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HOUSE OF REPRESENTATIVES

REPORT
104–614

IDEA IMPROVEMENT ACT OF 1996

JUNE 10, 1996.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. GOODLING, from the Committee on Economic and Educational Opportunities, submitted the following

R E P O R T

together with

ADDITIONAL AND DISSENTING VIEWS

[To accompany H.R. 3268]

[Including cost estimate of the Congressional Budget Office]

The Committee on Economic and Educational Opportunities, to whom was referred the bill (H.R. 3268) to amend the Individuals with Disabilities Education Act, to reauthorize and make improvements to that Act, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

The amendment strikes out all after the enacting clause of the bill and inserts a new text which appears in italic type in the reported bill.

EXPLANATION OF AMENDMENTS

The provisions of the substitute, as amended by those amendments agreed to during the bill's mark-up, are explained in this report.

PURPOSE

The purpose of this Act is to reform the Individuals with Disabilities Education Act to educate better children with disabilities and increase the educational opportunities available to these children, focusing on academic achievement, by placing an emphasis on what is best educationally instead of paperwork, giving teachers more

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flexibility and schools lower costs, enhancing parental input, making schools safer for students and teachers, and focusing and consolidating special education discretionary programs.

COMMITTEE ACTION

HEARINGS AND TESTIMONY

The Subcommittee on Early Childhood, Youth and Families together with the Subcommittee on Disability Policy of the Committee on Labor and Human Resources of the United States Senate held a joint hearing on May 9, 1995 to consider the review and authorization of the Individuals with Disabilities Education Act.

Testifying at the hearing were: Thomas K. Gilhool, Public Interest Law Center of Philadelphia, PA; Thomas A. Masterson, Esq., Partner, Morgan, Lewis and Bockius, Philadelphia, PA; Dennis Haggerty, Attorney specializing in disability law and estate planning for individuals with disabilities; Julian Tepper, Esq., Partner, Levin and Tepper, Washington, DC; Hon. Patricia Wald, Circuit Judge, United States Court of Appeals, District of Columbia Circuit, Washington, DC; Jack Duncan, Esq., Founder and President, Duncan and Associates, Washington, DC; Fred Weintraub, Senior Director of Publications and Professional Standards, Council for Exceptional Children, Reston, VA; Mike Resnik, Senior Associate Director, National School Board Association, Alexandria, VA; Lisa Walker, Executive Director, Educational Writers Association, Washington, DC; Martha Ziegler, Executive Director, Federation for Children with Special Needs, Boston, MA; and Marca Bristo, Chairperson, National Council on Disability, Chicago, IL.

The Subcommittee on Early Childhood, Youth and Families held further hearings on the Individuals with Disabilities Education Act on June 20 and 27, 1995, and on March 7, 1996.

Testifying at the June 20, 1995 hearing were: Hon. Richard Riley, Secretary, United States Department of Education; Hank Stoklosa, Parent, Delaware; Mary Ann Golembesky, Parent, San Diego, CA; Scott Jensen, Parent, Fishers, Indiana; Wendi Broadbent, Parent, Ridgewood, New Jersey; Reverend Guy Dunham, Parent, York, PA; Mary Ann Fielack, Parent, Satellite Beach, FL; Lois Helland, Parent, Eau Claire, WI; and Ann Caylor Cody, Parent, Williamston, MI.

Testifying at the June 27, 1995 hearing were: Rep. Peter J. Visclosky (D–IN); Rep. James A. Traficant, Jr. (D–OH); Robert Holland, Parent, Sacramento, CA; Glenn Young, Seattle, WA; Dan Baldwin, Wilmington, Delaware; Marlise Stieglitz, Special Education Teacher, Graybilt, Indiana; Gloria Froleck Clark, Occupational Therapist, Ankeny, Iowa; Dr. Joseph Rosenfeld, School Psychologist and Hearing Officer, South Hampton, PA; Dr. Tyrone Gilmore, Superintendent of Spartanburg County School District Seven, Spartanburg, SC; Dr. Doug Carnine, Director of the National Center to Improve the Tools of Educators, Eugene, OR; Jim Hensley, Director of Special Education for Orange County Consortium for Special Education, Costa Mesa, CA; Rebecca Sargent, President-Elect of the California School Board Association, West Sacramento, CA; and Corinne Weyrich, Special Education Supervisor for Albuquerque Public Schools, Albuquerque, NM.

Testifying at the hearing on March 7, 1996 were: Vicki L. Barbar, Ed.D, Superintendent for El Dorado County Schools, El Dorado, CA; Raymond J. Kelly, Principal for Maple Point Middle School, Langhorne, PA; Ann Baker Welch, Teacher, Murray Elementary School, Charlottesville, VA; Patricia Lange, President, Great Valley Board of School Directors, Malvern, PA; Sue Pratt, Parent, Executive Director, Citizens Alliance to Uphold Special Education, Inc., Kentwood, MI; and Stanley S. Herr, Professor of Law, University of Maryland, School of Law, Baltimore, MD.

INTRODUCTION OF THE IDEA IMPROVEMENT ACT OF 1996 AND LEGISLATIVE ACTION

The IDEA Improvement Act of 1996, HR 3268, was introduced on Thursday, April 18 by Chairman Randy "Duke" Cunningham (R–CA) and reported out of Subcommittee by voice vote on Wednesday, April 24, 1996 with no amendments. The full Committee on Economic and Educational Opportunities met to consider the IDEA Improvement Act of 1996, HR 3268, on May 30, 1996. HR 3268, as amended, was ordered reported by a vote of 32–5.

BACKGROUND AND NEED FOR LEGISLATION

In 1975 Congress passed the Education for All Handicapped Children Act establishing the State grant program for all States who, in accepting the funds, would provide a free appropriate public education to all children with disabilities with procedural safeguards.

From 1979 through 1994 a series of authorizations and amendments established the discretionary programs. P.L. 99–457 created a new Part H, which provides funds for establishing State programs for early intervention services for infants and toddlers with disabilities. The Handicapped Children's Protection Act, P.L. 99–372, authorized attorney's fees for parents who prevail in due process proceedings against a school district. The Education of the Handicapped Act Amendments of 1990, P.L. 101–476, renamed the law as the Individuals with Disabilities Education Act (IDEA). In 1994, P.L. 103–382, the Improving America's Schools Act, eliminated the separate authorization for the Chapter 1 Handicapped program and merged the program into the IDEA statute.

This Committee believes that the critical issue now is to place greater emphasis on improving student performance and ensuring that children with disabilities receive a quality public education. Education achievement for children with disabilities is still less than satisfactory.

This review and authorization of the IDEA is needed to move to the next step of providing special education and related services to children with disabilities. to improve and increase their educational achievement.

SUMMARY

In reporting H.R. 3268, the IDEA Improvement Act of 1996, the Committee intends to improve the Individuals with Disabilities Education Act to focus on educational achievement with five main policy goals: (1) Placing an emphasis on what is best educationally

for children with disabilities instead of paperwork; (2) Giving teachers more flexibility and schools lower costs; (3) Enhancing parental input; (4) Making schools safer for students and teachers; and (5) Focusing and consolidating special education discretionary programs.

The Committee further intends to improve how IDEA is structured as frequently referenced legal text. The legislation has: revised how the act is formatted, with definitions consolidated into a single section; gathered all state and local educational agency requirements into single respective sections; consolidated all evaluation and re-evaluation, individualized education program and placement requirements in a single section; and placed all procedural safeguards requirements in one section. The nineteen funded and unfunded authorities and programs were condensed and consolidated into one part with four authorized subparts.

The following is a summary of the legislation as approved by this Committee:

TITLE I—AMENDMENTS TO THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT

Amendments to Part A of the Individuals with Disabilities Education Act

Part A of the Individuals with Disabilities Education Act includes the findings of this Congress which support the need for the Act and the programs for which it provides support. The definitions for this Act are included in this Part and are alphabetized for ease in use. An Office of Special Education Programs which will oversee this Act is authorized in this section and the Secretary is directed to appoint a Director. Eleventh Amendment immunity is waived by IDEA, which is a valid exercise of Congressional power under the 14th Amendment. Finally, the process for prescribing regulations is outlined. The Secretary must provide a comment period of at least 90 days on any regulation proposed under Part B and Part C. He may also provide letters of interpretation and clarification to individuals and States. Strict limitations on how those letters may be used are imposed.

Amendments to Part B of the Individuals with Disabilities Education Act

Part B is the heart of the Act and is permanently authorized. It provides funds for grants to States to assist in providing special education and related services to children with disabilities who qualify under this law. The formula for distributing the appropriation to the various recipients is provided. It is based 85 percent on school age population and 15 percent on poverty.

All the requirements each State must meet to be eligible for funds are included in one section. The same is true for the local education agencies.

Evaluations, reevaluations, individualized education programs, and educational placements are all located in one section. The process moves from the child's initial evaluation for eligibility for special education through the child's placement in the location where he or she will receive services. All through the process the involve-

ment of the child's parent(s) is crucial and every effort is made to encourage that participation.

The procedural safeguards which are available to the child with a disability and his parents are very detailed. They include; the ability to obtain an independent educational evaluation; prior written notice; parental consent; access to school records; the opportunity to present complaints; the child's placement during the pendency of due process proceedings; procedures for students who are subject to placement in an interim alternative educational setting; requirements for unilateral placement by parents in private schools at public expense, mediation; due process hearings; State-level appeals; civil actions; and attorney's fees.

Part B also includes the responsibilities of the Secretary in administering this program, specifies about the ability of the Secretary to withhold funds, and the data collection requirements with which the States must comply.

Part B authorizes the expenditure of funds on preschool programs for children aged 3 to 5 who have disabilities.

Amendments to Part C of the Individuals with Disabilities Education Act

Part C authorizes the Secretary to make grants to States to fund programs for infants and toddlers from birth through age two who have disabilities. The requirements for these programs are specified and include: definitions; requirements for a State-wide system; Individualized Family Service Plans; State applications and assurances; authorized use of lands; procedural safeguards and the State interagency coordinating council. Federal administration specifications, allocation of funds, and authorization of appropriations are also included in this Part.

Amendments to Part D of the Individuals with Disabilities Education Act

Part D provides the authority for the Secretary to make grants using discretionary appropriations for the purposes of furthering the Act. Subpart 1 specifies the priorities, eligible applicants, and responsibilities of all concerned. It also provides for national research and improvement activities.

Subpart 2 establishes the authority for a national professional development emphasis including professional development for personnel serving low-incidence populations and leadership personnel.

Subpart 3 provides for State program improvement grants, specifies that a collaborative process be used in developing the application and requires that 75 percent of the funds awarded be used for personnel preparation.

Subpart 4 provides authority for grants for parent training and information centers which are to assist parents who have children with disabilities in improving their child's education. This sub-part also provides for technical assistance to the parent training and information centers.

TITLE II—MISCELLANEOUS PROVISIONS

The miscellaneous provisions amends one section of the Elementary and Secondary Education Act, repeals provisions of IDEA con-

sistent with the amendments in Title I of the bill, and establishes effective dates for the bill.

EXPLANATION OF THE BILL AND COMMITTEE VIEWS

In its more than 20 year life span, the Individuals with Disabilities Education Act has achieved many of the important goals it sought to achieve. Children with disabilities are for the most part well served in America's public and private schools and are guaranteed the right in every state and territory to a free, appropriate public education by law. But this success has not been free of problems.

Parents are often frustrated by local education systems that seem to focus on any number of things other than the education of their children. Teachers feel overwhelmed by paperwork that deprives them of time to spend with their students. Administrators and school boards face rising costs that are rising far faster than the number of special education students would seem to require, for reasons that sometimes have no apparent relationship with education. Taxpayers, parents, and educators question why vast sums of money are not necessarily leading to real academic results.

After careful consideration of this issue, including a comprehensive set of hearings and the public circulation of three draft versions of legislation over a nine-month period, the Committee developed the IDEA Improvement Act of 1996. The bill amends each Part of the Individuals with Disabilities Education Act and makes the most significant reform to the Act and to the nation's special education system since the passage of P.L. 94–142 in 1975.

