   *relief as the court determines is appro-*  
17                   *priate.*

18           “(3) *JURISDICTION OF DISTRICT COURTS; ATTOR-*  
19           *NEYS’ FEES.*—

20                   “(A) *IN GENERAL.*—*The district courts of*  
21                   *the United States shall have jurisdiction of ac-*  
22                   *tions brought under this section without regard*  
23                   *to the amount in controversy.*

24                   “(B) *AWARD OF ATTORNEYS’ FEES.*—*In*  
25                   *any action or proceeding brought under this sec-*

1           *tion, the court, in its discretion, may award rea-*  
2           *sonable attorneys' fees as part of the costs to the*  
3           *parents of a child or youth with a disability who*  
4           *is the prevailing party.*

5           “(C) *DETERMINATION OF AMOUNT OF AT-*  
6           *TORNEYS' FEES.—Fees awarded under this para-*  
7           *graph shall be based on rates prevailing in the*  
8           *community in which the action or proceeding*  
9           *arose for the kind and quality of services fur-*  
10          *nished. No bonus or multiplier may be used in*  
11          *calculating the fees awarded under this sub-*  
12          *section.*

13          “(D) *PROHIBITION OF ATTORNEYS' FEES*  
14          *AND RELATED COSTS FOR CERTAIN SERVICES.—*  
15          *(i) Attorneys' fees may not be awarded and re-*  
16          *lated costs may not be reimbursed in any action*  
17          *or proceeding under this subsection for services*  
18          *performed subsequent to the time of a written*  
19          *offer of settlement to a parent if—*

20                 *“(I) the offer is made within the time*  
21                 *prescribed by Rule 68 of the Federal Rules*  
22                 *of Civil Procedure or, in the case of an ad-*  
23                 *ministrative proceeding, at any time more*  
24                 *than ten days before the proceeding begins;*

1           “(II) the offer is not accepted within  
2           10 days; and

3           “(III) the court or administrative offi-  
4           cer finds that the relief finally obtained by  
5           the parents is not more favorable to the par-  
6           ents than the offer of settlement.

7           “(ii) Attorneys’ fees may not be awarded re-  
8           lating to any meeting of the IEP Team unless  
9           such meeting is convened as a result of a judicial  
10          action or proceeding.

11          “(E) EXCEPTION TO PROHIBITION ON AT-  
12          TORNEYS’ FEES AND RELATED COSTS.—Notwith-  
13          standing subparagraph (D), an award of attor-  
14          neys’ fees and related costs may be made to a  
15          parent who is the prevailing party and who was  
16          substantially justified in rejecting the settlement  
17          offer.

18          “(F) REDUCTION IN AMOUNT OF ATTOR-  
19          NEYS’ FEES.—Except as provided in subpara-  
20          graph (G), whenever the court finds that—

21                 “(i) the parent, during the course of  
22                 the action or proceeding, unreasonably pro-  
23                 tracted the final resolution of the con-  
24                 troversy;

1           “(ii) the amount of the attorneys’ fees  
2 otherwise authorized to be awarded unrea-  
3 sonably exceeds the hourly rate prevailing  
4 in the community for similar services by at-  
5 torneys of reasonably comparable skill and  
6 experience;

7           “(iii) the time spent and legal services  
8 furnished were excessive considering the na-  
9 ture of the action or proceeding;

10           “(iv) the attorney representing the par-  
11 ent did not provide to the school district the  
12 appropriate information in the due process  
13 complaint in accordance with subsection  
14 (b)(7); or

15           “(v) the amount of attorneys’ fees re-  
16 quested is not consistent with the extent of  
17 the success of the parents;

18           the court shall reduce, accordingly, the amount of  
19 the attorneys’ fees awarded under this subsection.

20           “(G) EXCEPTION TO REDUCTION IN AMOUNT  
21 OF ATTORNEYS’ FEES.—The provisions of sub-  
22 paragraph (F) shall not apply in any action or  
23 proceeding if the court finds that the State or  
24 local educational agency unreasonably protracted

1           *the final resolution of the action or proceeding*  
2           *or there was a violation of this section.*

3           “(j) *MAINTENANCE OF CURRENT EDUCATIONAL*  
4 *PLACEMENT.—Except as provided in subsection (k), during*  
5 *the pendency of any proceedings conducted pursuant to this*  
6 *section, unless the State or local educational agency and*  
7 *the parents otherwise agree, the child shall remain in the*  
8 *then current educational placement of such child, or, if ap-*  
9 *plying for initial admission to a public school, shall, with*  
10 *the consent of the parents, be placed in the public school*  
11 *program until all such proceedings have been completed.*

12           “(k) *PLACEMENT IN ALTERNATIVE EDUCATIONAL SET-*  
13 *TING.—*

14           “(1) *AUTHORITY OF SCHOOL PERSONNEL.—*  
15 *School personnel under this section may, to the same*  
16 *extent as a court, order a change in the placement of*  
17 *a child with a disability—*

18                   “(A) *to an appropriate interim alternative*  
19 *educational setting, another setting, or suspen-*  
20 *sion, for not more than 10 school days (to the ex-*  
21 *tent such alternatives would be applied to chil-*  
22 *dren without disabilities); and*

23                   “(B) *to an appropriate interim alternative*  
24 *educational setting for the same amount of time*  
25 *that a child without a disability would be subject*

1           to discipline, but for not more than an addi-  
2           tional 45 school days if—

3                   “(i) the child carries a weapon to  
4                   school or to a school function under the ju-  
5                   risdiction of a State or a local educational  
6                   agency;

7                   “(ii) the child possesses or uses illegal  
8                   drugs or sells or solicits the sale of medica-  
9                   tions or illegal drugs while at school or a  
10                  school function under the jurisdiction of a  
11                  State or local educational agency; or

12                  “(iii) the child causes serious injury  
13                  while at school or at a school function under  
14                  the jurisdiction of a State or a local edu-  
15                  cational agency.

16           “(2) *AUTHORITY OF HEARING OFFICER.*—A  
17           hearing officer under this section may, to the same ex-  
18           tent as a court, order a change in the placement of  
19           a child with a disability to an appropriate interim  
20           alternative educational setting for not more than 45  
21           school days if—

22                   “(A) the maintenance of the current place-  
23                   ment of such child is substantially likely to re-  
24                   sult in injury to the child or to others; and

25                   “(B) the hearing officer—

1           “(i) determines that the public agency  
2           has demonstrated by substantial evidence  
3           that the requirement of subparagraph (A)  
4           has been met;

5           “(ii) considers the appropriateness of  
6           the child’s current placement; and

7           “(iii) considers whether the public  
8           agency has made reasonable efforts to mini-  
9           mize the risk of harm including the use of  
10          supplementary aids and services.

11          “(3) *DETERMINATION OF SETTING.*—The alter-  
12          native educational setting described in paragraph (1)  
13          or paragraph (2) shall be determined by the individ-  
14          ualized education program team.

15          “(4) *MANIFESTATION DETERMINATION RE-*  
16          *VIEW.*—

17          “(A) *IN GENERAL.*—If a change in place-  
18          ment or disciplinary proceeding, including ex-  
19          pulsion, is contemplated as a result of an action  
20          described in paragraph (1) or paragraph (2)—

21                 “(i) not later than 3 school days after  
22                 the date on which such action has been  
23                 taken the parents shall be notified of such  
24                 action; and

1           “(i) not later than 15 school days  
2           after the date on which such action has been  
3           taken a review shall be conducted of the re-  
4           lationship between the child’s disability and  
5           the behavior described in paragraph (1).

6           “(B) INDIVIDUALS TO CARRY OUT RE-  
7           VIEW.—A review described in subparagraph (A)  
8           shall be conducted by the IEP Team and other  
9           qualified personnel.

10          “(C) CONDUCT OF REVIEW.—In carrying  
11          out a review described in subparagraph (A), the  
12          individuals described in subparagraph (B) shall  
13          consider appropriate factors, including—

14                 “(i) the appropriateness of the child’s  
15                 placement;

16                 “(ii) the consistency of the implemen-  
17                 tation of the child’s entire IEP, including  
18                 the technical soundness of the behavior  
19                 strategies used;

20                 “(iii) evaluation and diagnostic re-  
21                 sults, which may include any such results  
22                 supplied by the parents or guardian of the  
23                 child; and

24                 “(iv) observations of the child.

1           “(5) *DETERMINATION THAT BEHAVIOR WAS MAN-*  
2           *IFESTATION OF DISABILITY.*—*If the result of the re-*  
3           *view described in paragraph (4) is a determination*  
4           *that the behavior of the child with a disability was*  
5           *a manifestation of such child’s disability and the par-*  
6           *ents of such child agree with such determination, the*  
7           *educational placement of such child may be changed.*  
8           *If the parents do not agree with such determination*  
9           *or with such changed educational placement, an im-*  
10          *mediate appeal may be made to a hearing officer to*  
11          *determine whether the child’s placement should be*  
12          *changed. Any party aggrieved by the determination of*  
13          *the hearing officer may initiate a due process hearing*  
14          *as described in subsection (f).*

15           “(6) *DETERMINATION THAT BEHAVIOR WAS NOT*  
16          *MANIFESTATION OF DISABILITY.*—

17           “(A) *IN GENERAL.*—

18           “(i) *INITIAL DETERMINATION RE-*  
19          *QUIREMENT.*—*The IEP Team may deter-*  
20          *mine that the behavior of the child was not*  
21          *a manifestation of such child’s disability*  
22          *only if the IEP Team first determines that*  
23          *the disability—*

1                   “(I) did not impair the ability of  
2                   the child to understand the impact and  
3                   consequences of the behavior; and

4                   “(II) did not impair the ability of  
5                   the child to control the behavior.

6                   “(ii) *OTHER REQUIREMENTS.*—If the  
7                   result of the review described in paragraph  
8                   (4) is a determination that the behavior of  
9                   the child with a disability was not a mani-  
10                  festation of such child’s disability, the rel-  
11                  evant disciplinary procedures applicable to  
12                  children without disabilities may be applied  
13                  in the same manner in which they would be  
14                  applied to children without disabilities. If  
15                  the parents do not agree with such applica-  
16                  tion, a due process hearing, as described in  
17                  subsection (f), may be initiated. Any deter-  
18                  mination under paragraph (4) that a  
19                  child’s behavior was not a manifestation of  
20                  a disability shall be reviewed by a hearing  
21                  officer under subsection (f), whether or not  
22                  the child’s parents request a hearing, before  
23                  educational services to the child may be ter-  
24                  minated under this paragraph. During the  
25                  pendency of such due process procedures, the

1           *child shall continue to receive educational*  
2           *services in the alternative educational set-*  
3           *ting.*

4           “(B) *SPECIAL RULE.*—Where application of  
5           *the relevant disciplinary procedures in subpara-*  
6           *graph (A) would result in the expulsion of the*  
7           *child without the receipt of educational services,*  
8           *the child may be expelled only if—*

9                   “(i) *the child carries a weapon to*  
10           *school or to a school function under the ju-*  
11           *risdiction of a State or local educational*  
12           *agency; or*

13                   “(ii) *the child possesses or uses illegal*  
14           *drugs or sells or solicits the sale of medica-*  
15           *tions or illegal drugs while at school or a*  
16           *school function under the jurisdiction of a*  
17           *State or local educational agency.*

18           “(7) *EXPEDITED HEARING.*—*The State or local*  
19           *educational agency shall arrange for an expedited*  
20           *hearing in any case described in this subsection when*  
21           *requested by the parent.*

22           “(8) *ADDITIONAL REQUIREMENTS.*—

23                   “(A) *MAINTENANCE OF ALTERNATIVE EDU-*  
24           *CATIONAL SETTING.*—*If the parent of a child de-*  
25           *scribed in this section requests a hearing pursu-*

1           ant to subsection (f), the child shall remain in  
2           the alternative educational setting in which such  
3           child was placed during the pendency of any  
4           proceedings under this section, unless the parents  
5           and the State or local educational agency agree  
6           otherwise.

7           “(B) *PROTECTIONS FOR CHILDREN NOT YET*  
8           *ELIGIBLE FOR SPECIAL EDUCATION AND RELAT-*  
9           *ED SERVICES.—*

10           “(i) *IN GENERAL.—A child who has*  
11           *not been determined to be eligible for special*  
12           *education and related services under this*  
13           *part and who has engaged in behavior that*  
14           *violated any rule or code of conduct of the*  
15           *local educational agency, including any be-*  
16           *havior described in paragraph (1), may as-*  
17           *sert any of the protections provided for in*  
18           *this part if the local educational agency had*  
19           *knowledge (as determined in accordance*  
20           *with this subparagraph) that the child was*  
21           *a child with a disability before the behavior*  
22           *that precipitated the disciplinary action oc-*  
23           *curred.*

24           “(ii) *BASIS OF KNOWLEDGE.—A local*  
25           *educational agency shall be deemed to have*

1                    *knowledge that a child is a child with a dis-*  
2                    *ability if—*

3                    *“(I) the parent of the child has ex-*  
4                    *pressed concern in writing (unless the*  
5                    *parent is illiterate or has a disability*  
6                    *that prevents compliance with the re-*  
7                    *quirements contained in this subclause)*  
8                    *to personnel of the appropriate edu-*  
9                    *cational agency that the child is in*  
10                   *need of special education and related*  
11                   *services;*

12                   *“(II) the behavior of the child*  
13                   *demonstrates the need for such services;*

14                   *“(III) the parent of the child has*  
15                   *requested an evaluation of the child*  
16                   *pursuant to section 614; or*

17                   *“(IV) the teacher of the child, or*  
18                   *other personnel of the local educational*  
19                   *agency, has expressed concern about*  
20                   *the behavior of the child to the director*  
21                   *of special education of such agency or*  
22                   *to other personnel of the agency.*

23                   *“(iii) CONDITIONS THAT APPLY IF NO*  
24                   *BASIS OF KNOWLEDGE.—*

1           “(I) *IN GENERAL.*—If a local edu-  
2           cational agency does not have knowl-  
3           edge that a child is a child with a dis-  
4           ability (in accordance with clause (ii))  
5           prior to taking disciplinary measures  
6           against the child, the child may be sub-  
7           jected to the same disciplinary meas-  
8           ures as measures applied to children  
9           without disabilities, who engaged in  
10          comparable behaviors consistent with  
11          paragraph (2).

12          “(II) *LIMITATIONS.*—If a request  
13          is made for an evaluation of a child  
14          during the time period in which the  
15          child is subjected to disciplinary meas-  
16          ures under paragraph (1), the evalua-  
17          tion shall be conducted in an expedited  
18          manner. If the child is determined to  
19          be a child with a disability, taking  
20          into consideration information from  
21          the evaluation conducted by the agency  
22          and information provided by the par-  
23          ents, the agency shall provide special  
24          education and related services in ac-  
25          cordance with the provisions of this

1                    *part, except that, pending the results of*  
2                    *the evaluation, the child shall remain*  
3                    *in the educational placement deter-*  
4                    *mined by school authorities.*

5                    *“(C) REFERRAL TO AND ACTION BY LAW*  
6                    *ENFORCEMENT AND JUDICIAL AUTHORITIES.—*

7                    *Nothing in this part shall be construed to pro-*  
8                    *hibit an agency from reporting a crime commit-*  
9                    *ted by a child with a disability to appropriate*  
10                   *authorities or to prevent State law enforcement*  
11                   *and judicial authorities from exercising their re-*  
12                   *sponsibilities with regard to the application of*  
13                   *Federal and State law to crimes committed by a*  
14                   *child with a disability.*

15                   *“(9) DEFINITIONS.—For purposes of this sub-*  
16                   *section, the following definitions apply:*

17                   *“(A) ILLEGAL DRUG.—The term ‘illegal*  
18                   *drug’—*

19                   *“(i) means a controlled substance with-*  
20                   *in the meaning of any of paragraphs (1)*  
21                   *through (5) of section 202 of the Controlled*  
22                   *Substances Act (21 U.S.C 812); but*

23                   *“(ii) does not include a controlled sub-*  
24                   *stance within the meaning of paragraphs*

1                   (1) through (5) of section 202 of such Act  
2                   if—

3                               “(I) such controlled substance is  
4                               legally possessed or used under the su-  
5                               pervision of a licensed health care pro-  
6                               fessional; or

7                               “(II) such controlled substance is  
8                               legally possessed or used under any  
9                               other authority under such Act or  
10                              under any other provision of Federal  
11                              law.

12                             “(B) *SERIOUS INJURY*.—The term ‘serious  
13                             injury’ means an injury that involves substan-  
14                             tial risk of death, extreme physical pain, obvious  
15                             or protracted disfigurement, loss of the use of  
16                             bodily members or organs, broken bones, or sig-  
17                             nificant endangerment to an individual’s emo-  
18                             tional health or safety that is the result of a  
19                             physical or verbal assault.

20                             “(C) *WEAPON*.—The term ‘weapon’ has the  
21                             meaning given the term ‘dangerous weapon’  
22                             under paragraph (2) of the first subsection (g) of  
23                             section 930 of title 18, United States Code.

24                             “(l) *RULE OF CONSTRUCTION*.—Nothing in this part  
25                             shall be construed to restrict or limit the rights, procedures,

1 *and remedies available under the Constitution, the Ameri-*  
2 *cans with Disabilities Act, title V of the Rehabilitation Act*  
3 *of 1973, or other Federal laws protecting the rights of chil-*  
4 *dren with disabilities, except that before the filing of a civil*  
5 *action under such laws seeking relief that is also available*  
6 *under this part, the procedures under subsections (f) and*  
7 *(g) shall be exhausted to the same extent as would be re-*  
8 *quired had the action been brought under this part.*

9       “(m) *TRANSFER OF PARENTAL RIGHTS AT AGE OF*  
10 *MAJORITY.—*

11               “(1) *IN GENERAL.—A State that receives*  
12 *amounts from a grant under this part may provide*  
13 *that, when a child with a disability reaches the age*  
14 *of majority under State law (except for a child with*  
15 *a disability who has been determined to be incom-*  
16 *petent under State law)—*

17                       “(A) *the public agency shall provide any*  
18 *notice required by this section to both the indi-*  
19 *vidual and the parents;*

20                       “(B) *all other rights accorded to parents*  
21 *under this part transfer to the child;*

22                       “(C) *the agency shall notify the individual*  
23 *and the parents of the transfer of rights; and*

24                       “(D) *all rights accorded to parents under*  
25 *this part transfer to children who are incarcer-*

1           ated in an adult or juvenile Federal, State, or  
2           local correctional institution.

3           “(2) *SPECIAL RULE.*—If, under State law, a  
4           child with a disability who has reached the age of  
5           majority under State law is determined not to have  
6           the ability to provide informed consent with respect  
7           to the educational program of the child, the State  
8           shall establish procedures for appointing the parent of  
9           the child, or another appropriate individual, to rep-  
10          resent the educational interests of the child throughout  
11          the period of eligibility of the child under this part.

12   **“SEC. 616. WITHHOLDING AND JUDICIAL REVIEW.**

13          “(a) *WITHHOLDING OF PAYMENTS.*—

14               “(1) *IN GENERAL.*—Whenever the Secretary,  
15               after reasonable notice and opportunity for hearing to  
16               the State educational agency involved (and to any  
17               local educational agency or State agency affected by  
18               any failure described in subparagraph (B)), finds—

19                       “(A) that there has been a failure by the  
20                       State to comply substantially with any provision  
21                       of this part; or

22                       “(B) that there is a failure to comply with  
23                       any condition of a local educational agency’s or  
24                       State agency’s eligibility under this part;

1     *the Secretary shall, after notifying the State edu-*  
2     *catational agency, withhold any further payments to*  
3     *the State under this part.*

4             “(2) *NATURE OF WITHHOLDING.*—*If the Sec-*  
5     *retary withholds further payments under paragraph*  
6     *(1), the Secretary may determine that such withhold-*  
7     *ing will be limited to programs or projects, or por-*  
8     *tions thereof, affected by the failure, or that the State*  
9     *educational agency shall not make further payments*  
10    *under this part to specified local educational agencies*  
11    *or State agencies affected by the failure. Until the*  
12    *Secretary is satisfied that there is no longer any fail-*  
13    *ure to comply with the provisions of this part, as*  
14    *specified in subparagraph (A) or (B) of paragraph*  
15    *(1), no further payments shall be made to the State*  
16    *under this part, or payments by the State educational*  
17    *agency under this part shall be limited to local edu-*  
18    *catational agencies and State agencies whose actions*  
19    *did not cause or were not involved in the failure, as*  
20    *the case may be. Any State educational agency, State*  
21    *agency, or local educational agency that has received*  
22    *notice under paragraph (1) shall, by means of a pub-*  
23    *lic notice, take such measures as may be necessary to*  
24    *bring the pendency of an action pursuant to this sub-*

1        *section to the attention of the public within the juris-*  
2        *isdiction of such agency.*

3        “(b) *JUDICIAL REVIEW.*—

4                “(1) *IN GENERAL.*—*If any State is dissatisfied*  
5        *with the Secretary’s final action with respect to the*  
6        *eligibility of the State under section 612, such State*  
7        *may, not later than 60 days after notice of such ac-*  
8        *tion, file with the United States court of appeals for*  
9        *the circuit in which such State is located a petition*  
10       *for review of that action. A copy of the petition shall*  
11       *be forthwith transmitted by the clerk of the court to*  
12       *the Secretary. The Secretary thereupon shall file in*  
13       *the court the record of the proceedings upon which the*  
14       *Secretary’s action was based, as provided in section*  
15       *2112 of title 28, United States Code.*

16                “(2) *JURISDICTION; REVIEW BY UNITED STATES*  
17       *SUPREME COURT.*—*Upon the filing of such petition,*  
18       *the court shall have jurisdiction to affirm the action*  
19       *of the Secretary or to set it aside, in whole or in part.*  
20       *The judgment of the court shall be subject to review*  
21       *by the Supreme Court of the United States upon cer-*  
22       *tiorari or certification as provided in section 1254 of*  
23       *title 28, United States Code.*

24                “(3) *STANDARD OF REVIEW.*—*The findings of*  
25       *fact by the Secretary, if supported by substantial evi-*

1        *dence, shall be conclusive, but the court, for good*  
2        *cause shown, may remand the case to the Secretary*  
3        *to take further evidence, and the Secretary may there-*  
4        *upon make new or modified findings of fact and may*  
5        *modify the Secretary's previous action, and shall file*  
6        *in the court the record of the further proceedings.*  
7        *Such new or modified findings of fact shall likewise*  
8        *be conclusive if supported by substantial evidence.*

9        **“SEC. 617. ADMINISTRATION.**

10        *“(a) RESPONSIBILITIES OF SECRETARY.—In carrying*  
11        *out this part, the Secretary shall—*

12                *“(1) cooperate with, and (directly or by grant or*  
13                *contract) furnish technical assistance necessary to, the*  
14                *State in matters relating to—*

15                        *“(A) the education of children with disabil-*  
16                        *ities; and*

17                        *“(B) carrying out this part; and*

18                *“(2) provide short-term training programs and*  
19                *institutes.*

20        *“(b) RULES AND REGULATIONS.—In carrying out the*  
21        *provisions of this part, the Secretary shall issue regulations*  
22        *under this Act only to the extent that such regulations are*  
23        *necessary to ensure that there is compliance with the spe-*  
24        *cific requirements of this Act.*

1       “(c) *CONFIDENTIALITY.*—*The Secretary shall take ap-*  
2 *propriate action, in accordance with the provisions of sec-*  
3 *tion 444 of the General Education Provisions Act (20*  
4 *U.S.C. 1232g), to assure the protection of the confidentiality*  
5 *of any personally identifiable data, information, and*  
6 *records collected or maintained by the Secretary and by*  
7 *State and local educational agencies pursuant to the provi-*  
8 *sions of this part.*

9       “(d) *PERSONNEL.*—*The Secretary is authorized to hire*  
10 *qualified personnel necessary to conduct data collection and*  
11 *evaluation activities authorized by subsection (a) and sec-*  
12 *tion 618 without regard to the provisions of title 5, United*  
13 *States Code, relating to appointments in the competitive*  
14 *service and without regard to chapter 51 and subchapter*  
15 *III of chapter 53 of such title relating to classification and*  
16 *general schedule pay rates, except that no more than twenty*  
17 *such personnel shall be employed at any time.*

18       **“SEC. 618. PROGRAM INFORMATION.**

19       “(a) *IN GENERAL.*—*Each State that receives assist-*  
20 *ance under this part, and the Secretary of the Interior, shall*  
21 *provide data, which may be based on a sampling of data,*  
22 *each year to the Secretary on—*

23               “(1) *the number of children, categorized by race,*  
24               *ethnicity, gender, and disability, who are receiving—*

25                       “(A) *a free appropriate public education; or*

1           “(B) *early intervention services because—*

2                   “(i) *such children have developmental*  
3                   *delays; or*

4                   “(ii) *such children have a diagnosed*  
5                   *physical or mental condition that has a*  
6                   *high probability of resulting in developmen-*  
7                   *tal delay;*

8           “(2) *the progress of the State, and of the children*  
9           *with disabilities in the State, toward meeting the*  
10           *goals established under section 612(14);*

11           “(3) *the types of early intervention services pro-*  
12           *vided to such children;*

13           “(4) *the number of children with disabilities,*  
14           *categorized by race, ethnicity, gender, and disabil-*  
15           *ity—*

16                   “(A) *participating in regular education*  
17                   *programs;*

18                   “(B) *in separate classes, separate schools or*  
19                   *facilities, or public or private residential facili-*  
20                   *ties;*

21                   “(C) *who have been otherwise removed from*  
22                   *the regular education environment; and*

23                   “(D) *in various early intervention settings;*

24           “(5) *for each year of age from age 14 to 21, the*  
25           *number of children with disabilities, categorized by*

1 *race, ethnicity, gender, and disability, who, because of*  
2 *program completion or for other reasons, stopped re-*  
3 *ceiving special education, and the reasons why such*  
4 *children stopped receiving such special education;*

5 *“(6)(A) the number of children with disabilities,*  
6 *categorized by race, ethnicity, gender, and disability,*  
7 *who, under section 615(k), are removed to an interim*  
8 *alternative educational setting;*

9 *“(B) the acts or items precipitating such remov-*  
10 *als; and*

11 *“(C) the number of children with disabilities who*  
12 *are expelled from school without receiving services;*  
13 *and*

14 *“(7) any other information required by the Sec-*  
15 *retary.*

16 *“(b) DISPROPORTIONALITY.—*

17 *“(1) IN GENERAL.—Each State that receives as-*  
18 *sistance under this part, and the Secretary of the In-*  
19 *terior, shall provide for the collection and examina-*  
20 *tion of data to determine if significant*  
21 *disproportionality based on race is occurring in the*  
22 *State with respect to—*

23 *“(A) the identification of children as chil-*  
24 *dren with disabilities, including the identifica-*  
25 *tion of children as children with disabilities in*

1           *accordance with a particular impairment de-*  
2           *scribed in section 602(3); and*

3           *“(B) the placement in particular edu-*  
4           *cational settings of such children.*

5           *“(2) REVIEW AND REVISION OF POLICIES, PRAC-*  
6           *TICES, AND PROCEDURES.—In the case of a deter-*  
7           *mination of significant disproportionality with re-*  
8           *spect to the identification of children as children with*  
9           *disabilities, or the placement in particular edu-*  
10          *cational settings of such children, in accordance with*  
11          *paragraph (1), the State or the Secretary of the Inte-*  
12          *rior, as the case may be, shall provide for the review*  
13          *and, if appropriate, revision of the policies, proce-*  
14          *dures, and practices used in such identification or*  
15          *placement to ensure that such policies, procedures,*  
16          *and practices comply with the requirements of this*  
17          *Act.*

18   **“SEC. 619. PRESCHOOL GRANTS.**

19          *“(a) IN GENERAL.—The Secretary shall provide grants*  
20          *under this section to assist States to provide special edu-*  
21          *cation and related services, in accordance with this part—*

22                 *“(1) to children with disabilities aged 3 to 5, in-*  
23                 *clusive; and*

1           “(2) *at the State’s discretion, to 2-year-old chil-*  
2           *dren with disabilities who will turn 3 during the*  
3           *school year.*

4           “(b) *ELIGIBILITY.—A State shall be eligible for a grant*  
5           *under this section if such State—*

6           “(1) *is eligible under section 612 to receive a*  
7           *grant under this part; and*

8           “(2) *makes a free appropriate public education*  
9           *available to all children with disabilities, aged 3 to*  
10           *5, inclusive, residing in the State.*

11           “(c) *AMOUNT.—*

12           “(1) *IN GENERAL.—From the amount appro-*  
13           *priated for any fiscal year pursuant to the authoriza-*  
14           *tion of appropriations under subsection (m), the Sec-*  
15           *retary shall allot to each eligible State the amount it*  
16           *received for fiscal year 1996 under this section (as*  
17           *this section was in effect on the day before the date*  
18           *of the enactment of the IDEA Improvement Act of*  
19           *1996).*

20           “(2) *INSUFFICIENT FUNDS.—*

21           “(A) *IN GENERAL.—If the amount appro-*  
22           *priated under subsection (m) for a fiscal year is*  
23           *insufficient to make the full allotments described*  
24           *in paragraph (1), the Secretary shall—*

1           “(i) first, reduce the allocation to any  
2           State whose number of children aged 3 to 5,  
3           inclusive, is less than the number of such  
4           children in such State in fiscal year 1995  
5           by the same percentage by which such num-  
6           ber of children declined from the number of  
7           children in fiscal year 1995; and

8           “(ii) second, if necessary, ratably re-  
9           duce the allocations of all States, including  
10          those allocations reduced under clause (i).