TITLE I—AMENDMENTS TO THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT

Amendments to Part A of the Individuals with Disabilities Education Act

Definitions

In section 602, the bill consolidated the majority of the definitions in the Act and reordered them alphabetically. The bill created a new definition of service eligibility called "developmental delay." Over the twenty years of this Act's implementation, the use of the category under which the child was determined eligible for special education services has led to the use of the category to drive the development of the child's Individualized Education Program and not the child's needs. In the early years of a child's development, it is often difficult to determine the precise nature of the child's disability. Use of "developmental delay" as an acceptable category will allow the special education and related services to be directly related to the child's needs and prevent locking the child into an eligibility category which may be inappropriate or incorrect.

The definition of the Individualized Education Program (IEP) includes all of the required elements of an IEP. The items for consideration and the process for developing the IEP have been placed in the consolidated evaluation section of Part B. Under the IEP definition, the statement of a child's present levels of educational performance must be directly related to the child's involvement and

progress in the general education curriculum. All too often, once a child has been identified as being eligible for special education, the special education and related services provided have no further connection to the general education curriculum. The majority of students identified as eligible for special education are capable of participating in the general education curriculum to some degree with some adaptations and modifications. This change is intended to ensure that children's special education plans are in addition to the general education curriculum, not separate from it.

Under the new definition, IEP annual goals must be measurable. This change is crucial to help parents and educators determine if the goals can reasonably be met the year, and for parents to be able to monitor their child's progress. The IEP team will also need to be aware of any attempts to modify a child's classroom before he or she was referred to special education.

Historically when children with disabilities were provided an education, that experience was in separate schools away from children without disabilities. The law creates a presumption that children with disabilities will be educated in regular classes. Therefore, the legislation requires a justification by the IEP Team of the circumstances when a child will not be educated with their nondisabled peers.

This Committee recognizes that every decision made for a child with a disability must be made on the basis of what that individual child needs. Every child is unique and so will be his or her program needs. Nonetheless, when the decision is made to educate the child separately, a justification of that decision will need, at a minimum, to be stated as part of the child's IEP.

Children with disabilities should be included in state and district-wide assessments when possible, and the definition of IEP has been structured to require their inclusion in such assessments. Excluding children with disabilities from these assessments severely limits and in some cases removes the ability of the child from continuing on to post-secondary education through no fault of their own. Where a child cannot be included in the regular education assessments, even with individual modifications, other means of assessment will be made available. The special education system has for too long not been held accountable for the educational progress of children with disabilities. Participation in regular education assessments is an important way by which parents will be able to judge if their child is improving their academic achievement, just as the parents of nondisabled children do.

Service location has always been an important part of making an informed decision about what related services are proper and whether and when they should be provided to a child. The appropriate place for the related service may be the regular classroom, so that the child does not have to choose between a needed service and the core educational program. For this reason, service location has been added to the criteria describing the child's related services.

The need for attention to transition services beginning at the age of 14 has become clear. The children most likely to drop out of school are those who are identified as learning disabled or seriously emotionally disturbed. Careful attention must be given to the

child's move to high school and the courses the child will take in order to recognize and address the possibility of the child dropping out before it happens. The legislation states that the IEP definition will include a two-step transition process at ages 14 and 16 for this reason.

Problems have arisen when a child with a disability attains the age of majority. In order to clarify the situation, a new IEP provision on transfer of rights has been included. The bill clarifies that when a child is considered incapable of making educational decisions, the State will develop procedures for appointing the parent or another individual to represent the interests of the child.

Additionally, the new IEP ensures that parents can expect reports on their child's progress as regularly as do other parents. This will include regular teacher/parent conferences and any other reporting that is regular practice in the school.

The Individualized Education Program Team definition is intended to include only those individuals who know the child and those who have the expertise to make decisions about the program which will be provided to the student. Most importantly, parents are assured full memberships in the IEP Team, participating in all decisions related to their child's IEP, including placement.

Related services personnel should be included at the request of the parent or the school. These can include personnel for services that are not strictly special education services, such as specialists in curriculum content areas such as reading. The Committee recognizes that there are situations that merit the presence of a licensed registered school nurse on the IEP Team. The Committee also recognizes that schools are being saddled with inappropriate health-care costs that go beyond the scope of this Act. The Committee wishes to encourage, to the greatest extent practicable and when appropriate, the presence of a licensed registered school nurse on the IEP Team to help account for a child's educationally-related health needs.

Policy letters and regulations

The Committee recognizes the need for the Secretary to offer correspondence for a variety of reasons. Among those are technical assistance, interpretation and clarification of this Act and the accompanying regulations, and monitoring for compliance. Section 605 is not intended to prohibit the Secretary from answering such correspondence. In fact, the Secretary will be required to publish a notice that such correspondence available to the public.

The Committee is concerned that the Secretary is using policy letters and other correspondence in some cases to regulate without using the public notice and comment procedures of the Administrative Procedures Act. Particular areas of concern for the Committee about the Department's past actions include the year-round schools correspondence and the school discipline question and answer memorandum. The Committee is concerned about the Secretary continuing to issue correspondence that are either not clearly based on existing law or regulations, or that builds upon current law to the extent that the interpretations they contain are viewed by interested parties as being effectively regulations.

The Committee has chosen its means of restricting such letters and correspondence in recognition of the fact that lesser means, such as only requiring publication of such letters, would still permit the Secretary to informally regulate, and would, in fact, facilitate such informal regulation to a greater degree. In addition, any other means of encouraging better judgment by the Secretary in creating such informal regulations would be self-defeating, since other means would be self-policing by an agency that has clearly expressed its willingness to issue such dictates without public scrutiny and comment.

The legislation has established the procedures under section 605 to encourage the Secretary to submit such regulatory changes to the vital process of public debate by amending existing regulations to clarify those issue that deviate from current law. The encouragement should not be misconstrued as a general change to increase regulation. This Committee strongly believes that the Department can accomplish its mission through far less regulation than it currently uses. Where the choice, however, would be between using informal regulation to create new law, and using the notice and comment process, this Committee would prefer that the Secretary use regulations.

The Committee is also very concerned about the use of such correspondence in inappropriate cases. For that reason, the legislation limits the use of such letters, excluding them from most litigation, and from instances where the State has not otherwise acquiesced to the Secretary's interpretation of the law. Letters that do not apply to particular fact situations or to particular school or state policies should not impact on other situations that are similar, but not identical.

Amendments to Part B of the Individuals with Disabilities Education Act

Funding formula

The formula which determines the amount of funds sent to each State was changed in section 611 to address the problem of over-identification of children with disabilities. When the Act was first passed in 1975, States were not providing educational services to children with disabilities. Logically, a formula was established at that time that based funding on counting the number of children with disabilities identified. This was to encourage States to proactively locate children with disabilities.

In the twenty years since then States have done a good job of identifying children with service needs. Today, the growing problem is over-identification—identifying children as disabled when they might not be truly disabled. While it is unlikely that individual educators ever identify children for the additional funding that such identification brings, the financial incentive reduces the proactive scrutiny that such referrals would receive if they did not have the additional monetary benefit. In-state funding formulas that follow the Federal formula further reduce such scrutiny, with more children being identified to draw additional State funds.

This problem is most intense with minority children, especially African-American males. Over-identification of minority children,

particularly in urban schools with high proportions of minority students, remains a serious and growing problem in this nation. The problem also contributes to the referral of minority special education students to more restrictive environments. As noted by Diane Austin, et al, in "Segregated and Second-Rate: 'Special' Education in New York" (1992):

> In New York City, African-American students, unlike their Latino and White counterparts, represent a disproportionately large number of special education placements. * * * From 1985–1990 the number of African-American students in the City's special education system jumped 11%, simultaneously the number of Whites in special education dropped 14%. In fact, 80% of students in self contained special education and special programs were Black or Latino, while the White population in said programs was only 13.6%. Statewide figures also reveal the over-representation of children of color in segregated special education settings African-Americans constitute 19.8% of the general education population, but 34.1% of the segregated special education population. Conversely, White students compromise 59.8% of general education students and only 41.3% of segregated special education placements.

The causal link has been made by numerous reports, but none more succinctly than the 1994 report of the Department of Education's Inspector General. "Allocating dollars to states on the basis of an annual child count * * * acts as a bounty system [encouraging over-identification]. rather than support good practice. * * * Because [a population-based] method [of allocating funds] uses objective data derived for other purposes, [this method] eliminates the financial incentives for manipulating student counts [that exist in the current formula], including retaining students in Special Education just to continue receiving Federal funds."

The Committee has squarely faced this problem by shifting over a ten-year period from the current formula to one which, at full implementation distributes funds to States in a formula 85% based on the total school age population and 15% on the poverty statistic for children in the State. The Committee added a poverty factor to the formula because there is a link between poverty and certain forms of disability. As pointed out by Daniel Reschly in his piece, "Minority Mild Mental Retardation Overrepresentation: Legal Issues, Research Findings, and Reform Trends," "[T]here is a strong link between poverty and mild mental retardation."

The minimum amount a State will receive will be not less than one-third of one percent of the amount of the appropriation to be divided among the States. This will account for the cost difficulties in operating special education systems in smaller states. The legislation also limited the allocation to Puerto Rico to an amount that is proportional to Puerto Rico's percentage allotment of total allotment to all states under this section for fiscal year 1996. In doing so, the Committee seeks to assure that the transition to the new formula does not result in an inappropriate transfer of program funds from the 50 states to this single territory. The Committee ex-

empted allocations to territories under IDEA from section 501 of P.L. 95–134. The purpose of this was to assure that territories actually use IDEA funds for delivering services to children with disabilities.

The percentage of the appropriation which will go to the Secretary of the Interior to provide special education and related services to Indian children with disabilities has changed to 1.226% of the total appropriation. This percentage will provide the Secretary of the Interior the same amount of funding as the 1.25% did under the past authorization, because the future amounts will come out of a larger base of funding in the total Part B formula. A new reporting provision was included for the Secretary of the Interior's Advisory Council. This is intended to provide a means of determining if the Advisory Council is carrying out its duties and whether the Secretary is incorporating the recommendations of the Council into the Department of Interior's programs.

The bill reduces the amount of funds that may be set-aside by state education agencies for administrative purposes from the 5% maximum permitted in IDEA currently to a maximum of 3%. This change is premised on the Committee's strong conviction that Federal funds are disproportionately supporting state agency administration, with some states paying for the cost of all special education personnel within their education agencies with Federal allocations. While Federal requirements certainly account for some of the cost of supporting state administrative structures, the Committee is quite sure that the Federal government should not be responsible for the entire cost of these personnel, as is the case in some States.

State Education Agency requirements

All of the requirements with which a State must comply are consolidated into this section 612. As an overriding principle, the Committee believes that the Federal government should stay out of the internal workings of the State whenever possible. The changes in this Act reflect that philosophy. Consistent with that, the Committee returned as much decision making power to the States as possible.

The Committee intends that the States recognize their responsibility in locating, identifying, and evaluating all the children in each State who have a disability. This includes disabled children who may be attending private school. States must also consider if they have a responsibility to provide services to children with disabilities attending private schools. These are children whose parents are paying taxes to support the public school system and for whom the State is receiving Federal funding.

The Committee has become aware that States too often distribute their special education funding in a manner that promotes more restrictive education settings over less restrictive settings. This method of distributing funds is incompatible with the intent of this Act, which ties all special education and related services to the individual needs of the child. States have not created their formulas to do this intentionally. "Rather, these * * * incentives appear to be artifact of funding systems that were much more focused on other finance issues, such as the adequacy and equity of funding and the ability to track and audit federal funds," according to

Thomas B. Parrish, Co-Director of the Center for Special Education Finance in the *CSEF Brief,* No. 2, Fall 1993. For that reason, the legislation makes States free to distribute funds in the manner they view as most appropriate, provided that such funds do not cause children to be served in placements that are more restrictive than the needs of the child would indicate.

The Committee confronted the very rare situation where parents place a child in private school without notifying the school district. The Committee would require such parents to notify, at a minimum, a local education agency of their concerns, and provide the opportunity for the school to evaluate the child and determine if it can meet that child's needs.