11          “(B) AVAILABILITY OF ADDITIONAL  
12          FUNDS.—If additional funds become available to  
13          make allocations under this section, the alloca-  
14          tions that were reduced under subparagraph (A)  
15          shall be increased on the same basis as such allo-  
16          cations were reduced.

17          “(d) ALLOTMENT OF REMAINING FUNDS.—After mak-  
18          ing allotments under subsection (c), the Secretary shall allot  
19          any remaining funds to eligible States on the basis of their  
20          relative population of children aged 3 to 5, inclusive.

21          “(e) SPECIAL RULE WITH RESPECT TO PUERTO  
22          RICO.—Notwithstanding any other provision of this sub-  
23          section, the amount allotted to Puerto Rico for a fiscal year  
24          shall bear the same or lower proportion to the amount ap-  
25          propriated pursuant to subsection (m) as the amount re-

1 *ceived by Puerto Rico under this section for fiscal year 1996*  
2 *bears to the aggregate of the amounts received by all States*  
3 *under this section for fiscal year 1996.*

4       “(f) *DETERMINATION OF POPULATION FIGURES.*—*For*  
5 *the purpose of providing grants under this section, the Sec-*  
6 *retary shall use the most recent population data that are*  
7 *available and satisfactory to the Secretary.*

8       “(g) *RESERVATION FOR STATE ACTIVITIES.*—*A State*  
9 *may reserve not more than 25 percent of the amount allot-*  
10 *ted to the State under this section for a fiscal year for ad-*  
11 *ministration and other State-level activities in accordance*  
12 *with subsections (h) and (i).*

13       “(h) *STATE ADMINISTRATION.*—

14               “(1) *IN GENERAL.*—*A State may use up to 3*  
15 *percent of the amount allotted to the State under this*  
16 *section for a fiscal year for the purpose of administer-*  
17 *ing this section, including the coordination of activi-*  
18 *ties under this part with, and providing technical as-*  
19 *sistance to, other programs that provide services to*  
20 *children with disabilities.*

21               “(2) *USE OF AMOUNTS FOR ADMINISTRATION OF*  
22 *PART C.*—*If the State educational agency is the lead*  
23 *agency for the State under part C, amounts described*  
24 *in paragraph (1) may also be used for the adminis-*  
25 *tration of such part C.*

1       “(i) *OTHER STATE-LEVEL ACTIVITIES.—Each State*  
2 *shall use any funds it retains under subsection (g) and does*  
3 *not use for administration under subsection (h)—*

4               “(1) *for support services (including establishing*  
5 *and implementing the mediation process required by*  
6 *section 615(d)), which may benefit children with dis-*  
7 *abilities younger than 3 or older than 5 as long as*  
8 *those services also benefit children with disabilities*  
9 *aged 3 to 5, inclusive;*

10              “(2) *for direct services for children eligible for*  
11 *services under this section;*

12              “(3) *to develop a State improvement plan under*  
13 *part D;*

14              “(4) *for activities at the State and local levels to*  
15 *meet the performance goals established by the State*  
16 *under section 612(a)(14) and to support implementa-*  
17 *tion of the State improvement plan under part D if*  
18 *the State receives funds under that part; or*

19              “(5) *to supplement other funds used to develop*  
20 *and implement a Statewide coordinated services sys-*  
21 *tem designed to improve results for children and fam-*  
22 *ilies, including children with disabilities and their*  
23 *families, but not to exceed one percent of the amount*  
24 *received by the State under this section for a fiscal*  
25 *year.*

1       “(j) *SUBGRANTS TO LOCAL EDUCATIONAL AGEN-*  
2 *CIES.—*

3               “(1) *REQUIREMENT TO MAKE SUBGRANTS.—*

4       *Each State that receives a grant under this section for*  
5 *any fiscal year shall distribute at least 75 percent of*  
6 *the grant funds to local educational agencies in the*  
7 *State, and to State agencies that received funds under*  
8 *section 614A(a) (as such section was in effect on the*  
9 *day before the date of the enactment of the IDEA Im-*  
10 *provement Act of 1996) for fiscal year 1996, that have*  
11 *established their eligibility under section 613.*

12               “(2) *METHODS OF DISTRIBUTION.—A State may*  
13 *distribute funds under paragraph (1) on the basis*  
14 *of—*

15                       “(A) *total school age population;*

16                       “(B) *school enrollment;*

17                       “(C) *numbers of children with disabilities*  
18 *aged 3 to 5, inclusive, receiving a free appro-*  
19 *priate public education;*

20                       “(D) *allocations for previous fiscal years;*

21                       “(E) *any two or more of the factors de-*  
22 *scribed in subparagraphs (A) through (D); or*

23                       “(F) *poverty, in combination with one or*  
24 *more of the factors described in subparagraphs*  
25 *(A) through (D).*



1 *after infants and toddlers with disabilities reach*  
2 *school age;*

3 *“(3) to minimize the likelihood of institutional-*  
4 *ization of individuals with disabilities and maximize*  
5 *the potential for their independently living in society;*

6 *“(4) to enhance the capacity of families to meet*  
7 *the special needs of their infants and toddlers with*  
8 *disabilities; and*

9 *“(5) to enhance the capacity of State and local*  
10 *agencies and service providers to identify, evaluate,*  
11 *and meet the needs of historically underrepresented*  
12 *populations, particularly minority, low-income,*  
13 *inner-city, and rural populations.*

14 *“(b) POLICY.—It is therefore the policy of the United*  
15 *States to provide financial assistance to States—*

16 *“(1) to develop and implement a statewide, com-*  
17 *prehensive, coordinated, multidisciplinary, inter-*  
18 *agency system of early intervention services for in-*  
19 *fant and toddlers with disabilities and their families;*

20 *“(2) to facilitate the coordination of payment for*  
21 *early intervention services from Federal, State, local,*  
22 *and private sources (including public and private in-*  
23 *surance coverage); and*

24 *“(3) to enhance their capacity to provide quality*  
25 *early intervention services and expand and improve*

1       *existing early intervention services being provided to*  
2       *infants and toddlers with disabilities and their fami-*  
3       *lies.*

4       **“SEC. 632. DEFINITIONS.**

5       *“As used in this part:*

6               *“(1) AT-RISK INFANT OR TODDLER.—The term*  
7       *‘at-risk infant or toddler’ means an individual under*  
8       *3 years of age who would be at risk of experiencing*  
9       *a substantial developmental delay if early interven-*  
10       *tion services were not provided to the individual.*

11               *“(2) COUNCIL.—The term ‘council’ means a*  
12       *State interagency coordinating council established*  
13       *under section 641.*

14               *“(3) DEVELOPMENTAL DELAY.—The term ‘devel-*  
15       *opmental delay’, when used with respect to an indi-*  
16       *vidual residing in a State, has the meaning given*  
17       *such term by the State under section 635(a)(1).*

18               *“(4) EARLY INTERVENTION SERVICES.—The term*  
19       *‘early intervention services’ means developmental*  
20       *services which—*

21                       *“(A) are provided under public supervision;*

22                       *“(B) are provided at no cost except where*  
23       *Federal or State law provides for a system of*  
24       *payments by families, including a schedule of*  
25       *sliding fees;*

1           “(C) are designed to meet the developmental  
2 needs of an infant or toddler with a disability  
3 in any one or more of the following areas—

4                   “(i) physical development;

5                   “(ii) cognitive development;

6                   “(iii) communication development;

7                   “(iv) social or emotional development;

8           or

9                   “(v) adaptive development;

10           “(D) meet the standards of the State in  
11 which they are provided, including the require-  
12 ments of this part;

13           “(E) include—

14                   “(i) family training, counseling, and  
15 home visits;

16                   “(ii) special instruction;

17                   “(iii) speech-language pathology and  
18 audiology services;

19                   “(iv) occupational therapy;

20                   “(v) physical therapy;

21                   “(vi) psychological services;

22                   “(vii) service coordination services;

23                   “(viii) medical services only for diag-  
24 nostic or evaluation purposes;

1           “(ix) early identification, screening,  
2           and assessment services;

3           “(x) health services necessary to enable  
4           the infant or toddler to benefit from the  
5           other early intervention services;

6           “(xi) social work services;

7           “(xii) vision services;

8           “(xiii) assistive technology devices and  
9           assistive technology services; and

10          “(xiv) transportation and related costs  
11          that are necessary to enable an infant or  
12          toddler and the infant’s or toddler’s family  
13          to receive another service described in this  
14          paragraph;

15          “(F) are provided by qualified personnel,  
16          including—

17                 “(i) special educators;

18                 “(ii) speech-language pathologists and  
19                 audiologists;

20                 “(iii) occupational therapists;

21                 “(iv) physical therapists;

22                 “(v) psychologists;

23                 “(vi) social workers;

24                 “(vii) nurses;

25                 “(viii) nutritionists;

1                   “(ix) family therapists;

2                   “(x) orientation and mobility special-  
3                   ists; and

4                   “(xi) pediatricians and other physi-  
5                   cians;

6                   “(G) to the maximum extent appropriate,  
7                   are provided in natural environments, including  
8                   the home, and community settings in which chil-  
9                   dren without disabilities participate; and

10                  “(H) are provided in conformity with an  
11                  individualized family service plan adopted in  
12                  accordance with section 636.

13                  “(5) INFANT OR TODDLER WITH A DISABILITY.—  
14                  The term ‘infant or toddler with a disability’—

15                  “(A) means an individual under 3 years of  
16                  age who needs early intervention services because  
17                  the individual—

18                  “(i) is experiencing developmental  
19                  delays, as measured by appropriate diag-  
20                  nostic instruments and procedures in one or  
21                  more of the areas of cognitive development,  
22                  physical development, communication devel-  
23                  opment, social or emotional development,  
24                  and adaptive development; or

1                   “(i) has a diagnosed physical or men-  
2                   tal condition which has a high probability  
3                   of resulting in developmental delay; and

4                   “(B) may also include, at a State’s discre-  
5                   tion, at-risk infants and toddlers.

6 **“SEC. 633. GENERAL AUTHORITY.**

7                   “The Secretary shall, in accordance with this part,  
8                   make grants to States (from their allocations under section  
9                   643) to assist each State to maintain and implement a  
10                  statewide, comprehensive, coordinated, multidisciplinary,  
11                  interagency system to provide early intervention services for  
12                  infants and toddlers with disabilities and their families.

13 **“SEC. 634. ELIGIBILITY.**

14                  “In order to be eligible for a grant under section 633,  
15                  a State shall demonstrate to the Secretary that the State—

16                         “(1) has adopted a policy that appropriate early  
17                         intervention services are available to all infants and  
18                         toddlers with disabilities in the State and their fami-  
19                         lies, including Indian infants and toddlers with dis-  
20                         abilities and their families residing on a reservation  
21                         geographically located in the State; and

22                         “(2) has in effect a statewide system that meets  
23                         the requirements of section 635.

1 **“SEC. 635. REQUIREMENTS FOR STATEWIDE SYSTEM.**

2       “(a) *IN GENERAL.*—A statewide system described in  
3 section 633 shall include, at a minimum, the following com-  
4 ponents:

5           “(1) A definition of the term ‘developmental  
6 delay’ that will be used by the State in carrying out  
7 programs under this part.

8           “(2) A timely, comprehensive, multidisciplinary  
9 evaluation of the functioning of each infant or toddler  
10 with a disability in the State, and a family-  
11 directed identification of the needs of each family of  
12 such an infant or toddler, to appropriately assist in  
13 the development of the infant or toddler.

14           “(3) For each infant or toddler with a disability  
15 in the State, an individualized family service plan in  
16 accordance with section 636, including service coordi-  
17 nation services in accordance with such service plan.

18           “(4) A comprehensive child find system, consist-  
19 ent with part B, including a system for making refer-  
20 rals to service providers that includes timelines and  
21 provides for participation by primary referral  
22 sources.

23           “(5) A public awareness program focusing on  
24 early identification of infants and toddlers with dis-  
25 abilities, including the preparation and dissemina-  
26 tion by the lead agency designated or established

1        *under paragraph (8) to all primary referral sources,*  
2        *especially hospitals and physicians, of information*  
3        *for parents on the availability of early intervention*  
4        *services, and procedures for determining the extent to*  
5        *which such sources disseminate such information to*  
6        *parents of infants and toddlers.*

7                *“(6) A central directory which includes informa-*  
8                *tion on early intervention services, resources, and ex-*  
9                *ports available in the State and research and dem-*  
10               *onstration projects being conducted in the State.*

11               *“(7) A comprehensive system of personnel devel-*  
12               *opment, including the training of paraprofessionals*  
13               *and the training of primary referral sources respect-*  
14               *ing the basic components of early intervention serv-*  
15               *ices available in the State, that is consistent with the*  
16               *comprehensive system of personnel development de-*  
17               *scribed in section 612(a)(13) (or with the personnel*  
18               *development requirements for State improvement*  
19               *plans under section 683) and may include—*

20                        *“(A) implementing innovative strategies*  
21                        *and activities for the recruitment and retention*  
22                        *of early education service providers;*

23                        *“(B) promoting the preparation of early*  
24                        *intervention providers who are fully and appro-*

1           *priately qualified to provide early intervention*  
2           *services under this part;*

3           “(C) *training personnel to work in rural*  
4           *and inner city areas; and*

5           “(D) *training personnel to coordinate tran-*  
6           *sition services for infants and toddlers served*  
7           *under this part from an early intervention pro-*  
8           *gram under this part to preschool or other ap-*  
9           *propriate services.*

10          “(8) *Policies and procedures relating to the es-*  
11          *tablishment and maintenance of standards to ensure*  
12          *that personnel necessary to carry out this part are*  
13          *appropriately and adequately prepared and trained,*  
14          *including—*

15                 “(A) *the establishment and maintenance of*  
16                 *standards which are consistent with any State*  
17                 *approved or recognized certification, licensing,*  
18                 *registration, or other comparable requirements*  
19                 *which apply to the area in which such personnel*  
20                 *are providing early intervention services; and*

21                 “(B) *subject to subsection (b), to the extent*  
22                 *such standards are not based on the highest re-*  
23                 *quirements in the State applicable to a specific*  
24                 *profession or discipline, the steps the State is*  
25                 *taking to require the retraining or hiring of per-*

1           sonnel that meet appropriate professional re-  
2           quirements in the State;  
3       *except that nothing in this part, including this para-*  
4       *graph, prohibits the use of paraprofessionals and as-*  
5       *stants who are appropriately trained and super-*  
6       *vised, in accordance with State law, regulations, or*  
7       *written policy, to assist in the provision of early*  
8       *intervention services to infants and toddlers with dis-*  
9       *abilities under this part.*

10           “(9) A single line of responsibility in a lead  
11       agency designated or established by the Governor for  
12       carrying out—

13               “(A) the general administration and super-  
14       vision of programs and activities receiving as-  
15       sistance under section 633, and the monitoring  
16       of programs and activities used by the State to  
17       carry out this part, whether or not such pro-  
18       grams or activities are receiving assistance made  
19       available under section 633, to ensure that the  
20       State complies with this part;

21               “(B) the identification and coordination of  
22       all available resources within the State from  
23       Federal, State, local and private sources;

1           “(C) the assignment of financial respon-  
2           sibility in accordance with section 637(a)(1) to  
3           the appropriate agencies;

4           “(D) the development of procedures to en-  
5           sure that services are provided to infants and  
6           toddlers and their families under this part in a  
7           timely manner pending the resolution of any  
8           disputes among public agencies or service pro-  
9           viders;

10           “(E) the resolution of intra- and inter-  
11           agency disputes; and

12           “(F) the entry into formal interagency  
13           agreements that define the financial responsibil-  
14           ity of each agency for paying for early interven-  
15           tion services (consistent with State law) and pro-  
16           cedures for resolving disputes and that include  
17           all additional components necessary to ensure  
18           meaningful cooperation and coordination.

19           “(10) A policy pertaining to the contracting or  
20           making of other arrangements with service providers  
21           to provide early intervention services in the State,  
22           consistent with the provisions of this part, including  
23           the contents of the application used and the condi-  
24           tions of the contract or other arrangements.

1           “(11) A procedure for securing timely reimburse-  
2           ment of funds used under this part in accordance  
3           with section 640(a).

4           “(12) Procedural safeguards with respect to pro-  
5           grams under this part, as required by section 639.

6           “(13) A system for compiling data requested by  
7           the Secretary under section 618 that relates to this  
8           part.

9           “(14) A State interagency coordinating council  
10          that meets the requirements of section 641.

11          “(b) **MODIFICATION OF PERSONNEL REQUIREMENT.**—  
12          If a State determines that the requirement of subsection  
13          (a)(7)(B) would significantly inhibit the ability of the State  
14          to contract with, or employ, an appropriate number and  
15          types of personnel to provide early intervention services to  
16          infants and toddlers with disabilities in a geographic re-  
17          gion, the State may, subject to public notice and comment,  
18          temporarily suspend the requirement for the region, in a  
19          manner consistent with State law and for a period not ex-  
20          ceeding 3 years, with respect to the most qualified available  
21          individuals in shortage areas who are making annual  
22          progress in applicable coursework.

23          **“SEC. 636. INDIVIDUALIZED FAMILY SERVICE PLAN.**

24          “(a) **ASSESSMENT AND PROGRAM DEVELOPMENT.**—A  
25          statewide system described in section 633 shall provide, at

1 *a minimum, for each infant or toddler with a disability,*  
2 *and the infant's or toddler's family, to receive—*

3           “(1) *a multidisciplinary assessment of the*  
4 *unique strengths and needs of the infant or toddler*  
5 *and the identification of services appropriate to meet*  
6 *such needs;*

7           “(2) *a family-directed assessment of the re-*  
8 *sources, priorities, and concerns of the family and the*  
9 *identification of the supports and services necessary*  
10 *to enhance the family's capacity to meet the devel-*  
11 *opmental needs of the infant or toddler; and*

12           “(3) *a written individualized family service plan*  
13 *developed by a multidisciplinary team, including the*  
14 *parents, as required by subsection (e).*

15           “(b) *PERIODIC REVIEW.—The individualized family*  
16 *service plan shall be evaluated once a year and the family*  
17 *shall be provided a review of the plan at 6-month intervals*  
18 *(or more often where appropriate based on infant or toddler*  
19 *and family needs).*

20           “(c) *PROMPTNESS AFTER ASSESSMENT.—The individ-*  
21 *ualized family service plan shall be developed within a rea-*  
22 *sonable time after the assessment required by subsection*  
23 *(a)(1) is completed. With the parents' consent, early inter-*  
24 *vention services may commence prior to the completion of*  
25 *such assessment.*

1       “(d) *CONTENT OF PLAN.*—*The individualized family*  
2 *service plan shall be in writing and contain—*

3               “(1) *a statement of the infant’s or toddler’s*  
4 *present levels of physical development, cognitive devel-*  
5 *opment, communication development, social or emo-*  
6 *tional development, and adaptive development, based*  
7 *on objective criteria;*

8               “(2) *a statement of the family’s resources, prior-*  
9 *ities, and concerns relating to enhancing the develop-*  
10 *ment of the family’s infant or toddler with a disabil-*  
11 *ity;*

12               “(3) *a statement of the major outcomes expected*  
13 *to be achieved for the infant or toddler and the fam-*  
14 *ily, and the criteria, procedures, and timelines used*  
15 *to determine the degree to which progress toward*  
16 *achieving the outcomes is being made and whether*  
17 *modifications or revisions of the outcomes or services*  
18 *are necessary;*

19               “(4) *a statement of specific early intervention*  
20 *services necessary to meet the unique needs of the in-*  
21 *fant or toddler and the family, including the fre-*  
22 *quency, intensity, and method of delivering services;*

23               “(5) *a statement of the natural environments in*  
24 *which early intervention services shall appropriately*  
25 *be provided;*

1           “(6) *the projected dates for initiation of services*  
2           *and the anticipated duration of such services;*

3           “(7) *the identification of the service coordinator*  
4           *from the profession most immediately relevant to the*  
5           *infant’s or toddler’s or family’s needs (or who is oth-*  
6           *erwise qualified to carry out all applicable respon-*  
7           *sibilities under this part) who will be responsible for*  
8           *the implementation of the plan and coordination with*  
9           *other agencies and persons; and*

10           “(8) *the steps to be taken to support the transi-*  
11           *tion of the toddler with a disability to preschool or*  
12           *other appropriate services.*

13           “(e) *PARENTAL CONSENT.—The contents of the indi-*  
14           *vidualized family service plan shall be fully explained to*  
15           *the parents and informed written consent from such parents*  
16           *shall be obtained prior to the provision of early intervention*  
17           *services described in such plan. If such parents do not pro-*  
18           *vide such consent with respect to a particular early inter-*  
19           *vention service, then the early intervention services to which*  
20           *such consent is obtained shall be provided.*

21           **“SEC. 637. STATE APPLICATION AND ASSURANCES.**

22           “(a) *APPLICATION.—A State desiring to receive a*  
23           *grant under section 633 shall submit an application to the*  
24           *Secretary at such time and in such manner as the Secretary*  
25           *may reasonably require. Such application shall contain—*

1           “(1) a designation of the lead agency in the  
2           State that will be responsible for the administration  
3           of funds provided under section 633;

4           “(2) a designation of a person responsible for as-  
5           signing financial responsibility among appropriate  
6           agencies;

7           “(3) information demonstrating eligibility of the  
8           State under section 634, including—

9                   “(A) information demonstrating to the Sec-  
10                   retary’s satisfaction that the State has in effect  
11                   the statewide system required by section 633;  
12                   and

13                   “(B) a description of services to be provided  
14                   to infants and toddlers with disabilities and  
15                   their families through the system;

16           “(4) a description of the uses for which funds  
17           will be expended in accordance with this part;

18           “(5) a description of the procedure used to en-  
19           sure that resources are made available under this part  
20           for all geographic areas within the State;

21           “(6) a description of State policies and proce-  
22           dures that ensure that, prior to the adoption by the  
23           State of any other policy or procedure necessary to  
24           meet the requirements of this part, there are public  
25           hearings, adequate notice of the hearings, and an op-

1 *portunity for comment available to the general public,*  
2 *including individuals with disabilities and parents of*  
3 *infants and toddlers with disabilities;*

4 *“(7) a description of the policies and procedures*  
5 *to be used—*

6 *“(A) to ensure a smooth transition for tod-*  
7 *dlers receiving early intervention services under*  
8 *this part to preschool or other appropriate serv-*  
9 *ices, including a description of how—*

10 *“(i) the families of such toddlers will*  
11 *be included in the transition plans required*  
12 *by subparagraph (C); and*

13 *“(ii) the lead agency designated or es-*  
14 *tablished under section 635(a) will—*

15 *“(I) notify the local educational*  
16 *agency for the area in which such a*  
17 *child resides that the child will shortly*  
18 *reach the age of eligibility for preschool*  
19 *services under part B, as determined*  
20 *in accordance with State law;*

21 *“(II) in the case of such a child*  
22 *who may be eligible for such preschool*  
23 *services, with the approval of the fam-*  
24 *ily of the child, convene a conference*  
25 *among the lead agency, the family, and*

1           *the local educational agency at least 90*  
2           *days (and at the discretion of all such*  
3           *parties, up to 6 months) before the*  
4           *child is eligible for the preschool serv-*  
5           *ices, to discuss any such services that*  
6           *the child may receive; and*

7                     *“(III) in the case of such a child*  
8                     *who may not be eligible for such pre-*  
9                     *school services, with the approval of the*  
10                    *family, make reasonable efforts to con-*  
11                    *vene a conference among the lead agen-*  
12                    *cy, the family, and providers of other*  
13                    *appropriate services for children who*  
14                    *are not eligible for preschool services*  
15                    *under part B, to discuss the appro-*  
16                    *priate services that the child may re-*  
17                    *ceive;*

18                    *“(B) to review the child’s program options*  
19                    *for the period from the child’s third birthday*  
20                    *through the remainder of the school year; and*

21                    *“(C) to establish a transition plan; and*

22                    *“(8) such other information and assurances as*  
23                    *the Secretary may reasonably require.*

24                    *“(b) ASSURANCES.—The application described in sub-*  
25                    *section (a) shall contain the following:*

1           “(1) *A satisfactory assurance that the State*  
2     *will—*

3           “(A) *make such reports in such form and*  
4           *containing such information as the Secretary*  
5           *may require to carry out the Secretary’s func-*  
6           *tions under this part; and*

7           “(B) *keep such records and afford such ac-*  
8           *cess thereto as the Secretary may find necessary*  
9           *to assure the correctness and verification of such*  
10          *reports and proper disbursement of Federal*  
11          *funds under this part.*

12          “(2) *A satisfactory assurance that Federal funds*  
13          *made available under section 633 will be used to sup-*  
14          *plement and increase the level of State and local*  
15          *funds expended for infants and toddlers with disabil-*  
16          *ities and their families under this part and in no*  
17          *case to supplant such State and local funds.*

18          “(3) *Such other information and assurances as*  
19          *the Secretary may reasonably require by regulation.*

20          “(c) *STANDARD FOR DISAPPROVAL OF APPLICATION.—*  
21          *The Secretary may not disapprove such an application un-*  
22          *less the Secretary determines, after notice and opportunity*  
23          *for a hearing, that the application fails to comply with the*  
24          *requirements of this section.*

1       “(d) *SUBSEQUENT STATE APPLICATION.*—If a State  
2 has on file with the Secretary a policy, procedure, or assur-  
3 ance that demonstrates that the State meets a requirement  
4 of this section, including any policy or procedure filed  
5 under part H (as in effect before the date of the enactment  
6 of the IDEA Improvement Act of 1996), the Secretary shall  
7 consider the State to have met the requirement for purposes  
8 of receiving a grant under this part.

9       “(e) *MODIFICATION OF APPLICATION.*—An application  
10 submitted by a State in accordance with this section shall  
11 remain in effect until the State submits to the Secretary  
12 such modifications as the State determines necessary. This  
13 section shall apply to a modification of an application to  
14 the same extent and in the same manner as this section  
15 applies to the original application.

16 **“SEC. 638. USES OF FUNDS.**

17       *“In addition to using funds provided under section*  
18 *633 to maintain and implement the statewide system re-*  
19 *quired by such section, a State may use such funds—*

20               *“(1) for direct early intervention services for in-*  
21 *fants and toddlers with disabilities, and their fami-*  
22 *lies, under this part that are not otherwise funded*  
23 *through other public or private sources;*

1           “(2) to expand and improve on services for in-  
2           fants and toddlers and their families under this part  
3           that are otherwise available; and

4           “(3) to provide a free appropriate public edu-  
5           cation, in accordance with part B, to children with  
6           disabilities from their third birthday to the beginning  
7           of the following school year.

8   **“SEC. 639. PROCEDURAL SAFEGUARDS.**

9           “(a) *MINIMUM PROCEDURES.*—The procedural safe-  
10          guards required to be included in a statewide system under  
11          section 635(a)(10) shall provide, at a minimum, the follow-  
12          ing:

13               “(1) The timely administrative resolution of  
14          complaints by parents. Any party aggrieved by the  
15          findings and decision regarding an administrative  
16          complaint shall have the right to bring a civil action  
17          with respect to the complaint in any State court of  
18          competent jurisdiction or in a district court of the  
19          United States without regard to the amount in con-  
20          troversy. In any action brought under this paragraph,  
21          the court shall receive the records of the administra-  
22          tive proceedings, shall hear additional evidence at the  
23          request of a party, and, basing its decision on the  
24          preponderance of the evidence, shall grant such relief  
25          as the court determines is appropriate.

1           “(2) *The right to confidentiality of personally*  
2 *identifiable information, including the right of par-*  
3 *ents to written notice of and written consent to the*  
4 *exchange of such information among agencies consist-*  
5 *ent with Federal and State law.*

6           “(3) *The right of the parents to determine wheth-*  
7 *er they, their infant or toddler, or other family mem-*  
8 *bers will accept or decline any early intervention*  
9 *service under this part in accordance with State law*  
10 *without jeopardizing other early intervention services*  
11 *under this part.*

12           “(4) *The opportunity for parents to examine*  
13 *records relating to assessment, screening, eligibility*  
14 *determinations, and the development and implemen-*  
15 *tation of the individualized family service plan.*

16           “(5) *Procedures to protect the rights of the infant*  
17 *or toddler whenever the parents of the child are not*  
18 *known or cannot be found or the child is a ward of*  
19 *the State, including the assignment of an individual*  
20 *(who shall not be an employee of the State or any*  
21 *person, or any employee of a person, providing early*  
22 *intervention services to the infant or toddler or any*  
23 *family member of the infant or toddler) to act as a*  
24 *surrogate for the parents.*

1           “(6) Written prior notice to the parents of the  
2           infant or toddler with a disability whenever the State  
3           agency or service provider proposes to initiate or  
4           change or refuses to initiate or change the identifica-  
5           tion, evaluation, placement, or the provision of appro-  
6           priate early intervention services to the infant or tod-  
7           dler with a disability.