The Committee believes that agencies other than local education agencies should bear responsibility for some appropriate costs, particularly health costs, incurred delivering services to students under this Act. To assist the State and local educational agencies in obtaining relief from some of the costs of related services, a more specific requirement for interagency agreements has been developed.

The Committee envisions that the Governor of each State will organize a meeting of state education and other agencies, and local education agencies to review appropriate responsibilities for interagency service payment coordination. The Governor is empowered under this provision to establish the appropriate regulations and policies to implement the agreement reached by the agencies as determined most appropriate by the Governor. This Committee expects that the Secretary of the Department of Education will be bound to accept such agreements in whatever form is determined appropriate for the State by the Governor or the Governor's designee.

The legislation has substantially reduced Federal oversight of a State's comprehensive system of personnel development. This is intended to reduce the excessive data collection under current law, which often seems to be for its own sake and for the benefit of particular professional groups within states, at the expense of using funds for delivering services to children with disabilities.

The Committee has addressed the serious problem with personnel shortages through two means. First, the legislation makes clear that paraprofessionals can be used to assist professionals in delivering services under the Act. Second, the language provides that where there are shortages of personnel in particular geographic areas, the state may suspend standards to recruit and hire personnel who are making progress in applicable coursework toward certification.

This Committee believes that if Federal funds should be spent on the education of children with disabilities, that States receiving those funds should be accountable to their residents for demonstrating educational performance where States and localities have chosen to implement assessments under State or local law. The Committee understands that not all children with disabilities will be able to participate in the regular State and district-wide assessments, even with modifications and adaptations. For those children alternate assessment measures must be developed. The Committee intends for States to demonstrate that children with disabil-

ities are given the opportunity to participate, and where they cannot, that alternate means be established, and the reason for nonparticipation justified.

The Committee has taken notice of the case of *Zobrest* v. *Catalina Foothills Sch. Dist.,* 113 S. Ct. 2462 (1993). In light of this decision, the Committee affirms the principle that the ability of state and local education agencies to deliver services to children with disabilities at their private schools under this Act is not restricted by this Act. Further, the Committee believes that where services are being delivered to children with disabilities in private schools under this Act, those services should be delivered in the same type of location that they are delivered to children with disabilities who are served in public schools.

Thus, where public school children receive speech-therapy services in their neighborhood school, children in private schools who are receiving the same services at public expense should receive those services in their private school, unless the parent, IEP Team, and public school agree otherwise. Similarly, where public school children are transported at public expense to a central location to receive physical therapy services, the public school would not be obligated to serve private school children at a different location unless the public school agrees otherwise.

Twenty years ago when IDEA was first implemented, States had no process in place to locate all children with disabilities within the State and then provide those children with an education. It was appropriate for States to set goals and develop plans for meeting those goals consistent with regularly monitored Federal applications. Now, however, requiring States to continue to resubmit lengthy data intensive applications every three years is a waste of time and resources.

This legislation provides that States may continue to be considered eligible for funding if their current application meets the Secretary's requirements. If the State later determines that an amendment to such application is necessary, only then will the State be responsible for notifying the Department of Education. This change in procedure, however, is not intended to limit the Secretary's ability to monitor for compliance with the Act and its regulations. If during a monitoring visit, the Secretary determines that a change in State policy or procedures, which was not reported to the Secretary, has led to the State being out of compliance, the Secretary may require the State to change its plan and bring its policies and procedures back into compliance.

Local educational agency requirements

All requirements which a local educational agency (LEA) must meet in order to be eligible for funding has been consolidated into section 613. Among the changes for current law that affect LEAs, the provisions provide greater leeway in maintaining their financial efforts with local funds. These new exceptions are not, however, intended to override any Federal or State laws other than those related to an LEA's maintenance of financial effort in its special education program.

The legislation provides that LEAs may provide special education and related services even in situations where non-disabled children

will benefit. Often a child with a disability is able to be in a general education classroom if he or she receives individual assistance from an aide. The IDEA's current restriction that prevents that individual's services from benefiting nondisabled children is unreasonable. This Committee believes that such practices should be encouraged as long as doing so does not hamper the assistance the adult gives to the child with a disability.

The legislation changes the LEA to state education application process to make it consistent with the State to Federal application process, for the same reasons as the State to Federal application process.

Evaluations, IEPs, and placements

The evaluation, IEP, and placement provisions were consolidated in section 614 of the legislation. One of the most significant changes relates to evaluations. Over the years, the required three year re-evaluation process has become highly paperwork-intensive and often is only used to prove compliance with the law. The child should not be subjected to unnecessary tests and assessments if the child's disability has not changed over the three-year time period, and the LEA or state agency should not be saddled with such associated expenses. If there is no need to determine the child's continuing eligibility for special education, any assessments should be limited to assisting the IEP Team in understanding how to teach and assist the child in the way he or she is most capable of learning.

The Committee intends that evaluating professionals give serious consideration at the conclusion of their special education evaluation to other factors that might be affecting a child's performance. There are substantial numbers of children who are likely to be identified as disabled because they have not received proper academic support previously, such as children identified as learning disabled who have simply not been properly taught the core skill of reading. Other cases might include children who have limited English proficiency skills, or children whose performance has been adversely affected by cultural or environmental factors or by economic disadvantage. The Committee strongly suggests that the Department and education agencies focus on ensuring that this portion of the evaluation be given the utmost emphasis in every evaluation

The proper development of the individualized education program is crucial to the child's success in special education. The Committee believes that a number of considerations are essential to the process of creating the child's IEP. The purpose of the IEP is to tailor the education to the child; not tailor the child to the education. If the child fit into the school's general education program without assistance, special education would not be necessary.

The Committee recognizes that despite recent improvements in the delivery of services, parents of children with Attention Deficit Disorder (ADD) often encounter challenges in having their child assessed for special education and related services eligibility under the Act. The Committee intends that children with ADD be eligible for assessments to no lesser extent than other children.

An amendment by Rep. Sawyer (D–OH) directs the use of technically sound instruments when the LEA chooses to assess the rel-

ative contribution of cognitive and behavioral factors, in addition to physical or developmental factors, when conducting an evaluation. The Committee does not intend this provision, however, to require such evaluations for all children.

The legislation establishes that goals must be measurable and relate directly to the child's educational needs. It is not appropriate to have "group goals" which every child in a particular school's special education program must have on his or her IEP. Every child is different and unique and therefore will have goals which are unique to that child.

Special attention should be given to communication and the child's needs in this area. The ability of any child to communicate is at the heart of the ability to learn in school and ultimately to be a productive, participating member of the community. Children who are deaf or hard of hearing are at a greater disadvantage then non-disabled students when they cannot communicate with the teacher. Their needs for an interpreter or other form of communication are essential to their success. It has been shown that children who are blind grow up to have a high illiteracy rate. Schools should assume that a child will learn Braille unless, because of the individual disability of the child, this will not be possible. The Committee intends to move from having the burden of proof on the parents to prove that a child will use Braille, to a system in which schools will be expected to provide Braille services and would need to explain on IEP when they would not.

The Committee also intends that parent participation be equal to that of school personnel in every instance where the placement decision reviewed. Parents must have a right to know that their child is in the most appropriate location, and know that they had a part in deciding where that location would be. The most appropriate location will be different from child to child and should be decided based on the individual needs of that child.

Provisions on parental consent for services reflect this deference to parent's views on their child's IEP and services generally. The legislation makes clear that parents are fully empowered to prevent a school from assessing their child. Schools will be required to pursue an initial evaluation through due process if they wish to require a parent to permit that evaluation. The same will be true of services. Under this legislation, consent for an initial evaluation of a child will not be consent for delivery of services based on that evaluation. Specific consent shall be necessary.

An amendment to section 614 by Rep. Greenwood (R–PA) will permit teachers to directly address the behavior of students with disabilities who have demonstrated a pattern of behavior that significantly impairs the education of classmates and the ability of the teacher to teach. Under the amendment, teachers will be able to call and IEP Team meeting in cases of such behavior to review the child's IEP and placement.

If the IEP team proposes changing the placement, the IEP Team will need to document a cumulative record over a reasonable period of time describing how the frequent behaviors exhibited by the child impair the learning environment. They will also need to document the efforts made to address those behaviors, and training

that has been made available to the teacher to handle such behaviors.

If these efforts fail to result in a change in behavior, the IEP Team may propose a change in placement. If the parents object to the change, the teacher may seek an expedited due process hearing to review the matter. The child would remain in the current placement unless the hearing officer decides that the change is justified and the proposed placement is the appropriate least restrictive environment. If the hearing officer determines that the placement should be changed, that changed placement would be implemented for the duration of any due process appeals unless the school and parent agree otherwise.

Underlying the authority of teachers in this area, the legislation, as amended by Rep. Mink (D–HI) requires that the general education teacher participate when the IEP Team determines the appropriate behavior management techniques needed by the child, the necessary supplementary aids and services required, any program modifications, and what support for school personnel will be included in the child's IEP.

Procedural safeguards

IDEA's procedural safeguards have historically provided the foundation for ensuring access to a free appropriate public education for children with disabilities. Key to these due process procedures is the law's "stay put" provision. The Committee has made several changes to these provisions to facilitate conflict resolution, increase school safety, and ensure that due process is useful for all parents and schools, not simply those sophisticated enough to use the means at their disposal.

To encourage early resolution of problems whenever possible, the bill requires States to offer mediation. The Committee believes that in States where mediation is required, litigation has been reduced, and parents and schools have resolved their differences amicably, making decisions with the child's best interest in mind. It is the Committee's desire that mediation become the norm when resolving disputes under IDEA.

The mediation system under the IDEA Improvement Act will ensure that every parent and school has the opportunity to utilize the flexible, user-friendly practice of mediation where differences of opinion have not been resolved. Both parties, schools and parents, will have the opportunity to engage in mediation without attorneys. Should these discussions fail to resolve the conflict, some States will likely permit mediation to continue with counsel. The Committee believes that mediation will ensure that far fewer conflicts will proceed to the next procedural step in this process, formal due process and litigation: an outcome which the Committee believes should be avoided when possible.

The Committee believes that the IEP process should be primarily devoted to determining the needs of the child and planning for the child's education with parents and school personnel. to that end, the bill specifically excludes the payment of attorney's fees for attorney participation in IEP meetings, unless ordered by a hearing officer or a court. The Committee hopes that this will contribute to

all IEP meetings becoming focused on their original purpose: planning the child's education.

Ending the monopoly of schools on determining the relevance of information about a child, the legislation changes current law to require schools to make all records about a child available to the parents. The Committee also addressed a concern raised by school boards and administrators that they are often not aware of the nature of a problem when a due process request is made. The bill requires basic information to be contained in the due process complaint so that the school can have information about the problem, which could lead to an early resolution of the dispute. In the future, parents and their attorneys will be required to disclose the identity of the child, list their concerns about the child's education, and their requested remedies. The change of "denial of FAPE" will no longer be sufficient to commence due process.

The bill simplified the process of delivering and the content of notices to parents about their child's rights. The Director of the Office of Special Education Programs testified before the Subcommittee in June 1995 that, "oftentimes the information that [parents] receive form school districts" is legalese. The Committee hopes that this change will serve to change the useless, perfunctory paper-passing to parents under current law that now poses as notification of rights, and replaces it with user-friendly information that parents can understand.

The Committee was concerned that in the rare circumstance when children with disabilities engage in serious violations of safety rules, the stay-put provision removed flexibility of school personnel to remove the child to another placement as an immediate response to the serious safety threat. The bill addresses this problem by carving out a narrow exception to stay-put where the child with a disability has a weapon or drugs in school, actually causes serious injury, or poses a danger to themselves or others.

The new provisions on placing such children in alternative settings expands upon current law's provisions for students possessing firearms to include other weapons, illegal drugs, cases where the child has caused "serious injury," and cases where the child is a danger to themselves or others. Schools, or where so required, a hearing officer, will be able to quickly move such students to alternative placements for 45 days while parents and schools decide what changes, if any, are necessary for ensuring safe classrooms in the future. The same process would occur for children who are a danger to themselves or others, except that the decision to move the child would rest with a hearing officer. Where requested by a parent in the case of students with weapons or illegal drugs and students who cause serious injury, the State or local education agency will arrange for an expedited due process hearing after an interim placement has been made.