8           “(7) Procedures designed to assure that the no-  
9           tice required by paragraph (6) fully informs the par-  
10          ents, in the parents’ native language, unless it clearly  
11          is not feasible to do so, of all procedures available  
12          pursuant to this section.

13          “(8) The right of parents to use mediation in ac-  
14          cordance with section 615(e), except that—

15               “(A) any reference in such section to a  
16               State educational agency shall be considered to  
17               be a reference to a State’s lead agency established  
18               or designated under section 635(a)(8);

19               “(B) any reference in such section to a local  
20               educational agency shall be considered to be a  
21               reference to a local service provider or the State’s  
22               lead agency under this part, as the case may be;  
23               and

24               “(C) any reference in such section to the  
25               provision of free appropriate public education to

1           *children with disabilities shall be considered to*  
2           *be a reference to the provision of appropriate*  
3           *early intervention services to infants and tod-*  
4           *dlers with disabilities.*

5           “(b) *SERVICES DURING PENDENCY OF PROCEED-*  
6 *INGS.—During the pendency of any proceeding or action*  
7 *involving a complaint by the parents of an infant or toddler*  
8 *with a disability, unless the State agency and the parents*  
9 *otherwise agree, the infant or toddler shall continue to re-*  
10 *ceive the appropriate early intervention services currently*  
11 *being provided or, if applying for initial services, shall re-*  
12 *ceive the services not in dispute.*

13           **“SEC. 640. PAYOR OF LAST RESORT.**

14           “(a) *NONSUBSTITUTION.—Funds provided under sec-*  
15 *tion 643 may not be used to satisfy a financial commitment*  
16 *for services which would have been paid for from another*  
17 *public or private source but for the enactment of this part,*  
18 *except that whenever considered necessary to prevent a*  
19 *delay in the receipt of appropriate early intervention serv-*  
20 *ices by an infant, toddler, or family in a timely fashion,*  
21 *funds provided under section 643 may be used to pay the*  
22 *provider of services pending reimbursement from the agency*  
23 *which has ultimate responsibility for the payment.*

24           “(b) *REDUCTION OF OTHER BENEFITS.—Nothing in*  
25 *this part shall be construed to permit the State to reduce*

1 *medical or other assistance available or to alter eligibility*  
2 *under title V of the Social Security Act (relating to mater-*  
3 *nal and child health) or title XIX of the Social Security*  
4 *Act (relating to medicaid for infants or toddlers with dis-*  
5 *abilities) within the State.*

6 **“SEC. 641. STATE INTERAGENCY COORDINATING COUNCIL.**

7 *“(a) ESTABLISHMENT.—*

8 *“(1) IN GENERAL.—A State that desires to re-*  
9 *ceive financial assistance under this part shall estab-*  
10 *lish a State interagency coordinating council.*

11 *“(2) APPOINTMENT.—The council shall be ap-*  
12 *pointed by the Governor. In making appointments to*  
13 *the council, the Governor shall ensure that the mem-*  
14 *bership of the council reasonably represents the popu-*  
15 *lation of the State.*

16 *“(3) CHAIRPERSON.—The Governor shall des-*  
17 *ignate a member of the council to serve as the chair-*  
18 *person of the Council, or shall require the council to*  
19 *so designate such a member. Any member of the coun-*  
20 *cil who is a representative of the lead agency des-*  
21 *ignated under section 635(b)(8) may not serve as the*  
22 *chairperson of the council.*

23 *“(b) COMPOSITION.—*

24 *“(1) IN GENERAL.—The council shall be com-*  
25 *posed as follows:*

1           “(A) *PARENTS.*—At least 20 percent of the  
2           members shall be parents of infants or toddlers  
3           with disabilities or children with disabilities  
4           aged 12 or younger, with knowledge of, or experi-  
5           ence with, programs for infants and toddlers  
6           with disabilities. At least one such member shall  
7           be a parent of an infant or toddler with a dis-  
8           ability or a child with a disability aged 6 or  
9           younger.

10           “(B) *SERVICE PROVIDERS.*—At least 20  
11           percent of the members shall be public or private  
12           providers of early intervention services.

13           “(C) *STATE LEGISLATURE.*—At least one  
14           member shall be from the State legislature.

15           “(D) *PERSONNEL PREPARATION.*—At least  
16           one member shall be involved in personnel prepa-  
17           ration.

18           “(E) *AGENCY FOR EARLY INTERVENTION*  
19           *SERVICES.*—At least one member shall be from  
20           each of the State agencies involved in the provi-  
21           sion of, or payment for, early intervention serv-  
22           ices to infants and toddlers with disabilities and  
23           their families and shall have sufficient authority  
24           to engage in policy planning and implementa-  
25           tion on behalf of such agencies.

1           “(F) *AGENCY FOR PRESCHOOL SERVICES.*—  
2           *At least one member shall be from the State edu-*  
3           *cational agency responsible for preschool services*  
4           *to children with disabilities and shall have suffi-*  
5           *cient authority to engage in policy planning and*  
6           *implementation on behalf of such agency.*

7           “(G) *AGENCY FOR INSURANCE.*—*At least*  
8           *one member shall be from the agency responsible*  
9           *for the State governance of insurance, especially*  
10          *in the area of health insurance.*

11          “(H) *HEAD START AGENCY.*—*A representa-*  
12          *tive from a Head Start agency or program in*  
13          *the State.*

14          “(I) *A representative from a State agency*  
15          *responsible for child care.*

16          “(2) *OTHER MEMBERS.*—*The council may in-*  
17          *clude other members selected by the Governor, includ-*  
18          *ing a representative from the Bureau of Indian Af-*  
19          *airs, or where there is no BIA operated or funded*  
20          *school, from the Indian Health Service or the tribe/*  
21          *tribal council.*

22          “(c) *MEETINGS.*—*The council shall meet at least quar-*  
23          *terly and in such places as it deems necessary. The meetings*  
24          *shall be publicly announced, and, to the extent appropriate,*  
25          *open and accessible to the general public.*

1       “(d) *MANAGEMENT AUTHORITY.*—Subject to the ap-  
2       proval of the Governor, the council may prepare and ap-  
3       prove a budget using funds under this part to conduct hear-  
4       ings and forums, to reimburse members of the council for  
5       reasonable and necessary expenses for attending council  
6       meetings and performing council duties (including child  
7       care for parent representatives), to pay compensation to a  
8       member of the council if such member is not employed or  
9       must forfeit wages from other employment when performing  
10      official council business, to hire staff, and to obtain the serv-  
11      ices of such professional, technical, and clerical personnel  
12      as may be necessary to carry out its functions under this  
13      part.

14      “(e) *FUNCTIONS OF COUNCIL.*—

15           “(1) *DUTIES.*—The council shall—

16                   “(A) advise and assist the lead agency des-  
17                   ignated or established under section 635(b)(8) in  
18                   the performance of the responsibilities set out in  
19                   such section, particularly the identification of  
20                   the sources of fiscal and other support for serv-  
21                   ices for early intervention programs, assignment  
22                   of financial responsibility to the appropriate  
23                   agency, and the promotion of the interagency  
24                   agreements;

1           “(B) advise and assist the lead agency in  
2           the preparation of applications and amendments  
3           thereto;

4           “(C) advise and assist the State educational  
5           agency regarding the transition of toddlers with  
6           disabilities to preschool and other appropriate  
7           services; and

8           “(D) prepare and submit an annual report  
9           to the Governor and to the Secretary on the sta-  
10          tus of early intervention programs for infants  
11          and toddlers with disabilities and their families  
12          operated within the State.

13          “(2) *AUTHORIZED ACTIVITY.*—The council may  
14          advise and assist the lead agency and the State edu-  
15          cational agency regarding the provision of appro-  
16          priate services for children aged birth to 5, inclusive.

17          “(f) *CONFLICT OF INTEREST.*—No member of the coun-  
18          cil shall cast a vote on any matter which would provide  
19          direct financial benefit to that member or otherwise give  
20          the appearance of a conflict of interest under State law.

21          “**SEC. 642. FEDERAL ADMINISTRATION.**

22          “Sections 616, 617, 618, and 620 shall, to the extent  
23          not inconsistent with this part, apply to the program au-  
24          thorized by this part, except that—

1           “(1) any reference in such sections to a State  
2           educational agency shall be considered to be a ref-  
3           erence to a State’s lead agency established or des-  
4           ignated under section 635(a)(8);

5           “(2) any reference in such sections to a local  
6           educational agency, educational service agency, or a  
7           State agency shall be considered to be a reference to  
8           an early intervention service provider under this  
9           part; and

10           “(3) any reference to the education of children  
11           with disabilities or the education of all children with  
12           disabilities shall be considered to be a reference to the  
13           provision of appropriate early intervention services to  
14           infants and toddlers with disabilities.

15   **“SEC. 643. ALLOCATION OF FUNDS.**

16           “(a) *RESERVATION OF FUNDS FOR TERRITORIES.*—

17           “(1) *IN GENERAL.*—From the sums appropriated  
18           to carry out this part for any fiscal year, the Sec-  
19           retary may reserve up to one percent for payments to  
20           Guam, American Samoa, the Virgin Islands, and the  
21           Commonwealth of the Northern Mariana Islands in  
22           accordance with their respective needs.

23           “(2) *CONSOLIDATION OF FUNDS.*—The provisions  
24           of Public Law 95–134, permitting the consolidation of

1 *grants to the territories, shall not apply to funds those*  
2 *areas receive under this part.*

3 “(b) *PAYMENTS TO INDIANS.*—

4       “(1) *IN GENERAL.*—*The Secretary shall, subject*  
5 *to this subsection, make payments to the Secretary of*  
6 *the Interior to be distributed to tribes, tribal organi-*  
7 *zations (as defined under section 4 of the Indian Self-*  
8 *Determination and Education Assistance Act), or*  
9 *consortia of the above entities for the coordination of*  
10 *assistance in the provision of early intervention serv-*  
11 *ices by the States to infants and toddlers with disabil-*  
12 *ities and their families on reservations served by ele-*  
13 *mentary and secondary schools for Indian children*  
14 *operated or funded by the Department of the Interior.*  
15 *The amount of such payment for any fiscal year shall*  
16 *be 1.25 percent of the aggregate of the amount avail-*  
17 *able to all States under this part for such fiscal year.*

18       “(2) *ALLOCATION.*—*For each fiscal year, the Sec-*  
19 *retary of the Interior shall distribute the entire pay-*  
20 *ment received under paragraph (1) by providing to*  
21 *each tribe, tribal organization, or consortium an*  
22 *amount based on the number of infants and toddlers*  
23 *residing on the reservation as determined annually*  
24 *divided by the total of such children served by all*  
25 *tribes, tribal organizations, or consortia.*

1           “(3) *INFORMATION.*—*To receive a payment*  
2           *under this paragraph, the tribe, tribal organization,*  
3           *or consortia shall submit such information to the Sec-*  
4           *retary of the Interior as is needed to determine the*  
5           *amounts to be allocated under paragraph (2).*

6           “(4) *USE OF FUNDS.*—*The funds received by a*  
7           *tribe, tribal organization, or consortia shall be used*  
8           *to assist States in child find, screening, and other*  
9           *procedures for the early identification of Indian chil-*  
10           *dren under 3 years of age and for parent training.*  
11           *Such funds may also be used to provide early inter-*  
12           *vention services in accordance with this part. Such*  
13           *activities may be carried out directly or through con-*  
14           *tracts or cooperative agreements with the BIA, local*  
15           *educational agencies, and other public or private non-*  
16           *profit organizations. The tribe, tribal organization, or*  
17           *consortia is encouraged to involve Indian parents in*  
18           *the development and implementation of these activi-*  
19           *ties. The above entities shall, as appropriate, make*  
20           *referrals to local, State, or Federal entities for the*  
21           *provision of services or further diagnosis.*

22           “(5) *REPORTS.*—*To be eligible to receive a grant*  
23           *under paragraph (2), a tribe, tribal organization, or*  
24           *consortia shall make a biennial report to the Sec-*  
25           *retary of the Interior of activities undertaken under*

1        *this subsection, including the number of contracts and*  
2        *cooperative agreements entered into, the number of*  
3        *children contacted and receiving services for each*  
4        *year, and the estimated number of children needing*  
5        *services during the 2 years following the year in*  
6        *which the report is made. The Secretary of the Inte-*  
7        *rior shall include a summary of this information on*  
8        *a biennial basis to the Secretary of Education along*  
9        *with such other information as required under section*  
10       *611(f)(3)(D). The Secretary of Education may require*  
11       *any additional information from the Secretary of the*  
12       *Interior.*

13                *“(6) PROHIBITED USES OF FUNDS.—None of the*  
14        *funds under this subsection may be used by the Sec-*  
15        *retary of the Interior for administrative purposes, in-*  
16        *cluding child count, and the provision of technical as-*  
17        *sistance.*

18                *“(c) STATE ALLOTMENTS.—*

19                *“(1) IN GENERAL.—Except as provided in para-*  
20        *graphs (2), (3), and (4), from the funds remaining for*  
21        *each fiscal year after the reservation and payments*  
22        *under subsections (a) and (b), the Secretary shall first*  
23        *allot to each State an amount that bears the same*  
24        *ratio to the amount of such remainder as the number*

1       *of infants and toddlers in the State bears to the num-*  
2       *ber of infants and toddlers in all States.*

3           “(2) *MINIMUM ALLOTMENTS.—Except as pro-*  
4       *vided in paragraphs (3) and (4), no State shall re-*  
5       *ceive an amount under this section for any fiscal year*  
6       *that is less than the greatest of—*

7           “(A) *one-half of one percent of the remain-*  
8       *ing amount described in paragraph (1); or*

9           “(B) *\$500,000.*

10          “(3) *SPECIAL RULE FOR 1997 THROUGH 1999.—*

11          “(A) *IN GENERAL.—Except as provided in*  
12       *paragraph (4), no State may receive an amount*  
13       *under this section for any of the fiscal years*  
14       *1997 through 1999 that is less than the sum of*  
15       *the amount such State received for fiscal year*  
16       *1994 under—*

17           “(i) *part H (as in effect on the day be-*  
18       *fore the date of the enactment of the IDEA*  
19       *Improvement Act of 1996); and*

20           “(ii) *subpart 2 of part D of chapter 1*  
21       *of title I of the Elementary and Secondary*  
22       *Education Act of 1965 (as in effect on the*  
23       *day before the date of the enactment of the*  
24       *Improving America’s Schools Act of 1994)*

1           *for children with disabilities under 3 years*  
2           *of age.*

3           “(B) *EXCEPTION.*—*If, for fiscal year 1998*  
4           *or 1999, the number of infants and toddlers in*  
5           *a State, as determined under paragraph (1), is*  
6           *less than the number of infants and toddlers so*  
7           *determined for fiscal year 1994, the amount de-*  
8           *termined under subparagraph (A) for the State*  
9           *shall be reduced by the same percentage by which*  
10           *the number of such infants and toddlers so de-*  
11           *clined.*

12           “(4) *RATABLE REDUCTION.*—

13           “(A) *IN GENERAL.*—*If the sums made avail-*  
14           *able under this part for any fiscal year are in-*  
15           *sufficient to pay the full amounts that all States*  
16           *are eligible to receive under this subsection for*  
17           *such year, the Secretary shall ratably reduce the*  
18           *allocations to such States for such year.*

19           “(B) *ADDITIONAL FUNDS.*—*If additional*  
20           *funds become available for making payments*  
21           *under this subsection for a fiscal year, alloca-*  
22           *tions that were reduced under subparagraph (A)*  
23           *shall be increased on the same basis as such allo-*  
24           *cations were reduced.*

1           “(5) *DEFINITIONS.*—*For the purpose of this sub-*  
2           *section—*

3                   “(A) *the terms ‘infants’ and ‘toddlers’ mean*  
4                   *children under 3 years of age; and*

5                   “(B) *the term ‘State’ means each of the 50*  
6                   *States, the District of Columbia, and the Com-*  
7                   *monwealth of Puerto Rico.*

8           “(d) *REALLOTMENT OF FUNDS.*—*If a State elects not*  
9           *to receive its allotment under subsection (c), the Secretary*  
10           *shall reallot, among the remaining States, amounts from*  
11           *such State in accordance with such subsection.*

12   **“SEC. 644. AUTHORIZATION OF APPROPRIATIONS.**

13           *“For the purpose of carrying out this part, there are*  
14           *authorized to be appropriated such sums as may be nec-*  
15           *essary for each of the fiscal years 1997 through 2001.*

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

18   **“SEC. 651. PURPOSE OF PART.**

19           *“The purpose of this part is to support national, State,*  
20           *and local activities aimed at improving educational, early*  
21           *intervention, and transitional services and opportunities*  
22           *for children with disabilities.*

23   **“SEC. 652. ELIGIBILITY FOR FINANCIAL ASSISTANCE.**

24           *“No State, State educational agency, local educational*  
25           *agency, educational service agency, or other public institu-*

1 *tion or agency may receive a grant, contract, or cooperative*  
2 *agreement under this part which relates exclusively to pro-*  
3 *grams, projects, and activities for children aged 3 to 5, in-*  
4 *clusive, unless the State, or, in the case of an agency or*  
5 *institution, the State in which the agency or institution is*  
6 *located, is eligible to receive a grant under section 619.*

7       **“Subpart 1—General Provisions and National**  
8               **Research and Improvement Activities**

9       **“SEC. 661. COMPREHENSIVE PLAN.**

10       “(a) *IN GENERAL.*—*The Secretary shall develop and*  
11 *implement a comprehensive plan for ongoing activities con-*  
12 *ducted by the Secretary under this part.*

13       “(b) *USE OF KNOWLEDGE IN DEVELOPING PLAN.*—*To*  
14 *the maximum extent appropriate, the Secretary shall ensure*  
15 *that the plan is based upon the knowledge gained from re-*  
16 *search on practices that have been proven effective in im-*  
17 *proving the achievement of children with disabilities.*

18       “(c) *CONSULTATION.*—*In developing the plan, the Sec-*  
19 *retary shall consult the following persons:*

20               “(1) *Individuals with disabilities.*

21               “(2) *Parents of children with disabilities.*

22               “(3) *Representatives of State and local edu-*  
23 *cational agencies and educational service agencies.*

24               “(4) *Private schools.*

25               “(5) *Institutions of higher education.*

1           “(6) *Other Federal agencies.*

2           “(7) *The National Council on Disability.*

3           “(8) *National organizations with an interest in,*  
4           *and expertise in, providing services to children with*  
5           *disabilities and their families.*

6           “(9) *Any other professionals determined appro-*  
7           *priate by the Secretary.*

8           “(d) *DEADLINE.—The plan shall be developed not later*  
9           *than the date that is 12 months after the date of the enact-*  
10          *ment of the IDEA Improvement Act of 1996.*

11          **“SEC. 662. PRIORITIES.**

12          “(a) *IN GENERAL.—In making awards under this*  
13          *part, the Secretary may, without regard to the rule making*  
14          *procedures under section 553 of title 5, United States Code,*  
15          *limit such awards to, or otherwise give priority to—*

16                  “(1) *projects that address the improvement of the*  
17                  *academic performance of children with disabilities;*

18                  “(2) *projects that address one or more—*

19                          “(A) *age ranges;*

20                          “(B) *disabilities;*

21                          “(C) *grades in school;*

22                          “(D) *types of educational placements or*  
23                          *early intervention environments;*

24                          “(E) *types of services; or*

25                          “(F) *content areas such as reading;*

1           “(3) projects that address the needs of children  
2 based on the severity of their disability;

3           “(4) projects that address the needs of—

4                 “(A) low-achieving students;

5                 “(B) underserved populations;

6                 “(C) children from low-income families;

7                 “(D) children with limited English pro-  
8 ficiency;

9                 “(E) unserved and underserved areas;

10                “(F) particular types of geographic areas,  
11 such as inner-city or rural areas; or

12                “(G) institutionalized children in juvenile  
13 and adult correctional institutions;

14           “(5) any activity that is expressly authorized in  
15 this title;

16           “(6) a large-scale longitudinal study designed to  
17 provide information on the long-term impact of edu-  
18 cation agency disciplinary procedures on children  
19 with disabilities;

20           “(7) research and development projects includ-  
21 ing—

22                 “(A) projects that advance knowledge  
23 about—

24                     “(i) teaching and learning practices,  
25 and assessment techniques, instruments,

1           *and strategies, including behavioral strate-*  
2           *gies, that lead to improved results for chil-*  
3           *dren with disabilities;*

4           “(ii) *the developmental and learning*  
5           *characteristics of children with disabilities*  
6           *in a manner that will improve the design*  
7           *and effectiveness of interventions and in-*  
8           *struction; or*

9           “(iii) *the coordination of education*  
10          *with health and social services;*

11          “(B) *large-scale longitudinal studies de-*  
12          *signed to produce information on the long-term*  
13          *impact of early intervention and education on*  
14          *results for individuals with disabilities;*

15          “(C) *model demonstration projects to apply*  
16          *and test research findings in typical service set-*  
17          *tings to determine the usability, effectiveness,*  
18          *and general applicability of such research find-*  
19          *ings in such areas as improving instructional*  
20          *methods, curricula, and tools such as textbooks,*  
21          *media, and other materials; and*

22          “(D) *projects which apply research and*  
23          *other knowledge to improve educational results*  
24          *for children with disabilities by—*

1           “(i) synthesizing useful research and  
2           educational products;

3           “(ii) ensuring that such research and  
4           products are in appropriate formats for dis-  
5           tribution to administrators, teachers, par-  
6           ents, and individuals with disabilities; or

7           “(iii) making such research and prod-  
8           ucts available through libraries, electronic  
9           networks, parent training projects, and  
10          other information sources, including the Na-  
11          tional Information Dissemination System  
12          under part D of title IX of Public Law  
13          103–227;

14          “(8) projects which provide technical assistance  
15          to—

16               “(A) States—

17                   “(i) to link States to other technical  
18                   assistance resources, including special and  
19                   general education resources; or

20                   “(ii) in gaining access to information,  
21                   including information on research and best  
22                   practices; or

23               “(B) State educational agencies, State lead  
24               agencies serving infants and toddlers with dis-  
25               abilities under part C, and other organizations

1           *and agencies that play a critical role in provid-*  
2           *ing for the participation of children with dis-*  
3           *abilities in State and local assessments;*

4           “(9) activities to produce, and promote the use  
5           of, knowledge to address the special needs of children  
6           who have a high likelihood of needing special edu-  
7           cation and related services in order to reduce, through  
8           early intervention, the need for special education serv-  
9           ices later in life;

10          “(10) educational media activities including—

11               “(A) through September 30, 1998, video de-  
12               scription, open captioning, or closed captioning;

13               “(B) video description, open captioning, or  
14               closed captioning of educational, news, and in-  
15               formational materials;

16               “(C) through September 30, 1998, distribu-  
17               tion of captioned and described materials and  
18               videos;

19               “(D) distribution of captioned and de-  
20               scribed educational, news, and informational  
21               materials and videos; and

22               “(E) recording free educational materials,  
23               including textbooks, for visually impaired and  
24               print-disabled students in elementary, secondary,  
25               post-secondary, and graduate schools; and

1           “(11) projects to assist institutions of higher edu-  
2           cation in appropriately serving students with disabili-  
3           ties, including deaf students.

4           “(b) *DEFINITION.*—As used in this section, the term  
5           ‘low-incidence disability’ means—

6           “(1) a visual impairment, a hearing impair-  
7           ment, or simultaneous visual and hearing impair-  
8           ments;

9           “(2) a significant cognitive impairment; or

10           “(3) any impairment for which a small number  
11           of personnel, with highly specialized skills and knowl-  
12           edge, are needed nationwide in order for all children  
13           with disabilities who have the impairment to receive  
14           early intervention services or a free appropriate pub-  
15           lic education.

16           “(c) *REPORT.*—If the Secretary awards a grant, con-  
17           tract, or cooperative agreement under this part prior to  
18           February 1, 1998 with respect to an educational media ac-  
19           tivity described in subparagraph (A) or (C) of subsection  
20           (a)(10), the Secretary, after consulting with the chairman  
21           of the Federal Communications Commission, shall submit  
22           to the Committee on Economic and Educational Opportu-  
23           nities of the House of Representatives and the Committee  
24           on Labor and Human Resources of the Senate, not later  
25           than April 15, 1998, a report on the progress that the Fed-

1 eral Communications Commission is making towards meet-  
2 ing the requirements imposed on the Commission under sec-  
3 tion 713 of the Communications Act of 1934 (47 U.S.C.  
4 613).

5 **“SEC. 663. PEER REVIEW.**

6 “(a) *IN GENERAL.*—The Secretary shall use a panel  
7 of experts who are competent, by virtue of their training,  
8 expertise, or experience, to evaluate an application under  
9 this part that requests more than \$75,000 in Federal finan-  
10 cial assistance.

11 “(b) *COMPOSITION OF PANEL.*—A majority of a panel  
12 described in subsection (a) shall be composed of individuals  
13 who are not employees of the Federal Government.

14 “(c) *PAYMENT OF FEES AND EXPENSES OF CERTAIN*  
15 *MEMBERS.*—The Secretary may use available funds appro-  
16 priated to carry out this part to pay the expenses and fees  
17 of panel members who are not employees of the Federal Gov-  
18 ernment.

19 **“SEC. 664. ELIGIBLE APPLICANTS.**

20 “Except as otherwise provided in this part, the persons  
21 who, and the agencies that, may apply for receipt of grants,  
22 contracts, or cooperative agreements under this part are the  
23 following:

24 “(1) *Institutions of higher education.*

25 “(2) *State educational agencies.*

1           “(3) *Local educational agencies.*

2           “(4) *Educational service agencies.*

3           “(5) *Other public agencies.*

4           “(6) *Private nonprofit organizations.*

5           “(7) *Indian tribes and tribal organizations (as*  
6           *defined under section 4 of the Indian Self-Determina-*  
7           *tion and Education Assistance Act).*

8           “(8) *For-profit organizations.*

9   **“SEC. 665. APPLICANT AND RECIPIENT RESPONSIBILITIES.**

10       “(a) *GENERAL REQUIREMENTS ON APPLICANTS AND*  
11    *RECIPIENTS.—The Secretary may not make a grant to, or*  
12    *enter into a contract or cooperative agreement with, a per-*  
13    *son or agency under this part unless—*

14           “(1) *the person or agency involves individuals*  
15       *with disabilities, and parents of children with disabili-*  
16       *ties, in planning, implementing, and evaluating ac-*  
17       *tivities conducted under the grant, contract, or agree-*  
18       *ment;*

19           “(2) *the person or agency, where appropriate,*  
20       *evaluates the potential for replication and widespread*  
21       *adoption of such activities; and*

22           “(3) *the person or agency prepares their findings*  
23       *and work product in a format useful for a specific*  
24       *audience specified by the Secretary, such as parents,*  
25       *administrators, teachers, early intervention personnel,*

1        *related services personnel, or individuals with disabili-*  
2        *ties.*

3        *“(b) ADDITIONAL REQUIREMENTS IMPOSED AT DIS-*  
4        *CRETION OF SECRETARY.—The Secretary may require that*  
5        *a person who, or agency that, is awarded a grant, contract,*  
6        *or cooperative agreement under this part—*

7                *“(1) assume a portion of the cost of carrying out*  
8        *the grant, contract, or agreement;*

9                *“(2) disseminate the findings and work product*  
10        *of the person or agency; and*

11                *“(3) collaborate with other such persons and*  
12        *agencies.*

13        **“SEC. 666. INDIRECT COSTS.**

14        *“The Secretary—*

15                *“(1) may not permit any recipient of Federal*  
16        *funds under this part to use more than 25 percent of*  
17        *such funds for indirect costs; and*

18                *“(2) may further limit the extent to which any*  
19        *such recipient may use such funds for such costs.*

20        **“SEC. 667. PROGRAM EVALUATION.**

21        *“The Secretary may use funds appropriated to carry*  
22        *out this part to evaluate any activity carried out under*  
23        *this part.*

1 **“SEC. 668. NATIONAL ASSESSMENT.**

2       “(a) *PURPOSE OF ASSESSMENT.*—*The Secretary shall*  
3 *carry out a national assessment of activities carried out*  
4 *with Federal funds under this title in order—*

5               “(1) *to determine the effectiveness of the title in*  
6 *achieving the purposes of the title;*

7               “(2) *to provide information to the President, the*  
8 *Congress, the States, local educational agencies, and*  
9 *the public on how to implement the title more effec-*  
10 *tively; and*

11               “(3) *to provide the President and the Congress*  
12 *with information that will be useful in developing leg-*  
13 *islation to achieve the purposes of this title more effec-*  
14 *tively.*

15       “(b) *CONSULTATION.*—*The Secretary shall plan, re-*  
16 *view, and conduct the national assessment under this sec-*  
17 *tion in consultation with researchers, State practitioners,*  
18 *local practitioners, parents of children with disabilities, in-*  
19 *dividuals with disabilities, and other appropriate individ-*  
20 *uals.*