To assure uniformity in the application of these provisions, the terms "weapon," "illegal drug," and "serious injury" have been defined in the bill. The Committee intends that the terms "verbal threat" and "significant endangerment to emotional health" in the definition of "serious injury" are meant to convey the same level of seriousness as the list of physical injuries. A "verbal assault" under this section is intended to connote a serious threat stating an in-

tent to inflict serious injury on another individual, coupled with the present ability to do so, that would cause a reasonable person to expect immediate serious bodily harm. A verbal threat does not justify removal to an interim alternative placement unless it indicates a substantial likelihood of serious physical injury. Similarly, "significant endangerment of emotional health" must be a serious actual psychological illness which would manifest in the reasonable person who has been subjected to the same verbal assault. It does not include the stress experienced by verbal misbehavior short of verbal assault as described above. It cannot be the result of unfamiliarity with or a lack of understanding of a child's disability.

The Committee recognizes that disagreement exists as to whether, under current law, disabled students whose conduct is unrelated to their disability may be expelled without services where that practice is permitted by State or local law. The legislation provides that students whose actions were unrelated to their disability may be treated as any other student, up to and including expulsion without services for weapon and illegal drug cases if so provided by local or state law. The legislation, as amended by Rep. Miller (D–CA), also includes two procedural safeguards against inappropriate expulsion. The first, a mandatory review of the manifestation determination by a hearing officer if the school plans to expel a child without services. The second would require that the IEP team consider whether the child's disability impaired the ability of the child to understand the impact and consequences of the behavior and the child's ability to control the behavior. If the child's disability meets either of these conditions, the IEP team must deem the child's action as being a manifestation of their disability.

Data collection

The legislation has substantially streamlined the data collection requirements under the Act, limiting collection to only the most important for which information is needed. In the further interest of reducing the cost and burden of collecting this data, the bill permits the collection of all data based on sampling. Underlying the Committee's desire to see the problem of over identification of minority children addressed, the Committee expects that the Secretary will collect data in a manner that provides information from which the Secretary and States can make appropriate decisions about practices and policies affecting the identification of all children, particularly minorities.

The Preschool Program

The legislation amended section 619 of IDEA in conformance with the funding formula changes in Part B. To that end, the Committee limited Puerto Rico's share of a Federal allotment to all States under this section for fiscal year 1996. In doing so, the Committee seeks to assure that the transition to the new formula does not result in an inappropriate transfer of program funds from the 50 states to this single territory. The Committee also exempted allocations to territories under IDEA from section 501 of P.L. 95–134. The purpose of this was to assure that territories actually use IDEA funds for delivering services to children with disabilities.

Amendments to Part C of the Individuals with Disabilities Education Act

This Committee continues to recognize the importance of early intervention for infants and toddlers with disabilities from birth through age two. Infants and toddlers with disabilities whose families receive early intervention services often require less intensive services when they reach school age. The Committee believes that it is in the best interest of the infants and toddlers, their families, schools, and society in general that these services continue to be provided.

However, this Committee believes strongly that during the period of this authorization, efforts must be made to find additional ways to fund these programs, or that other means of cost control need to be considered. This legislation does not intend that Federal appropriations ever are expected to come close to meeting the need that exists, and that States should be encouraged to explore means of securing other public, private, insurance, and individual means of supporting such services.

Changes have been made in the Part C application process to conform to the changes in Part B. This is intended to lead to a major reduction in the paperwork which must be done by each State, a major priority of this Committee.

The Committee has addressed the serious problem with personnel shortages through two means. First, the legislation makes clear that paraprofessionals can be used to assist professionals in delivering services under the act. Second, the language provides that where there are shortages of personnel in particular geographic areas, the state may suspend standards to recruit and hire personnel who are making progress in applicable coursework toward certification.

The Committee exempted allocations to territories under IDEA from section 501 of P.L. 95–134. The purpose of this was to assure that territories actually use IDEA funds for delivering services to children with disabilities.

The legislation has eliminated the Federal Interagency Coordinating Council that is authorized under current law. The Committee believes that the FICC has produced little of benefit for infants and toddlers with disabilities. This is also consistent with this Committee's strong commitment to eliminating excessive Federal bureaucracies.

Amendments to Part D of the Individuals with Disabilities Education Act

The discretionary programs of the current Individuals with Disabilities Education Act have evolved since the Act's original passing to cover a variety of particular needs perceived by past Congresses to exist in the special education community. Many of these needs continue to this day, while others have receded. This process has left Federal grants that continue to receive funding from their own inertia and from the limited flexibility available to the Executive Branch under the terms of the law.

Reflecting the policy making methods of an earlier era, the nineteen funded and unfunded discretionary program authorities found in Parts A through G and I of the current law now stand as a testi-

mony to the piecemeal method of Federal program creation. Where there as a "need," now there stands a program. One, the equipment and construction authority of current law's Part A, survived without ever being funded in 20 years. Another, current law's Part I, was added to the Act through an amendment to the Improving America's School Act without ever being considered by a House Committee, nor ever having a House hearing held. This new program has also never been funded.

The consensus for consolidating this mass of programs is clear to this Committee. The Clinton Administration proposed consolidating existing authorities, as have many education and disability groups. The problem with authorizing a multitude of programs is that each will independently draw appropriations, when a more appropriate distribution might weight competing worthy projects differently. Such independent programs also draw form the ability of the Federal government to properly fund Parts B and C to levels targeted by the laws' original authors.

This legislation has consolidated the programs into four broad areas. The Committee believes that by creating a broad national program and a narrower national program focused on training personnel, establishing a new state improvement program also focused on personnel training, and maintaining a parent-training center program, the diffused efforts under current appropriations can be focused on the areas of greatest need.

In Part D, the committee intends that the new Subpart 1 National Research and Improvement Activities Program lead to a new coordinated effort in special education and grant activities. The Secretary of Education will be responsible for developing a comprehensive plan to coordinate all non-training national activities in a coherent and cohesive strategy. When implemented, each major grant shall be subject to peer review, to assure this Act's reflection of the needs of the education community to the greatest extent possible.

The Committee intends that grants under this Act be open to all interested persons to the maximum extent feasible. Though there will be exceptions to this general preference, such as grants to States and state education agencies to improve their system operations, and for parent training and information centers, this legislation should be construed as permitting grants to be open to all applicants without exception unless explicitly justified otherwise by the Secretary of Education based on the specific nature of the grant.

In keeping with this Congress' and Committee's interest in focusing resources on intended activities, the legislation has limited the use of Federal funds for indirect costs. The Committee believes that grants that permit such costs in excess of 25% are inappropriate to the mission of maximizing the value of Federal resources, and that where possible, indirect costs should be limited to levels lower than 25%. In addition, this also reflects the Committee's believe that such levels properly reflect the indirect, difficult to quantify benefits received by grantees from their grants, such as operational economies of scale and the academic and institutional prestige associated with receiving grants.

The range of activities permitted under this subpart are not intended to reflect all activities currently authorized under IDEA's non-training discretionary programs. Nor are the funds authorized under this subpart, for the activities that remain authorized, to be used in equal proportion to current levels of appropriation. Instead, the Committee intends that the Secretary's planning process will establish a new coordinated system of funding to reflect this Committee's authorized activities and its desire for more focused discretionary activities.

The Committee has added several areas to the permissible range of activities under IDEA's national discretionary programs. The legislation intends that these activities be funded to address needs too often ignored by parts of the special education community and by current discretionary program grants. Projects to address content areas such as reading are intended to focus on the failure of special education programs to account for the impact of limited reading, math, and other skills when determining a child's need for special education.

An amendment by Rep. Gunderson (R–WI) will delay the implementation of the restriction on the Secretary to limit funding for open or closed captioning to educational, news, and informational materials from September 30, 1997 until that date in 1998. This amendment will also require the Secretary to consult with the Chairman of the Federal Communications Commission and submit a report to the Committee on Economic and Educational Opportunities on the progress the Federal Communications Commission is making towards meeting the requirements imposed on the Commission to have all broadcast television captioned.

The Committee also intends that the current practice of paying for the captioning of television programming generally and the captioning and describing of entertainment programming particularly be phased out during fiscal year 1998. This legislation, as amended by Rep. Gunderson, is intended to transition toward privately financed captioning of all broadcast television following the implementation of the Federal Communication Commission's regulations on the subject in August 1997. In years following the phase out, the Secretary will be able to focus resources on educational, news, and informational programming with Subpart 1 appropriations. The committee intends that these future resources be focused on non-broadcast captioning where possible and help the development of a described video infrastructure, from which Federal funding can also phase out at some point after this law's expiration.

In addition to these activities, the legislation intends that the Secretary undertake a national assessment of this nation's special education system. The report following this assessment should outline recommendations for improving the nation's special education systems in a fashion that is useful for the 107th Congress as it considers how Part B should be amended and whether activities authorized in Parts C and D should be authorized again, and if so, how they should be changed.

The legislation also established two minimum levels of funding for activities under this Subpart where appropriations have been made in a particular year. The Committee believes that the current programs for individuals with deaf-blindness and the university

program for deaf student are of such importance that their funding must be assured, provided that appropriations are made in this Subpart.

In Subpart 2, the Committee intends to authorize appropriations for a national training program distinct from the training authorized under Subpart 3. This Committee believes that a coordinated national program of personnel training will provide important benefits that would not be otherwise available through a strictly state-based program. Among the benefits anticipated are the continued availability of personnel to serve persons with low-incidence disabilities, which individual states might not independently view as a priority sufficient enough to guarantee funds. Another important benefit will be assuring that the nation's academic institutions continue to be led by individuals whose training draws from programs outside of the one's that they lead. The Administration proposed an essentially identical program in its IDEA bill.

The State Improvement Grant Program, Subpart 3, will establish a new system of grants primarily focused on personnel training. Governors, in close cooperation with their state and local education agencies, parents, and other institutions, shall develop an improvement plan after identifying the state's needs in several areas; these include assessing children and their performance, training personnel, and evaluating system effectiveness. Outside of Federal Department of Education strictures, States will be able to use funds in a manner that they view as best, based on the needs of a State's special education students and system.

The legislation provides that 75% of State Improvement Grant funds should be used for personnel training. This reflected the Committee's desire that the Part 3 grant be the primary means of supporting personnel training, with Subpart 2 supporting those areas of training for which a national need still remains. The purpose of focusing personnel training funds at the state level is that IDEA national training program funds are currently distributed in a manner that fails to account for the real personnel training needs of States.

Under the current program, universities receive grants based on applications made to the Department of Education. These applications generally focus on pre-service training for special education teachers. In many of the areas served by these universities, however, the greatest need for training is for in-service training for general and special education teachers, and for pre-service training for future general education personnel. The Committee believes that appropriate training for general education teachers in early grades will help reduce future referrals to special education of learning disabled children. Instead of learning from a teacher whose abilities cannot properly meet the child's particular needs, learning disabled children will have been taught in a manner that they can understand from a teacher whose training permitted them to understand that child's learning style.

For these reasons, the Committee believes that shifting the control over personnel training funds to the state and local level will result in training that more accurately reflects real training needs in this nation. In this sense, the national training program in Subpart 2 will complement the efforts in Subpart 3.

The Parent Training program of Subpart 4 will continue the largely effective program of training parents to understand how to ensure that their children are served appropriately in local or other schools. As amended by Rep. Owens (D–NY), the Secretary's permissive authority for additional centers will be known in the legislation as "community-based" parent organizations, and those centers shall be permitted to ensure services to "high density and rural" areas.

TITLE II—MISCELLANEOUS PROVISIONS

The miscellaneous provisions amends one section of the Elementary and Secondary Education Act relating to IDEA funding. It also repeals provisions of IDEA consistent with the amendments in Title I of the bill. Title II also establishes that amendments to Part A, B, and C will be effective on July 1, 1997, to facilitate their implementation consistent with most school years across the nation. It provides that amendments to Part D, the new discretionary programs, shall take effect October 1, 1997, consistent with the start of the Federal fiscal year 1998. It also establishes that the amendments to section 605 of Part B take effect upon enactment. This will affect all policy letters and correspondence issued after that date, and any such letters and correspondence used in monitoring and compliance reports, due process, and litigation after that date.

SECTION-BY-SECTION ANALYSIS

Section 1 permits this title to be cited as the IDEA Improvement Act of 1996. TITLE I, Section 101 amends the current provisions of the Individuals with Disabilities Education Act to read as follows.

"PART A

"Section 601 contains the short title of the bill, the Table of Contents, the findings, and the purposes.

"Section 602 defines the key terms used in this title. Definitions are include for the following: Assistive Technology Device, Assistive Technology Service, Child with a Disability, Educational Service Agency, Elementary School, Equipment, Excess Costs, Free Appropriate Public Education, Indian, Indian Tribe, Individualized Education Program, Individualized Education Program Team, Institution of Higher Education, Local Educational Agency, Native Language, Nonprofit, Parent, Parent Organization, Parent Information and Training Center, Related Services, Secondary School, Secretary, Special Education, Specific Learning Disability, State, State Educational Agency, Supplementary Aids and Services, Territory, Transition Services, and Underrepresented.

"Section 603 authorizes the Office of Special Education Programs headed by a Director who is selected by the Secretary and also authorizes the Secretary to accept the work of volunteers in carrying out the Act.

"Section 604 denies a State immunity under the Eleventh Amendment to the Constitution of the United States for violating this Act. This section also provides for remedies for violation and for an effective date for the provision with respect to violations.

"Section 605 prescribes a public comment period for enacting proposed regulations; prohibits the Secretary from implementing regulations which lessen the protections given to children with disabilities under this Act; and outlines the process by which the Secretary may issue correspondence and general statements of policy for purposes of clarification.

"Section 606 directs each recipient of funds under this Act to make positive efforts to employ individuals with disabilities in programs assisted under this Act.

"PART B

"Section 611(a) authorizes the Secretary to provide grants to the States and amounts to the Secretary of the Interior to provide special education and related services to children with disabilities.

"Section 611(b) describes the formula under which grants will be made to states and territories. Allowing for a ten-year transition period, the money appropriated would be allocated to the States on a formula which is based upon a State's relative number of children aged 3 through 21 years who are the same age as the children with disabilities for whom a State ensures the availability of a free, appropriate public education, with a factor for poverty. Not more than one percent of the total appropriation is set aside for the territories and 1.226 percent of the total appropriation shall be given to the Secretary of the Interior. Each state is guaranteed at least one-third of one percent of the amount remaining for allocation to the states after the territorial and Interior set-asides are made. Included in this section is a limitation on the total allocation to the Commonwealth of Puerto Rico to an amount that is proportional to Puerto Rico's Percentage allotment of total allotment to all states under this section for fiscal year 1996. The Committee also exempted allocations to territories under IDEA from section 501 of P.L. 95–134.

"Section 611(c) describes the uses to which a State may put its allotted funds. States may reserve not more than 25 percent of the funds distributed to the State for a fiscal year for administration and other State-level activities. This section also directs States to provide the other 75 percent of the allocated funds to local education agencies for use in providing special education and related services. Allowable State and local activities are described with not more than 3 percent being spent on State administration. This section also provides for continued funding for 1997, 1998, and 1999 for State agencies that received fiscal year 1994 funds under the former Chapter 1 program for children with disabilities and for LEAs that received funds under that program for children who transferred to their schools from State-operated or State-supported schools or programs.

"Section 611(d) addresses the use of funds provided to the Secretary of the Interior for the education of children with disabilities living on reservations or enrolled in elementary or secondary schools for Indian children operated or funded by the Secretary of the Interior.

"Section 611(e) authorizes the appropriation of such sums as may be necessary for the purpose of carrying out the provision of special

education and related services to children with disability ages 5 through 21 years.

"Section 612(a) lists the following policies and procedures that a State must have in place to be eligible for receipt of Federal funds and the requirements for each. Free Appropriate Public Education; Child Find; Individualized Education Program, Least Restrictive Environment; Procedural Safeguards; Evaluation; Confidentiality; Transition from Part C to Preschool Programs; Children in Private Schools; State Education Agency Responsible for General Supervision; Obligations Relating to and Methods for Ensuring Services; Local Educational Agency Eligibility; Comprehensive System of Personnel Development; Personnel Standards; Performance Goals and Indicators; Participation in Assessments; Supplementation of State, Local and other Federal Funds; Public Participation; and State Advisory Panel.

"Section 612(b) lists the requirements with which the State Education Agency must comply if it provides free appropriate public education to children with disabilities, or provides them direct services.

"Section 612(c) directs each State that wishes to establish its eligibility under section 612 to submit to the Secretary the policies and procedures listed under section 612(a). In addition, if a State already has on file with the Secretary policies and procedures that demonstrate that it meets any requirement of section 612, including any policies and procedures filed under the current Part B, the Secretary is directed to treat the State as meeting that requirement.

"Section 612(d) directs the Secretary to notify the State if the Secretary determines that it is eligible under section 612. The Secretary can not finally determine that a State is not eligible until after providing the State reasonable notice and an opportunity for a hearing.

"Section 612(e) provides that nothing in the IDEA permits a State to reduce medical and other assistance available, or to alter eligibility, under Titles V and XIX of the Social Security Act (Maternal and Child Health Services and Medicaid) with respect to the provision of a free appropriate public education for children with disabilities within the State.

"Section 612(f) directs the Secretary to arrange for provision of services if, in 1983, a state was prohibited by State law from providing special education and related services to children in private elementary and secondary schools and lists the requirements to which the Secretary is subject.

"Section 613(a) provides that an LEA is eligible for assistance under Part B for any fiscal year if it demonstrates to the satisfaction of the SEA that it meets each of the following conditions: Consistency with State Policies; Use of Amounts; Information for State Educational Agency; and Public Information.

"Section 613(b) provides that if the LEA or a State agency already has on file with the SEA policies, procedures, or applications filed under Part B as currently in effect, the SEA will treat the LEA or State agency as meeting that requirement.

"Section 613(c) provides that the SEA can not finally determine that an LEA or State agency is not eligible under after providing it reasonable notice and an opportunity for a hearing.

"Section 613(d) directs and SEA to reduce or make no further payments to the LEA or State agency under Part B until the SEA is satisfied that the LEA or State agency is complying with the requirements.

"Section 613(e) permits an SEA to require an LEA to establish its eligibility jointly with another LEA if the SEA determines that the LEA would not be able to establish and maintain programs of sufficient size and scope to effectively meet the needs of children with disabilities. This section also lists the requirements for education service agencies.

"Section 613(f) permits an LEA to use up to five percent of the amount it receives under Part B for any fiscal year to develop and implement a coordinated services system.

"Section 613(g) directs and SEA to use the payments that would otherwise have been available to an LEA or State agency to provide special education and related services directly to children with disabilities residing in that area for one or more of the four reasons listed.

"Section 613(h) requires any State agency that desires to receive a subgrant for any fiscal year under Part B to demonstrate the listed conditions to the satisfaction of the SEA.

"Section 614(a) requires that an SEA, LEA, or State agency to conduct an initial evaluation with parental consent following the outlined procedures before beginning special education and related services to a child with a disability. This section also requires an SEA, LEA, or State agency to ensure that a re-evaluation of each child with a disability is conducted whenever conditions warrant a re-evaluation or whenever the child's parent or teacher requests one. At a minimum, consideration of whether such re-evaluation is appropriate would have to occur once every three years.

"Section 614(b) requires the LEA to provide to the parents of a child with a disability which describes any evaluation procedures it proposes to conduct and to use a variety of assessment tools and strategies. Upon completion of the evaluation, an IEP team will be convened to determined the child's eligibility and a copy of the evaluation report and documentation of the determination of eligibility will be given to the parents.

"Section 614(c) requires that as part of any re-evaluation under this section, the evaluation team review existing evaluation data and what additional data, if any, are needed. The IEP team will not be required to conduct assessment for re-evaluation unless requested by the parents.

"Section 614(d) requires that an IEP be in effect at the beginning of each school year for each child with a disability. In the case of a child with a disability aged three, four, or five, an individualized family service plan (IFSP) developed under Part C could serve as the child's IEP. Each IEP must be developed in a meeting by an IEP team and lists the areas that must be considered. The LEA must ensure that the IEP team reviews and, if necessary, revises each IEP at least one a year. The LEA must reconvince the IEP team to identify alternative strategies to meet the transition objec-

tives for the student if a participation agency, other than the LEA, fails to provide the transition services described in the IEP. This section also outlines the process for handling children who demonstrates certain patterns of behavior.

"Section 614(e) requires that each public agency ensure that the parents of each child with a disability are members of any groups that make decisions on the educational placement of their child.

"Section 615(a) requires that any State educational agency or local educational agency establish and maintain procedures to assure that children with disabilities and their families are guaranteed procedural safeguards with respect to the provision of a free appropriate public education.

"Section 615(b) requires the procedural safeguards include: examination of all relevant records, participation in meetings regarding the identification, evaluation, educational placement and the provision of FAPE to their child, and obtainment of an independent educational evaluation for their child; procedures to protect the rights of the child when the parents of the child are not known, cannot be found, or the child is a ward of the State, provision of written prior notice to the parents; procedure to provide the written notice in the native language of the parents unless it is clearly not feasible to do so; mediation; presentation of complaints; procedures requiring the parent to provide notice to the SEA or LEA; and procedures requiring the SEA to develop a model complaint form.

"Section 615(c) describes the content of the notice that would have to be given whenever written prior notice is required.

"Section 615(d) describes the content and timing of the procedural safeguards notice given to the parents.

"Section 615(e) requires that the SEA or LEA have a process for medication to resolve disputes between the parents and the State or local educational agency. This section also outlines the requires of the mediation system.

"Section 615(f) requires that parents who bring a complaint have the opportunity for an impartial due process hearing conducted by the SEA or LEA and also outlines the requirements for the hearing process.

"Section 615(g) allows due process hearings conducted by the LEA to be appealed to the SEA if the due process hearing held is conducted by an LEA.

"Section 615(h) lists the rights of any party to a due process hearing.

"Section 615(i) allows any party in disagreement with the findings of a due process hearing to bring civil action in a State court or in a District Court of the United States regardless of the amount in question. This section permits the award of attorney's fees and lists the considerations for reducing attorney's fees.

"Section 615(j), except as provided in 615(k), maintains the child in the current educational setting while any proceedings conducted under this section are pending.

"Section 615(k) allows LEAs the authority to place a child in an appropriate interim alternative placement chosen by the IEP Team for not more than 45 days for the reasons listed. If the school wishes to change a child's placement because the child is substantially likely to injure himself or others, a hearing officer must be used

and the listed requirements considered. This section requires review by the IEP team of whether the child's action was a manifestation of the disability, and a determination of whether the action was disability related. Where it is not, any school discipline policy applied to non-disabled students shall be equally applied to the disabled student, except that if following the school discipline policy will lead to the cessation of services a hearing officer must review the manifestation determination before services may be ceased. If the parents do not agree with this determination, a due process hearing may be initiated. While the due process is pending, the child shall continue to receive educational services. This section also maintains the child in the alternative placement while due process proceedings are being conducted unless the parents and the LEA or SEA agree otherwise. The section also assures that in such cases, the State or local educational agency will arrange for an expedited hearing. The placement ordered by the hearing officer is the placement pending further appeals. The section permits children whose actions were determined not to be a manifestation of their disability in the case of weapons or illegal drugs to be treated as a nondisabled child, up to and including expulsion without education services. In cases of expulsion, however, an automatic review of the manifestation determination by a due process hearing officer shall be required. In addition, certain circumstances are outlined where a child's actions shall automatically be determined to be a manifestation of their disability. Protections provided for children not yet eligible for special education or related services are outlined. This section defines the terms 'illegal drugs', 'weapon' and 'serious injury.'

"Section 615(l) maintains the rights available under the Constitution, the Americans with Disabilities Act, title V of the Rehabilitation Act and other federal laws.

"Section 615(m) requires the State to provide for transfer of rights from the parent to the child with a disability when that child reaches the age of majority under State law, unless the child has been found to be unable to provide informed consent to educational decisions.