21       “(c) *SCOPE OF ASSESSMENT.*—*The national assess-*  
22 *ment shall examine how well schools, local educational*  
23 *agencies, States, other recipients of assistance under this*  
24 *title, and the Secretary are achieving the purposes of this*  
25 *title, including—*

1           “(1) the performance of children with disabilities  
2           in general scholastic activities and assessments as  
3           compared to nondisabled children;

4           “(2) providing for the participation of children  
5           with disabilities in the general education curriculum;

6           “(3) helping children with disabilities make suc-  
7           cessful transitions from—

8                   “(A) early intervention services to preschool  
9                   education;

10                   “(B) preschool education to elementary  
11                   school; and

12                   “(C) secondary school to adult life;

13           “(4) placing and serving children with disabil-  
14           ities, including children from underserved popu-  
15           lations, in the least restrictive environment appro-  
16           priate;

17           “(5) preventing children with disabilities, espe-  
18           cially children with emotional disturbances and spe-  
19           cific learning disabilities, from dropping out of  
20           school;

21           “(6) assessing the use of disciplinary measures,  
22           and the effect of such use, with children with disabil-  
23           ities as compared to nondisabled children;

24           “(7) coordinating services provided under this  
25           title with each other, with other educational and

1        *pupil services (including preschool services), and with*  
2        *health and social services funded from other sources;*

3            *“(8) addressing the participation of parents of*  
4        *children with disabilities in the education of their*  
5        *children; and*

6            *“(9) resolving disagreements between education*  
7        *personnel and parents through activities such as me-*  
8        *diation.*

9            *“(d) INTERIM AND FINAL REPORTS.—The Secretary*  
10       *shall submit to the President and the Congress—*

11            *“(1) an interim report that summarizes the pre-*  
12        *liminary findings of the assessment not later than Oc-*  
13        *tober 1, 1998; and*

14            *“(2) a final report of the findings of the assess-*  
15        *ment not later than October 1, 2000.*

16        **“SEC. 669. AUTHORIZATION OF APPROPRIATIONS.**

17            *“(a) IN GENERAL.—There are authorized to be appro-*  
18        *priated to carry out this subpart such sums as may be nec-*  
19        *essary for each of the fiscal years 1997 through 2001.*

20            *“(b) MINIMUM AMOUNTS.—Subject to subsection (c),*  
21        *the Secretary shall ensure that, for each fiscal year, at least*  
22        *the following amounts are provided under this part to ad-*  
23        *dress the following needs:*

1           “(1) \$12,832,000 to address the educational, re-  
2           lated services, transitional, and early intervention  
3           needs of children with deaf-blindness.

4           “(2) \$4,000,000 to address the postsecondary, vo-  
5           cational, technical, continuing, and adult education  
6           needs of individuals with deafness.

7           “(c) *RATABLE REDUCTION*.—If the total amount ap-  
8           propriated to carry out this part for any fiscal year is less  
9           than \$135,600,000, the amounts listed in subsection (b)  
10          shall be ratably reduced.

11           **“Subpart 2—Professional Development**

12          **“SEC. 671. PURPOSE.**

13          “The purpose of this subpart is to help ensure that—

14               “(1) personnel responsible for serving children  
15               with disabilities, including general and special edu-  
16               cation personnel, related services personnel, and early  
17               intervention personnel, have the knowledge and skills  
18               necessary to help such children—

19                       “(A) meet developmental goals and, to the  
20                       maximum extent possible, those challenging ex-  
21                       pectations that have been established for all chil-  
22                       dren; and

23                       “(B) be prepared to lead productive, inde-  
24                       pendent adult lives to the maximum extent pos-  
25                       sible;

1           “(2) *there are adequate numbers of such person-*  
2           *nel to meet the needs of children with disabilities; and*

3           “(3) *the skills and knowledge of personnel re-*  
4           *sponsible for serving children with disabilities reflect*  
5           *the best practices, as determined through research and*  
6           *experience, particularly with respect to the inclusion*  
7           *of children with disabilities in the regular education*  
8           *environment.*

9   **“SEC. 672. FINDING.**

10          *“The Congress finds that the conditions noted in para-*  
11          *graphs (7) through (10) of section 601(c) can be greatly im-*  
12          *proved by providing opportunities for the full participation*  
13          *of minorities through the implementation of the following*  
14          *recommendations:*

15                 “(1) *Implementation of a policy to mobilize the*  
16                 *Nation’s resources to prepare minorities for careers in*  
17                 *special education and related services.*

18                 “(2) *Focusing such policy on—*

19                         “(A) *the recruitment of minorities into*  
20                         *teaching; and*

21                         “(B) *financially assisting Historically*  
22                         *Black Colleges and Universities and other insti-*  
23                         *tutions of higher education (whose minority stu-*  
24                         *dent enrollment is at least 25 percent) to prepare*

1           *students for special education and related service*  
2           *careers.*

3   **“SEC. 673. NATIONAL ACTIVITIES.**

4           “(a) *PROGRAM AUTHORIZED.*—*The Secretary may*  
5   *make grants to, and enter into contracts and cooperative*  
6   *agreements with, eligible entities to support activities of na-*  
7   *tional significance that—*

8           “(1) *have broad applicability; and*

9           “(2) *will help ensure that the purpose of this*  
10   *subpart is met.*

11          “(b) *AUTHORIZED ACTIVITIES.*—*In carrying out this*  
12   *section, the Secretary may support any activity that is con-*  
13   *sistent with subsection (a), including—*

14           “(1) *the development, evaluation, demonstration,*  
15   *or dissemination of effective personnel preparation*  
16   *practices for personnel to work with children with*  
17   *disabilities;*

18           “(2) *promoting the transferability of licensure*  
19   *and certification of teachers and administrators*  
20   *among State and local jurisdictions;*

21           “(3) *developing and disseminating models that*  
22   *prepare teachers with strategies, including behavioral*  
23   *management techniques, for addressing the conduct of*  
24   *children with disabilities that impedes their learning*  
25   *and that of others in the classroom; and*



1                   “(ii) to meet competency requirements  
2                   in one or more of such fields.

3                   “(2) *SCHOLARSHIPS.*—The Secretary may in-  
4                   clude funds for scholarships, with necessary stipends  
5                   and allowances, in awards under this section.

6                   “(c) *APPLICATIONS.*—Any application for assistance  
7                   under this section shall propose to provide preparation that  
8                   addresses a significant need, as shown by letters from one  
9                   or more States stating that the State—

10                   “(1) intends to accept successful completion of  
11                   the proposed personnel preparation as meeting State  
12                   personnel standards for serving children with low-in-  
13                   cidence disabilities, or for serving infants and tod-  
14                   dlers with disabilities; and

15                   “(2) needs personnel in the area or areas in  
16                   which the applicant proposes to provide preparation,  
17                   as identified in the State’s comprehensive system of  
18                   personnel development under part B or C, or in the  
19                   State’s State improvement plan under subpart 3.

20                   “(d) *DEFINITION.*—For purposes of this section, the  
21                   term ‘low-incidence disability’ has the meaning given such  
22                   term in section 662(b).

23                   **“SEC. 675. LEADERSHIP PERSONNEL.**

24                   “(a) *PROGRAM AUTHORIZED.*—The Secretary may  
25                   make grants to, and enter into contracts and cooperative

1 *agreements with, eligible entities to meet the purpose of this*  
2 *subpart by preparing educational, related service, and early*  
3 *intervention leadership personnel (including teacher-prepa-*  
4 *ration faculty, administrators, researchers, supervisors, and*  
5 *principals) so that they are prepared to help children with*  
6 *disabilities—*

7           “(1) *meet developmental goals and, to the maxi-*  
8           *imum extent possible, those challenging expectations*  
9           *that have been established for all children; and*

10           “(2) *be prepared to lead productive, independent*  
11 *adult lives to the maximum extent possible.*

12           “(b) *AUTHORIZED ACTIVITIES.—*

13           “(1) *IN GENERAL.—In carrying out this section,*  
14 *the Secretary may support any activity that is con-*  
15 *sistent with subsection (a), including—*

16           “(A) *preparation of personnel at the ad-*  
17 *vanced graduate, doctoral, or post-doctoral levels;*  
18 *and*

19           “(B) *professional development of leadership*  
20 *personnel.*

21           “(2) *SCHOLARSHIPS.—The Secretary may in-*  
22 *clude funds for scholarships, with necessary stipends*  
23 *and allowances, in awards under this section.*

24           “(c) *PREFERENCES.—In making awards under this*  
25 *section, the Secretary shall give preference to projects at in-*

1 *stitutions of higher education that have successfully inte-*  
2 *grated the professional development of general and special*  
3 *education personnel.*

4 **“SEC. 676. SERVICE OBLIGATION.**

5 *“Each application for funds under section 674 or 675*  
6 *shall include an assurance that the applicant will ensure*  
7 *that individuals who are prepared under the proposed*  
8 *project will subsequently perform work related to their prep-*  
9 *aration or repay all or part of the cost of such preparation.*

10 **“SEC. 677. OUTREACH.**

11 *“(a) PLAN FOR OUTREACH SERVICES.—The Secretary*  
12 *shall develop a plan for providing outreach services to the*  
13 *entities and populations described in subsection (b) in order*  
14 *to increase the participation of such entities and popu-*  
15 *lations in competitions for grants, contracts, and coopera-*  
16 *tive agreements under this subpart.*

17 *“(b) ENTITIES AND POPULATIONS DESCRIBED.—The*  
18 *entities and populations referred to in subsection (a) are—*

19 *“(1) Historically Black Colleges and Universities*  
20 *and other institutions of higher education whose mi-*  
21 *nority student enrollment is at least 25 percent;*

22 *“(2) eligible institutions, as defined in section*  
23 *312 of the Higher Education Act of 1965;*

1           “(3) *nonprofit and for-profit agencies at least 51*  
2           *percent owned or controlled by one or more minority*  
3           *individuals; and*

4           “(4) *underrepresented populations.*

5           “(c) *FUNDING.—For the purpose of implementing the*  
6           *plan required under subsection (a), the Secretary shall, for*  
7           *each of the fiscal years 1997 through 2002, expend 1 percent*  
8           *of the funds appropriated for the fiscal year involved for*  
9           *carrying out this subpart.*

10          “(d) *DILIGENCE.—The Secretary shall exercise the ut-*  
11          *most authority, resourcefulness, and diligence of the Sec-*  
12          *retary to meet the requirements of this section.*

13          “(e) *REPORT.—Not later than January 31 of each*  
14          *year, beginning with fiscal year 1997 and ending with fis-*  
15          *cal year 2002, the Secretary shall submit to the Congress*  
16          *a final report on the progress toward meeting the goals of*  
17          *this section during the preceding fiscal year. The report*  
18          *shall include—*

19                 “(1) *a full explanation of any progress toward*  
20                 *meeting the goals of this section; and*

21                 “(2) *a plan to meet the goals, if necessary.*

22          “(f) *UNDERREPRESENTED POPULATIONS DEFINED.—*  
23          *For purposes of this section, the term ‘underrepresented*  
24          *populations’ means populations such as minorities, the*

1 *poor, individuals with limited English proficiency, and in-*  
2 *dividuals with disabilities.*

3 **“Subpart 3—State Program Improvement Grants for**  
4 **Children with Disabilities**

5 **“SEC. 681. PURPOSE.**

6 *“The purpose of this subpart is to assist States in re-*  
7 *forming and improving their systems for providing edu-*  
8 *cational and early intervention services, particularly their*  
9 *systems for professional development, to improve the*  
10 *achievement of children with disabilities.*

11 **“SEC. 682. ELIGIBILITY AND COLLABORATIVE PROCESS.**

12 *“(a) ELIGIBLE APPLICANTS.—A State may apply for*  
13 *a grant under this subpart for a grant period that is not*  
14 *less than one year, but is not greater than 4 years.*

15 *“(b) CERTIFICATION THAT COLLABORATIVE PROCESS*  
16 *HAS BEEN USED.—A State that desires to receive a grant*  
17 *under this subpart shall certify to the Secretary that a col-*  
18 *laborative process with persons described in subsection (c)*  
19 *has been used in developing the State improvement plan*  
20 *described in section 683.*

21 *“(c) COLLABORATIVE PROCESS PARTICIPANTS.—*

22 *“(1) REQUIRED PARTICIPANTS.—The collabo-*  
23 *rative process referred to in subsection (b) is a State*  
24 *process for making decisions which includes as par-*

1 *ticipants, at a minimum, the Governor of the State*  
2 *and representatives, appointed by such Governor, of—*

3 *“(A) parents of children with disabilities;*

4 *“(B) parents of nondisabled children;*

5 *“(C) individuals with disabilities;*

6 *“(D) organizations representing individuals*  
7 *with disabilities and their parents;*

8 *“(E) community-based and other nonprofit*  
9 *organizations related to the education and em-*  
10 *ployment of individuals with disabilities;*

11 *“(F) the lead State agency official or offi-*  
12 *cials for part C;*

13 *“(G) local educational agencies;*

14 *“(H) general and special education teach-*  
15 *ers;*

16 *“(I) the State educational agency;*

17 *“(J) the State advisory panel established*  
18 *under part B; and*

19 *“(K) the State interagency coordinating*  
20 *council established under part C.*

21 *“(2) OPTIONAL PARTICIPANTS.—The collabo-*  
22 *rative process may include, at the Governor’s discre-*  
23 *tion, representatives, appointed by the Governor, of—*

24 *“(A) individuals knowledgeable about voca-*  
25 *tional education;*

1           “(B) the State agency for higher education;

2           “(C) institutions of higher education;

3           “(D) schools of education;

4           “(E) the State vocational rehabilitation  
5           agency;

6           “(F) public agencies with jurisdiction in the  
7           areas of health, mental health, social services,  
8           and juvenile justice; and

9           “(G) any other individuals designated by  
10          the Governor.

11   **“SEC. 683. STATE IMPROVEMENT PLANS.**

12          “(a) *IN GENERAL.*—A State that desires to receive a  
13          grant under this subpart shall submit to the Secretary a  
14          State improvement plan that is integrated, to the maximum  
15          extent possible, with State plans under the Elementary and  
16          Secondary Education Act of 1965 and the Rehabilitation  
17          Act of 1973, as appropriate.