"Section 616 allows the Secretary to withhold payments to the State, after reasonable notice and an opportunity for a hearing, for substantial failure to comply with any provision or condition under this part. The section also describes the nature of the withholding and the availability and process of a judicial review.

"Section 617 describes the responsibilities of the Secretary under this Part including rules and regulations, confidentiality, and personnel.

"Section 618 describes the program information that each State receiving Part B funds and the Secretary of the Interior must provide to the Secretary each year. This section also requires each State to review the data for disproportionality based on individual status, and review and revise, if necessary, its policies, practices, and procedures.

"Section 619(a) directs the Secretary to make grants to assist States to provide special education and related services, in accordance with Part B, to children with disabilities aged three through

five and, at the State's discretion, to 2-year-old children with disabilities who will turn three during the school year.

"Section 619(b) provides that a State is eligible for a grant under section 619 if it has established its eligibility under section 612 and it makes a free appropriate public education available to all children with disabilities, aged three through five, residing in its jurisdiction.

"Section 619(c) guarantees each State an amount equal to what it received under section 619 for fiscal year 1996. The amounts guaranteed to the States under this paragraph would be reduced if insufficient funds were appropriated. This subsection also describes how the reduction will be accomplished.

"Section 619(d) directs the Secretary to allocate any additional funds to eligible States on the basis of their relative population of children aged three through five.

"Section 619(e) limits the total allocation to the Commonwealth of Puerto Rico to the same proportion of the total allocation to States that Puerto Rico received for fiscal year 1996.

"Section 619(f) authorizes the Secretary to use the most recent population data that are available and satisfactory to the Secretary in making grants under this section.

"Section 619(g) allows each State to keep up to 25 percent of the grant it receives under section 619 for administration and other State-level activities.

"Section 619(h) allows each State and outlying area to use up to three percent of the amount it receives under section 619 for any fiscal year for the costs of administering this section. This subsection also allows a State to use these funds to administer the Part C program, if the SEA is the lead State agency under that program.

"Section 619(i) lists the authorized activities for which each State is permitted to use section 619 funds retained at the State level.

"Section 619(j) requires each State which receives a grant under section 619 for any fiscal year to distribute at least 75 percent of the grant funds to LEAs and to State agencies that have established their eligibility under section 613 and outlines the methods of distribution.

"Section 619(k) provides that Part C of the IDEA does not apply to any child with a disability receiving FAPE in accordance with Part B, with funds received under section 619.

"Section 619(l) exempts allocations to territories under IDEA from section 501 of P.L. 95–134.

"Section 619(m) authorizes the appropriation of such sums as are necessary to carry out this section.

"PART C

"Section 631(a) lists the Congressional findings relating to Part C.

"Section 631(b) outlines the policy of the United States to provide financial assistance to enhance the State's capacity to provide quality early intervention services and expand and improve existing early intervention services.

"Section 632 defines: at-risk infant or toddler, council, developmental delay, early intervention services, and infant or toddler with a disability.

"Section 633 authorizes the Secretary to make grants to the States to assist them in implementing and maintaining a statewide system of early intervention services.

"Section 634 establishes the criteria each State must meet to be eligible for a grant under this Part. This criteria includes: adoption of a policy that appropriate early intervention services are available to all infants and toddlers with disabilities and their families in the State (including Indian infants and toddlers with disabilities and their families living on an Indian reservation within the State); and a statewide system in effect for the provision of early intervention services which meets the requirements of section 635.

"Section 635(a) establishes the minimum requirements for a statewide system of early intervention services which are: a definition of developmental delay; a timely, comprehensive, multidisciplinary evaluation of each infant or toddler; and Individualized Family Service Plan; a comprehensive child find system; a public awareness program; a central directory; a comprehensive system of personnel development; policies and procedures relating to personnel standards; a single line of responsibility; a policy pertaining to contracting with service providers; a procedure for reimbursement of funds; procedural safeguards; a system for compiling data; and a State interagency coordinating council.

"Section 635(b) allows the State to temporarily suspend the requirements for personnel standards for a particular region if the requirement significantly inhibits the ability of the State to contract with or employ appropriate personnel.

"Section 636(a) requires each infant or toddler with a disability receive a written individualized family service plan (IFSP) developed by a multidisciplinary team, including the parents which includes appropriate assessments.

"Section 636(b) requires the IFSP be evaluated once a year and requires that every six months the family receive a review of the plan.

"Section 636(c) requires the individual family service plan be developed within a reasonable time after the assessment. With parental consent, early intervention services may commence prior to the completion of the assessment.

"Section 636(d) directs that the individualized family service plan be in writing and details what it must contain.

"Section 636(e) requires parents to provide written informed consent before implementation of the IFSP.

"Section 637(a) requires each State desiring to receive a grant under this part submit an application to the Secretary at the time and in the manner required by the Secretary containing the information required by this section.

"Section 637(b) lists the assurances that the State must include in its application to the Secretary.

"Section 637(c) directs the Secretary not to finally disapprove the application without allowing, with reasonable notice, the State an opportunity for a hearing.

"Section 637(d) directs the Secretary to determine a State to met the requirements for this section if the State has on file with the Secretary a policy, procedure, or assurance demonstrating that the State meets a requirement of this section.

"Section 637(e) requires the State to modify its application as the State determines necessary.

"Section 638 lists the allowable State activities for funds provided under this part.

"Section 639(a) details the minimum procedural safeguards a State shall have in place.

"Section 639(b) requires that while any proceedings or action is pending involving a complaint by the parents, the infant or toddler will continue to receive the early intervention services currently being delivered.

"Section 640(a) prohibits funds from this part being used to pay for services which would have been paid for by another source except to prevent a delay in the provision of early intervention pending reimbursement.

"Section 640(b) prohibits the State from reducing medical or other assistance available or from altering eligibility relating to maternal and child health or to Medicaid within the State.

"Section 641 requires each State wishing to receive funds under this part to establish an interagency coordinating council with the membership outlined in this section appointed by the Governor. This section also details the requirements for and the functions of the Council.

"Section 642 requires that Sections 616, 617, 618, and 620, to the extent not inconsistent with this part, apply to the program authorized by this part. This section cross-references the necessary citations.

"Section 643(a) allows the Secretary to reserve up to one percent of the funds from the appropriation for payment to the territories and excepts these funds from the provisions of P.L. 95–134;

"Section 643(b) directs the Secretary to make payments of 1.25 percent of the amount available to the States to the Secretary of the Interior for distribution to Indian tribes and includes the methods of allocation, allowable uses of funds, and reporting requirements.

"Section 643(c) describes the manner in which appropriated funds will be distributed to the States, and assures the State of the same level of funding as the State received in 1994 unless the total appropriation is less.

"Section 643(d) allows the Secretary to reallot any funds refused by a State among the remaining States.

"Section 644 authorizes the appropriation of such sums as may be necessary to carry out the programs for each of the fiscal year 1997 through 2001.

"PART D

"Section 651 describes the purpose of this part.

"Section 652 establishes the eligibility requirements for receiving a grant relating exclusively to 3 to 5 year old children.'

"Subpart 1

"Section 661 directs the Secretary to develop and implement a comprehensive plan for activities conducted under this part by twelve months after enactment of the IDEA Improvement Act of 1996 in consultation with listed persons.

"Section 662 authorizes the Secretary to make awards for the priorities listed in this section without regard to the rule-making procedures under section 553 of title 5 U.S.C. This section also includes the definition of "low-incidence disability" as used in this part.

"Section 663 directs the Secretary to use a panel of experts to evaluate all proposals under this part requesting over $75,000, prohibits the majority of the panel from being individuals who are employed by the Federal Government, and authorizes the use of funds to pay the expenses and fees of panel members who are not employees of the Federal government.

"Section 664 lists the applicants eligible under this part as institutions of higher education, state educational agencies, local educational agencies, educational service agencies, other public agencies, private nonprofit organizations, Indian tribes and tribal organizations, and for-profit organizations.

"Section 665 prohibits the Secretary from making a grant to or entering into agreement with any person or agency unless that person or agency has met the requirements of this section. This section also lists the additional requirements the Secretary may impose on the recipient.

"Section 666 limits the indirect costs of the grant to not more than 25 percent and permits the Secretary to further limit the use of funds for indirect costs.

"Section 667 authorizes the Secretary to use appropriated funds for evaluation of any activities carried out under this part.

"Section 668 directs the Secretary in consultation with others to plan, review and carry out a national assessment of activities carried out under this title and to submit interim and final reports.

"Section 669 authorizes the appropriation of such sums as may be necessary for each fiscal year 1997–2001. The minimum amounts of $12,832,000 will be used for the educational, related services, transitional, and early intervention needs of children with deaf-blindness, and $4,000,000 for the postsecondary, vocational, technical, and adult education needs of individuals with deafness. The section also allows for the minimum amounts to be ratably reduced.

"Subpart 2

"Section 671 expresses the purpose of this subpart as helping to ensure that there are adequate numbers of personnel with the skills and knowledge necessary to provide services to children with disabilities.

"Section 672 lists the Congressional findings relating to this subpart.

"Section 673 authorizes the Secretary to make grants to support activities of national significance and lists the authorized activities.

"Section 674 authorizes the Secretary to make grants for the support of personnel preparation and lists the authorized activities and application process.

"Section 675 authorizes the Secretary to make grants for the support of leadership personnel and lists the authorized activities and preferences for making the awards.

"Section 676 requires that each application for funds under section 674 or 675 include an assurance that the applicant will subsequently perform work related to their application or repay all or part of the cost of preparation.

"Section 677 requires the Secretary to develop a plan for providing outreach services listed. This section also directs the Secretary to expend one percent of the funds appropriated for carrying out this subpart to Historically Black Colleges and Universities and other entities, and to provide a report.

"Subpart 3

"Section 681 expresses the purpose of this subpart as assisting states in reforming and improving their systems for providing educational and early intervention services, particularly their systems for personnel development.

"Section 682 requires the applicant be the State and lists the participants in the collaborative process necessary for submitting an application.

"Section 683(a) requires a State applying for funds under this subpart to submit a State Improvement Plan that is integrated with State plans required under the Elementary and Secondary Education Act and the Rehabilitation Act as appropriate.

"Section 683(b) directs the State to identify critical aspects of early intervention, general education, and special education which must be improved. This subsection also lists the required analyses to be done by the State before submitting the plan.

"Section 683(c) requires the State to describe its improvement strategies. The State will also describe how the improvement strategies will be coordinated with public and private sector resources.

"Section 683(d) requires a State receiving funds under this subpart to report to the Secretary.

"Section 683(e) outlines the requirements which must be met in order for the Secretary to approve a State Improvement Plan.

"Section 683(f) allows for modifications to the approved State Improvement Plan upon request of the State or when required by the Secretary.

"Section 684 authorizes the use of funds awarded under this subpart for carrying out the activities of the State improvement plan and requires that 75 percent of the funds awarded be used for personnel development. This section also excepts these funds from the provisions of P.L. 95–134.

"Section 685 specifies the minimum stat allotments to be awarded under this subpart.

"Section 686 authorizes the appropriation of such sums as may be necessary to carry out the subpart for each of the fiscal years 1997–2001.

"Subpart 4

"Section 691(a) authorizes the Secretary to make grants to, and enter into contracts and cooperative agreements with, parent organizations to support parent training and information centers to carry out the purposes of this subpart.

"Section 691(b) lists the required activities for parent training and information centers..

"Section 691(c) lists the optional activities.

"Section 691(d) lists the requirements for application under this subpart.

"Section 691(e) requires the Secretary to make a least one award to a parent organization in each State unless the Secretary does not receive an application of sufficient merit to warrant approval, and allows the Secretary to select among the applications submitted in a manner that ensures the most effective assistance to parents. This section also allows the Secretary to make additional smaller awards to meet the needs of targeted groups of parents.

"Section 692 authorizes the Secretary to provide technical assistance for developing, assisting, and coordinating parent training and information programs carried out by parent training and information centers receiving assistance under this subpart. This section lists the areas in which the Secretary may provide technical assistance.

"Section 693 authorize the appropriation of such sums as may be necessary for each of the fiscal years 1997 through 2001.

TITLE II

Section 201 makes technical amendments to ESEA to coordinate IDEA and schoolwide programs.

Section 202(a) establishes the effective date for Parts A, B, and C of the Individuals with Disabilities Education Act, as amended by title I, as July, 1, 1997.

Section 202(b) requires that section 605 of the IDEA, as amended by title I, take effect upon enactment of this Act.

Section 202(c) establishes the effective date for Part D of such Act, as amended by title I, as October 1, 1997.

Section 203 repeals Part I of the individuals with Disabilities Education Act, effective upon enactment. This section also repeals Part H of the Individuals with Disabilities Education Act, effective July 1, 1997, and Parts E, F, and G of such Act, effective October 1, 1997.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives and clause 2(b)(l) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the body of this report.

INFLATIONARY IMPACT STATEMENT

In compliance with clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that the enact-

ment into law of H.R. 3268 will have no significant inflationary impact on prices and costs in the operation of the national economy. It is the judgment of the Committee that the inflationary impact of this legislation as a component of the federal budget is negligible.

GOVERNMENT REFORM AND OVERSIGHT

With respect to the requirement of clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, the Committee has received no report of oversight findings and recommendations from the Committee on Government Reform and Oversight on the subject to H.R. 3268.

COMMITTEE ESTIMATE

Clause 7 of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out H.R. 3268. However, clause 7(d) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974.

APPLICATION OF LAW TO LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch. The bill provides grant funds to States and localities to educate children with disabilities and increases educational opportunities available to these children. This bill does not prohibit legislative branch employees from receiving the benefits of this legislation.

UNFUNDED MANDATE STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act requires a statement of whether the provisions of the reported bill include unfunded mandates; the bill provides funds for programs authorized under this bill at the local level and as such does not contain any unfunded mandates. The Committee also received a letter regarding unfunded mandates from the Director of the Congressional Budget Office. See infra.

BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirement of clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 3268 from the Director of the Congressional Budget Office:

CONGRESSIONAL BUDGET OFFICE,
U.S. CONGRESS,
Washington, DC, June 4, 1996.

Hon. WILLIAM F. GOODLING,
Chairman, Committee on Economic and Educational Opportunities, U.S. House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3268, the Individuals with Disabilities Education Act Amendments of 1996, as ordered reported by the Committee on Economic and Educational Opportunities on May 30, 1996. Because enactment of H.R. 3268 would not affect direct spending or receipts, pay-as-you-go procedures would not apply to the bill.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JUNE E. O'NEILL, *Director.*

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: H.R. 3268.

2. Bill title: The IDEA Improvement Act of 1996.

3. Bill status: As ordered reported by the House Committee on Educational and Economic Opportunities on May 30, 1996.

4. Bill purpose: H.R. 3268 would revise the Individuals with Disabilities Education Act (IDEA) and would reauthorize funding for many of the programs that fall under the act.

The purposes of H.R. 3268 are to ensure that children with disabilities receive a free appropriate public education that is designed to meet their needs and prepare them for employment, to assist States and localities in providing education for children with disabilities, and to assess the effectiveness of efforts to educate children with disabilities.

5. Estimated cost to the Federal Government: The following table shows discretionary spending under H.R. 3268 with and without adjustments for inflation in cases where the bill would authorize such sums as necessary. With adjustments for inflation, authorizations of appropriations would total $122 billion over the 1997–2002 period, as compared with $107 billion under current law (see Table 2). Without adjustments for inflation, authorizations of appropriations would also total $122 billion over the 1997–2002 period, as compared with $107 billion under current law (see Table 3).

TABLE 1.—ESTIMATED BUDGETARY IMPACT OF H.R. 3268

[By fiscal year, in millions of dollars]

	1996	1997	1998	1999	2000	2001	2002
WITH ADJUSTMENTS FOR INFLATION							
Authorizations of Appropriations Under Current Law:							
Estimated authorization	3,245	15,403	16,329	17,280	18,287	19,353	20,501
Estimated outlays	3,230	4,456	11,849	15,538	17,049	18,044	19,097
Proposed Changes:							
Estimated authorization	0	2,092	2,231	2,372	2,522	2,682	2,854
Estimated outlays	0	209	1,478	2,099	2,338	2,486	2,643
Authorizations of Appropriations Under H.R. 3268:							
Estimated authorization	3,245	17,495	18,560	19,652	20,809	22,034	23,355

TABLE 1.—ESTIMATED BUDGETARY IMPACT OF H.R. 3268—Continued

[By fiscal year, in millions of dollars]

	1996	1997	1998	1999	2000	2001	2002
Estimated outlays	3,230	4,665	13,327	17,637	19,387	20,530	21,741
WITHOUT ADJUSTMENTS FOR INFLATION							
Authorizations of Appropriations Under Current Law:							
Estimated authorization	3,245	15,403	16,329	17,280	18,287	19,353	20,501
Estimated outlays	3,230	4,456	11,849	15,538	17,049	18,044	19,097
Proposed Changes:							
Estimated authorization	0	2,083	2,204	2,329	2,462	2,604	2,758
Estimated outlays	0	208	1,470	2,076	2,299	2,430	2,570
Authorizations of Appropriations Under H.R. 3268:							
Estimated authorization	3,245	17,486	18,533	19,609	20,748	21,957	23,259
Estimated outlays	3,230	4,664	13,319	17,614	19,348	20,474	21,667

Notes.—The 1996 levels are the amounts appropriated. Components may not sum to totals because of rounding.

The costs of this bill fall within budget function 500.

TABLE 2.—ESTIMATED BUDGETARY IMPACT OF H.R. 3268 BY TITLE, WITH ADJUSTMENTS FOR INFLATION

[By fiscal year, in millions of dollars]

	1996	1997	1998	1999	2000	2001	2002
Part B—General grants:							
Estimated authorization	0	195	207	219	232	246	261
Estimated outlays	0	19	137	195	216	229	243
Part B—Preschool grants:							
Estimated authorization	0	1,317	1,427	1,539	1,659	1,787	1,926
Estimated outlays	0	132	933	1,339	1,512	1,630	1,756
Part C:							
Estimated authorization	0	325	335	344	354	364	374
Estimated outlays	0	33	229	317	342	351	361
Part D—Subpart 1:							
Estimated authorization	0	135	139	143	147	151	155
Estimated outlays	0	14	95	131	142	146	150
Part D—Subparts 2 and 3:							
Estimated authorization	0	100	103	106	109	112	115
Estimated outlays	0	10	70	97	105	108	111
Part D—Subpart 4:							
Estimated authorization	0	20	21	21	22	22	23
Estimated outlays	0	2	14	19	21	22	22
Total:							
Estimated authorization	0	2,092	2,231	2,372	2,522	2,682	2,854
Estimated outlays	0	209	1,478	2,099	2,338	2,486	2,643

Note.—Components may not sum to totals because of rounding.

TABLE 3.—ESTIMATED BUDGETARY IMPACT OF H.R. 3268 BY TITLE, WITH ADJUSTMENTS FOR INFLATION

[By fiscal year, in millions of dollars]

	1996	1997	1998	1999	2000	2001	2002
Part B—General grants:							
Estimated authorization	0	195	207	219	232	246	261
Estimated outlays	0	19	137	195	216	229	243
Part B—Preschool grants:							
Estimated authorization	0	1,317	1,427	1,539	1,659	1,787	1,926
Estimated outlays	0	132	933	1,339	1,512	1,630	1,756
Part C:							
Estimated authorization	0	316	316	316	316	316	316
Estimated outlays	0	32	221	300	316	316	316

TABLE 3.—ESTIMATED BUDGETARY IMPACT OF H.R. 3268 BY TITLE, WITH ADJUSTMENTS FOR INFLATION—Continued

[By fiscal year, in millions of dollars]

	1996	1997	1998	1999	2000	2001	2002
Part D—Subpart 1:							
Estimated authorization	0	135	135	135	135	135	135
Estimated outlays	0	14	95	128	135	135	135
Part D—Subparts 2 and 3:							
Estimated authorization	0	100	100	100	100	100	100
Estimated outlays	0	10	70	95	100	100	100
Part D—Subpart 4:							
Estimated authorization	0	20	20	20	20	20	20
Estimated outlays	0	2	14	19	20	20	20
Total:							
Estimated authorization	0	2,083	2,204	2,329	2,462	2,604	2,758
Estimated outlays	0	208	1,470	2,076	2,299	2,430	2,570

Note.—Components may not sum to totals because of rounding.

6. Basis of estimate: the spending that would occur under H.R. 3268 would be subject to the availability of appropriated funds. Estimated outlays are based on the historical spending of programs authorized by IDEA.

H.R. 3268 would revise Part B of IDEA, including the program of general grants to states. Current law permanently authorizes such sums as necessary for this program, and contains a formula for determining how much states would get if the program is fully funded—the number of children with a disability times forty percent of the average per pupil expenditure. H.R. 3268 would expand the definition of children with disabilities to include children aged 6 to 9 who are determined to be developmentally delayed. This expansion of eligibility by about 10 percent would increase the authorizations of appropriations by about $200 million in 1997, or a total of $1.4 billion over the 1997–2002 period with adjustments for increases in the number of disabled children and costs per pupil.

H.R. 3268 would also revise the section of Part B of IDEA that deals with preschool grants to states. Current law permanently authorizes such sums as may be necessary to provide funding for grants for preschool children with disabilities, with a maximum grant for each child capped at $1,500. H.R. 3268 would continue to authorize appropriations at such sums as necessary for preschool children with disabilities but would remove the limit on the grant amount per child. CBO estimates that H.R. 3268 would increase authorizations of appropriations by $1.3 billion in 1997, or a total of $9.7 billion over the 1997–2002 period with adjustments for increases in numbers of disabled children and costs per pupil.

CBO's estimate assumes that the total funding that H.R. 3268 would authorize for preschool children would be the average per pupil expenditure times the number of preschool children with disabilities. The general grants to states program authorizes appropriations of 40 percent of the average per pupil expenditure times the number of preschool children. CBO assumes that the preschool grants program would authorize the remaining 60 percent. Sixty percent of the average per pupil expenditure for fiscal year 1997 would be about $3,800, or $2,300 higher than the $1,500 authorized under current law. Multiplying $2,300 times the estimated number of preschool children with disabilities that would be served

in fiscal year 1997 (580,000) yields and increase in authorizations of $1.3 billion in 1997.

Part C of H.R. 3268 would authorize such sums as necessary for infants and toddlers with disabilities for fiscal years 1997 through 2001. This authorization of appropriations would automatically be extended one year through fiscal year 2002 under the General Education Provisions Act (GEPA). Part C would be similar to part H of current law which covers infants and toddlers with disabilities and which is authorized only through fiscal year 1996. CBO used the amount appropriated in 1996 for part H as its basis for estimating increases in authorizations under H.R. 3268. budget authority is estimated to increase by $325 million in fiscal year 1997, or a total of $2.1 billion over fiscal years 1997–2002 with adjustments for inflation. The total over the same period without adjustments for inflation would be $2.0 billion. Part D of H.R. 3268 would authorize such sums as necessary for grants to fund activities to improve the education of children with disabilities for fiscal years 1997 through 2001. DEPA would extend the authorizations of appropriations for one more year through fiscal year 2002.

Subpart 1 of Part D would authorize appropriations for national research and improvement activities. Activities authorized under subpart 1 include many activities that are authorized in various parts of current law, including programs for deaf-blindness, serious emotional disturbances, early-childhood education, secondary and transitional services, postsecondary education, innovation and development, media and captioning services, special studies, clearinghouses, and regional resource centers. Using the amounts appropriated for these activities in fiscal year 1996 as a benchmark, CBO or $870 million over fiscal years 1997–2002, with adjustments for inflation. Authorizations of appropriations for the same period without adjustments for inflation would total $810 million.