18          “(b) *DETERMINING CHILD AND PROGRAM NEEDS.*—

19                 “(1) *IN GENERAL.*—Each State improvement  
20          plan shall identify those critical aspects of early  
21          intervention, general education, and special education  
22          programs (including professional development, based  
23          on an assessment of State and local needs) that must  
24          be improved to enable children with disabilities to

1       *meet the goals established by the State under section*  
2       *612(a)(14).*

3               “(2) *REQUIRED ANALYSES.*—*To meet the re-*  
4       *quirement of paragraph (1), the State improvement*  
5       *plan shall include at least—*

6                       “(A) *an analysis of all information, reason-*  
7       *ably available to the State, on the performance*  
8       *of children with disabilities in the State, includ-*  
9       *ing—*

10                               “(i) *their performance on State assess-*  
11       *ments and other performance indicators es-*  
12       *tablished for all children, including drop-*  
13       *out rates and graduation rates;*

14                               “(ii) *their participation in postsecond-*  
15       *ary education and employment; and*

16                               “(iii) *how their performance on the as-*  
17       *sessments and indicators described in clause*  
18       *(i) compares to that of non-disabled chil-*  
19       *dren;*

20                               “(B) *an analysis of State and local needs*  
21       *for professional development for personnel to*  
22       *serve children with disabilities that includes, at*  
23       *a minimum, relevant information on current*  
24       *and anticipated personnel shortages, and on the*  
25       *extent of certification or retraining necessary to*

1           *eliminate such shortages, that is based, to the*  
2           *maximum extent possible, on existing assess-*  
3           *ments of personnel needs; and*

4           “(C) *a summary of the information and*  
5           *analysis provided by the State to the Secretary*  
6           *under parts B and C on the effectiveness of the*  
7           *State’s systems of early intervention, special edu-*  
8           *cation, and general education in meeting the*  
9           *needs of children with disabilities.*

10          “(c) *IMPROVEMENT STRATEGIES.—Each State im-*  
11          *provement plan shall—*

12           “(1) *describe the strategies the State will use to*  
13          *address the needs identified under subsection (b)(1),*  
14          *including—*

15           “(A) *how it will hold school districts and*  
16          *schools accountable for educational progress of*  
17          *children with disabilities;*

18           “(B) *how it will provide technical assist-*  
19          *ance to school districts and schools to improve*  
20          *results for children with disabilities;*

21           “(C) *how it will address the identified needs*  
22          *for in-service and pre-service preparation to en-*  
23          *sure that all personnel who work with children*  
24          *with disabilities (including both professional and*  
25          *paraprofessional personnel who provide early*

1           *intervention services, special education, general*  
2           *education, or related services) have the skills and*  
3           *knowledge necessary to meet the needs of children*  
4           *with disabilities, including a description of*  
5           *how—*

6                     *“(i) the State will prepare general edu-*  
7                     *cation and special education personnel with*  
8                     *the content knowledge and collaborative*  
9                     *skills needed to meet the needs of children*  
10                    *with disabilities, including how the State*  
11                    *will work with other States on common cer-*  
12                    *tification criteria;*

13                    *“(ii) the State will prepare profes-*  
14                    *sionals and paraprofessionals in the area of*  
15                    *early intervention with the content knowl-*  
16                    *edge and collaborative skills needed to meet*  
17                    *the needs of infants and toddlers with dis-*  
18                    *abilities;*

19                    *“(iii) the State will work with institu-*  
20                    *tions of higher education and other entities*  
21                    *that prepare (on both a pre-service and an*  
22                    *in-service basis) personnel who work with*  
23                    *children with disabilities to ensure that*  
24                    *such institutions and entities develop the*  
25                    *capacity to support professional develop-*

1           *ment programs which reflect actual edu-*  
2           *cation practices and techniques;*

3           “(iv) *the State’s requirements for licen-*  
4           *sure of teachers and administrators, includ-*  
5           *ing certification and recertification, will be*  
6           *modified to support an adequate supply of*  
7           *personnel with the necessary skills and*  
8           *knowledge (including, where appropriate,*  
9           *strategies for developing reciprocal certifi-*  
10          *cation agreements and common certification*  
11          *requirements with other States); and*

12          “(v) *the State will work to develop col-*  
13          *laborative agreements with other States for*  
14          *the joint support and development of pro-*  
15          *grams to prepare personnel for which there*  
16          *is not sufficient demand within a single*  
17          *State to justify support or development of*  
18          *such a program of preparation;*

19          “(D) *how it will work in collaboration with*  
20          *other States, particularly neighboring States, to*  
21          *address the lack of uniformity and reciprocity in*  
22          *the credentialing of teachers and other personnel;*

23          “(E) *strategies that will address systemic*  
24          *problems identified in Federal compliance re-*

1           *views, including shortages of qualified personnel;*  
2           *and*

3           “(F) *how the State will assess, on a regular*  
4           *basis, the extent to which the strategies imple-*  
5           *mented under this subpart have been effective;*  
6           *and*

7           “(2) *describe how the improvement strategies*  
8           *under paragraph (1) will be coordinated with public*  
9           *and private sector resources.*

10          “(d) *REPORTING PROCEDURES.—Each State that re-*  
11          *ceives a grant under this subpart shall submit performance*  
12          *reports to the Secretary pursuant to a schedule to be deter-*  
13          *mined by the Secretary, but not more frequently than annu-*  
14          *ally.*

15          “(e) *PLAN APPROVAL.—The Secretary shall approve a*  
16          *State improvement plan under this section if it—*

17                 “(1) *meets the requirements of this part;*

18                 “(2) *has been developed in accordance with the*  
19                 *requirements of section 682; and*

20                 “(3) *in the opinion of the Secretary, has a rea-*  
21                 *sonable chance of achieving the purposes of the grant.*

22          “(f) *PLAN AMENDMENTS.—*

23                 “(1) *MODIFICATIONS MADE BY STATE.—Subject*  
24                 *to paragraph (2), a plan submitted by a State in ac-*  
25                 *cordance with this section shall remain in effect until*

1       *the State submits to the Secretary such modifications*  
2       *as the State determines necessary. This section shall*  
3       *apply to a modification to a plan to the same extent*  
4       *and in the same manner as this section applies to*  
5       *the original plan.*

6               “(2) *MODIFICATIONS REQUIRED BY SEC-*  
7       *RETARY.—The Secretary may require a State to*  
8       *amend its State improvement plan at any time as a*  
9       *result of the Secretary’s compliance reviews under*  
10       *parts B and C. The Secretary may not provide fur-*  
11       *ther funding under this subpart to the State until*  
12       *such amendments are made.*

13       **“SEC. 684. USE OF FUNDS.**

14               “(a) *IN GENERAL.—A State that receives a grant*  
15       *under this subpart may use the grant to carry out any ac-*  
16       *tivities that are described in the State improvement plan*  
17       *and that are consistent with the purpose of this subpart.*  
18       *Such activities may include the awarding of subgrants, but*  
19       *only if the subgrants are made to local educational agencies.*  
20       *Any such local educational agency may award subgrants*  
21       *to any person. Such activities may also include the award-*  
22       *ing of contracts to appropriate entities.*

23               “(b) *USE OF FUNDS FOR PROFESSIONAL DEVELOP-*  
24       *MENT.—A State that receives a grant under this subpart*  
25       *shall use not less than 75 percent of the funds it receives*

1 *under the grant for any fiscal year to ensure that there is*  
2 *a sufficient supply of personnel who have the skills and*  
3 *knowledge necessary to enable children with disabilities to*  
4 *meet developmental goals and to meet the needs of such chil-*  
5 *dren, including working with other States on common cer-*  
6 *tification criteria.*

7       “(c) *GRANTS TO TERRITORIES.—The provisions of*  
8 *Public Law 95–134, permitting the consolidation of grants*  
9 *to the territories, shall not apply to funds received under*  
10 *this subpart.*

11 **“SEC. 685. MINIMUM STATE ALLOTMENTS.**

12       *“A State that receives a grant under this subpart shall*  
13 *receive an amount that is—*

14               *“(1) not less than \$200,000, in the case of the 50*  
15 *States, the District of Columbia, and the Common-*  
16 *wealth of Puerto Rico; and*

17               *“(2) not less than \$40,000, in the case of a terri-*  
18 *tory.*

19 **“SEC. 686. AUTHORIZATION OF APPROPRIATIONS.**

20       *“There are authorized to be appropriated to carry out*  
21 *this subpart such sums as may be necessary for each of the*  
22 *fiscal years 1997 through 2001.*

1                   **“Subpart 4—Parent Training**

2   **“SEC. 691. GRANTS FOR PARENT TRAINING AND INFORMA-**  
3                   **TION CENTERS.**

4           “(a) *PROGRAM AUTHORIZED.*—*The Secretary may*  
5   *make grants to, and enter into contracts and cooperative*  
6   *agreements with, parent organizations to support parent*  
7   *training and information centers to carry out activities*  
8   *under this subpart.*

9           “(b) *REQUIRED ACTIVITIES.*—*A parent training and*  
10   *information center that receives assistance under this sec-*  
11   *tion shall—*

12                   “(1) *assist parents to understand the availability*  
13           *of, and how effectively to use, procedural safeguards*  
14           *under this title, including the use of alternative meth-*  
15           *ods of dispute resolution, such as mediation;*

16                   “(2) *serve the parents of children with the full*  
17           *range of disabilities; and*

18                   “(3) *annually report to the Secretary on—*

19                           “(A) *the number of parents to whom it pro-*  
20                   *vided information and training in the most re-*  
21                   *cently concluded fiscal year; and*

22                           “(B) *the effectiveness of strategies used to*  
23                   *reach and serve parents of children with disabil-*  
24                   *ities, including underserved parents of children*  
25                   *with disabilities.*

1       “(c) *OPTIONAL ACTIVITIES.*—A parent training and  
2 information center that receives assistance under this sec-  
3 tion may—

4           “(1) provide information to teachers and other  
5 professionals who provide special education and relat-  
6 ed services to children with disabilities;

7           “(2) assist students with disabilities to under-  
8 stand their rights and responsibilities under section  
9 615(j) on reaching the age of majority; and

10          “(3) establish cooperative partnerships with par-  
11 ent organizations, and other organizations assisting  
12 families of children with disabilities, in the commu-  
13 nity.

14       “(d) *APPLICATION REQUIREMENTS.*—Each applica-  
15 tion for assistance under this section shall identify with  
16 specificity the special efforts that the applicant will under-  
17 take to—

18           “(1) ensure that the needs for training and infor-  
19 mation of parents of underserved children with dis-  
20 abilities in the area to be served are effectively met;  
21 and

22           “(2) work with community-based organizations.

23       “(e) *DISTRIBUTION OF FUNDS.*—

24           “(1) *INITIAL AWARDS.*—

1           “(A) *IN GENERAL.*—*The Secretary shall*  
2           *make at least one award to a parent organiza-*  
3           *tion in each State, unless the Secretary does not*  
4           *receive an application from such an organiza-*  
5           *tion in each State of sufficient quality to war-*  
6           *rant approval.*

7           “(B) *SELECTION REQUIREMENT.*—*The Sec-*  
8           *retary shall select among applications submitted*  
9           *by parent organizations in a State in a manner*  
10          *that ensures the most effective assistance to par-*  
11          *ents, including parents in urban and rural*  
12          *areas, in the State.*

13          “(2) *ADDITIONAL AWARDS.*—

14          “(A) *IN GENERAL.*—*The Secretary may*  
15          *make additional awards to community-based*  
16          *parent organizations in each State.*

17          “(B) *SELECTION REQUIREMENT.*—*The Sec-*  
18          *retary may make additional awards in a man-*  
19          *ner that ensures that parents of children with*  
20          *disabilities in low-income, high-density, and*  
21          *rural areas have access to parent training and*  
22          *information centers that provide appropriate*  
23          *training and information.*

1 **“SEC. 692. TECHNICAL ASSISTANCE FOR PARENT TRAINING**  
2 **AND INFORMATION CENTERS.**

3 “(a) *PROGRAM AUTHORIZED.*—*The Secretary may*  
4 *provide technical assistance for developing, assisting, and*  
5 *coordinating parent training and information programs*  
6 *carried out by parent training and information centers re-*  
7 *ceiving assistance under section 691.*

8 “(b) *AUTHORIZED ACTIVITIES.*—*The Secretary may*  
9 *provide technical assistance to a parent training and infor-*  
10 *mation center under this section in areas such as—*

11 “(1) *effective coordination of parent training ef-*  
12 *forts;*

13 “(2) *dissemination of information;*

14 “(3) *evaluation by the center of itself;*

15 “(4) *promotion of the use of technology, includ-*  
16 *ing assistive technology devices and assistive tech-*  
17 *nology services;*

18 “(5) *reaching underserved populations;*

19 “(6) *including children with disabilities in gen-*  
20 *eral education programs;*

21 “(7) *facilitation of transitions from—*

22 “(A) *early intervention services to preschool;*

23 “(B) *preschool to school; and*

24 “(C) *secondary school to postsecondary en-*  
25 *vironments; and*

1           “(8) promotion of alternative methods of dispute  
2           resolution.

3   **“SEC. 693. AUTHORIZATION OF APPROPRIATIONS.**

4           *“There are authorized to be appropriated to carry out*  
5 *this subpart such sums as may be necessary for each of the*  
6 *fiscal years 1997 through 2001.”.*

7           **TITLE II—MISCELLANEOUS**  
8           **PROVISIONS**

9   **SEC. 201. AMENDMENT TO ESEA TO COORDINATE IDEA AND**  
10           **SCHOOLWIDE PROGRAMS.**

11           *Section 1114(a)(4) of the Elementary and Secondary*  
12 *Education Act of 1965 (20 U.S.C. 6314(a)(4)) is amend-*  
13 *ed—*

14           *(1) in subparagraph (A), by striking “Secretary*  
15 *(other than formula or discretionary grant programs*  
16 *under the Individuals with Disabilities Education*  
17 *Act),” and inserting “Secretary,”; and*

18           *(2) in subparagraph (B), by inserting “special*  
19 *education and related services under an individual-*  
20 *ized education program, procedural safeguards,” after*  
21 *“civil rights,”.*

22   **SEC. 202. EFFECTIVE DATES.**

23           *(a) PARTS A, B, AND C.—Except as provided in sub-*  
24 *section (b), parts A, B, and C of the Individuals with Dis-*

1 *abilities Education Act, as amended by title I, shall take*  
2 *effect on July 1, 1997.*

3 (b) *SECTION 605.—Section 605 of such Act, as amend-*  
4 *ed by title I, shall take effect upon the enactment of this*  
5 *Act.*

6 (c) *PART D.—Part D of such Act, as amended by title*  
7 *I, shall take effect on October 1, 1997.*

8 **SEC. 203. REPEALERS.**

9 (a) *PART I.—Part I of the Individuals with Disabil-*  
10 *ities Education Act is hereby repealed.*

11 (b) *PART H.—Effective July 1, 1997, part H of such*  
12 *Act is hereby repealed.*

13 (c) *PARTS E, F, AND G.—Effective October 1, 1997,*  
14 *parts E, F, and G of such Act are hereby repealed.*