Subpart 2 of Part D authorizes activities related to professional development of personnel who work with children with disabilities. Subpart 3 of Part D authorizes such sums as necessary for state program improvement grants for children with disabilities. Although this program does not have a direct counterpart under the current law IDEA, states who received grants would be required to use at least 75 percent of grants for professional development to ensure that there is a sufficient number of personnel who have the sills necessary to teach children with disabilities. Using what was appropriated for the current law personnel development program in fiscal year 1996 as a guide, CBO estimates that subparts 2 and 3 would increase budget authority by $100 million in fiscal year 1997, or about $640 million for fiscal years 1997-2002 when inflation is considered. The total for 1997–2002 without adjustments for inflation would be $600 million.

Subpart 4 of Part D authorizes such sums as necessary to be appropriated for parent training and information centers. CBO estimates that this would increase authorizations of appropriations by $20 million in fiscal year 1997, or $129 million over fiscal years 1997–2002, with adjustments for inflation. The total over the same period without adjustments for inflation would be $120 million. CBO used what was appropriated for parent training under current

law IDEA for fiscal year 1996 as its basis for estimating these amounts.

H.R. 3268 repeals Parts E, F, G, H, and I of current law. Authorizations of appropriations for Parts E, F, G, and H have expired, so repealing these would have no budgetary impact. Part I is authorized at such sums as may be necessary through fiscal year 1997. Since this part (family support) has never received an appropriation, the estimate includes no savings from its repeal.

7. Pay-as-you-go considerations: None.

8. Estimated cost to State and local governments: Section 4 of the Unfunded Mandates Reform Act (P.L. 104–4) excludes from application of the act legislative provisions that "establish or enforce statutory rights that prohibit discrimination on the basis of * * * handicap or disability." CBO has determined that many provisions of H.R. 3268—primarily in Part B of Title I—fit within this exclusion. All other provisions are conditions of federal assistance, or constitute a duty arising from participation in a voluntary federal program, and are thus not mandates as defined in P.L. 104–4.

9. Estimated impact on the private sector: Any requirements imposed by the bill on the private sector are excluded from consideration under the Unfunded Mandates Reform Act of 1995 because they establish or enforce statutory rights that prohibit discrimination on the basis of disability or because they are considerations of federal assistance.

9. Estimate comparison: None.

10. Previous CBO estimate: None.

11. Estimate prepared by: Federal Cost Estimate: Justin Latus, State and Local Cost Estimate: Mark Nicole, Private Sector Mandate Estimate: Jay Noell.

12. Estimate approved by: Paul N. Van de Water, Assistant Director for Budget Analysis.

COMMITTEE ON ECONOMIC AND EDUCATIONAL OPPORTUNITIES

ROLL CALL #1 **BILL** H.R. 3268 **DATE** MAY 30, 1996

AMENDMENT NUMBER 6 **DEFEATED** 17 - 21 (not voting - 4)

SPONSOR/AMENDMENT Mr. Scott / Amendment to prohibit cessation of services for any reason to an IDEA child, regardless of the relationship between the Act and the disability.

MEMBER	AYE	NO	PRESENT	NOT VOTING
CHAIRMAN GOODLING		X		
Mr. PETRI		X		
Mrs. ROUKEMA				X
Mr. GUNDERSON		X		
Mr. FAWELL		X		
Mr. BALLENGER		X		
Mr. BARRETT		X		
Mr. CUNNINGHAM		X		
Mr. HOEKSTRA		X		
Mr. McKEON		X		
Mr. CASTLE		X		
Mrs. MEYERS		X		
Mr. JOHNSON		X		
Mr. TALENT		X		
Mr. GREENWOOD		X		
Mr. HUTCHINSON		X		
Mr. KNOLLENBERG		X		
Mr. RIGGS		X		
Mr. GRAHAM		X		
Mr. WELDON		X		
Mr. FUNDERBURK		X		
Mr. SOUDER				X
Mr. McINTOSH		X		
Mr. NORWOOD				X
Mr. CLAY	X			
Mr. MILLER	X			
Mr. KILDEE	X			
Mr. WILLIAMS	X			
Mr. MARTINEZ	X			
Mr. OWENS	X			
Mr. SAWYER	X			
Mr. PAYNE	X			
Mrs. MINK	X			
Mr. ANDREWS	X			
Mr. REED	X			
Mr. ROEMER	X			
Mr. BECERRA	X			
Mr. SCOTT	X			
Mr. GREEN	X			
Ms. WOOLSEY	X			
Mr. ROMERO-BARCELO	X			
Mr. FATTAH				X
TOTALS	17	21		4

COMMITTEE ON ECONOMIC AND EDUCATIONAL OPPORTUNITIES

ROLL CALL #2 **BILL** H.R. 3268 **DATE** MAY 30, 1996

AMENDMENT NUMBER 7 **PASSED** 27 - 8 (not voting - 7)

SPONSOR/AMENDMENT Mr. Gunderson / Amendment that would phase-in the restriction on closed captioning of television programming for educational purposes.

MEMBER	AYE	NO	PRESENT	NOT VOTING
CHAIRMAN GOODLING	X			
Mr. PETRI	X			
Mrs. ROUKEMA				X
Mr. GUNDERSON	X			
Mr. FAWELL	X			
Mr. BALLENGER		X		
Mr. BARRETT	X			
Mr. CUNNINGHAM	X			
Mr. HOEKSTRA	X			
Mr. McKEON		X		
Mr. CASTLE	X			
Mrs. MEYERS	X			
Mr. JOHNSON		X		
Mr. TALENT	X			
Mr. GREENWOOD	X			
Mr. HUTCHINSON		X		
Mr. KNOLLENBERG	X			
Mr. RIGGS		X		
Mr. GRAHAM		X		
Mr. WELDON		X		
Mr. FUNDERBURK				X
Mr. SOUDER	X			
Mr. McINTOSH		X		
Mr. NORWOOD				X
Mr. CLAY	X			
Mr. MILLER				X
Mr. KILDEE	X			
Mr. WILLIAMS	X			
Mr. MARTINEZ				X
Mr. OWENS	X			
Mr. SAWYER	X			
Mr. PAYNE	X			
Mrs. MINK	X			
Mr. ANDREWS	X			
Mr. REED	X			
Mr. ROEMER				X
Mr. BECERRA	X			
Mr. SCOTT	X			
Mr. GREEN	X			
Ms. WOOLSEY	X			
Mr. ROMERO-BARCELO	X			
Mr. FATTAH				X
TOTALS	27	8		7

COMMITTEE ON ECONOMIC AND EDUCATIONAL OPPORTUNITIES

ROLL CALL #3 **BILL** H.R. 3268 **DATE** MAY 30, 1996

AMENDMENT NUMBER 8 **DEFEATED** 14 - 21 (not voting - 7)

SPONSOR/AMENDMENT Mr. Sawyer / Amendment that would create a Federal definition of evaluation.

MEMBER	AYE	NO	PRESENT	NOT VOTING
CHAIRMAN GOODLING		X		
Mr. PETRI		X		
Mrs. ROUKEMA				X
Mr. GUNDERSON		X		
Mr. FAWELL		X		
Mr. BALLENGER		X		
Mr. BARRETT		X		
Mr. CUNNINGHAM		X		
Mr. HOEKSTRA		X		
Mr. McKEON		X		
Mr. CASTLE		X		
Mrs. MEYERS		X		
Mr. JOHNSON		X		
Mr. TALENT		X		
Mr. GREENWOOD		X		
Mr. HUTCHINSON		X		
Mr. KNOLLENBERG		X		
Mr. RIGGS		X		
Mr. GRAHAM		X		
Mr. WELDON		X		
Mr. FUNDERBURK				X
Mr. SOUDER		X		
Mr. McINTOSH		X		
Mr. NORWOOD				X
Mr. CLAY	X			
Mr. MILLER				X
Mr. KILDEE	X			
Mr. WILLIAMS				X
Mr. MARTINEZ				X
Mr. OWENS	X			
Mr. SAWYER	X			
Mr. PAYNE	X			
Mrs. MINK	X			
Mr. ANDREWS	X			
Mr. REED	X			
Mr. ROEMER	X			
Mr. BECERRA	X			
Mr. SCOTT	X			
Mr. GREEN	X			
Ms. WOOLSEY	X			
Mr. ROMERO-BARCELO	X			
Mr. FATTAH				X
TOTALS	14	21		7

COMMITTEE ON ECONOMIC AND EDUCATIONAL OPPORTUNITIES

ROLL CALL #4 **BILL** H.R. 3268 **DATE** MAY 30, 1996

AMENDMENT NUMBER 11 **DEFEATED** 14 - 20 (not voting 8)

SPONSOR/AMENDMENT Mr. Payne / Amendment to reinstate language from current law maintaining the authority for appropriations to remove architectural barriers from schools.

MEMBER	AYE	NO	PRESENT	NOT VOTING
CHAIRMAN GOODLING		X		
Mr. PETRI		X		
Mrs. ROUKEMA				X
Mr. GUNDERSON		X		
Mr. FAWELL		X		
Mr. BALLENGER		X		
Mr. BARRETT		X		
Mr. CUNNINGHAM		X		
Mr. HOEKSTRA		X		
Mr. McKEON		X		
Mr. CASTLE		X		
Mrs. MEYERS		X		
Mr. JOHNSON		X		
Mr. TALENT		X		
Mr. GREENWOOD				X
Mr. HUTCHINSON		X		
Mr. KNOLLENBERG		X		
Mr. RIGGS		X		
Mr. GRAHAM		X		
Mr. WELDON				X
Mr. FUNDERBURK		X		
Mr. SOUDER		X		
Mr. McINTOSH				X
Mr. NORWOOD		X		
Mr. CLAY	X			
Mr. MILLER				X
Mr. KILDEE	X			
Mr. WILLIAMS				X
Mr. MARTINEZ	X			
Mr. OWENS	X			
Mr. SAWYER	X			
Mr. PAYNE	X			
Mrs. MINK	X			
Mr. ANDREWS	X			
Mr. REED	X			
Mr. ROEMER	X			
Mr. BECERRA	X			
Mr. SCOTT	X			
Mr. GREEN				X
Ms. WOOLSEY	X			
Mr. ROMERO-BARCELO	X			
Mr. FATTAH				X
TOTALS	14	20		8

COMMITTEE ON ECONOMIC AND EDUCATIONAL OPPORTUNITIES

ROLL CALL #5 **BILL** H.R. 3268 **DATE** MAY 30, 1996

AMENDMENT NUMBER 13 **DEFEATED** 14 - 23 (not voting - 5)

SPONSOR/AMENDMENT Mr. Andrews / Amendment that would restore the current funding formula which sends funds to the States based on the number of children identified as disabled.

MEMBER	AYE	NO	PRESENT	NOT VOTING
CHAIRMAN GOODLING		X		
Mr. PETRI		X		
Mrs. ROUKEMA	X			
Mr. GUNDERSON		X		
Mr. FAWELL		X		
Mr. BALLENGER		X		
Mr. BARRETT	X			
Mr. CUNNINGHAM		X		
Mr. HOEKSTRA		X		
Mr. McKEON		X		
Mr. CASTLE		X		
Mrs. MEYERS		X		
Mr. JOHNSON		X		
Mr. TALENT	X			
Mr. GREENWOOD		X		
Mr. HUTCHINSON				X
Mr. KNOLLENBERG		X		
Mr. RIGGS		X		
Mr. GRAHAM		X		
Mr. WELDON				X
Mr. FUNDERBURK		X		
Mr. SOUDER				X
Mr. McINTOSH	X			
Mr. NORWOOD				X
Mr. CLAY				X
Mr. MILLER		X		
Mr. KILDEE	X			
Mr. WILLIAMS	X			
Mr. MARTINEZ		X		
Mr. OWENS	X			
Mr. SAWYER		X		
Mr. PAYNE	X			
Mrs. MINK		X		
Mr. ANDREWS	X			
Mr. REED	X			
Mr. ROEMER	X			
Mr. BECERRA		X		
Mr. SCOTT	X			
Mr. GREEN		X		
Ms. WOOLSEY		X		
Mr. ROMERO-BARCELO	X			
Mr. FATTAH	X			
TOTALS	14	23		5

COMMITTEE ON ECONOMIC AND EDUCATIONAL OPPORTUNITIES

ROLL CALL #6 **BILL** H.R. 3268 **DATE** MAY 30, 1996

AMENDMENT NUMBER 14 **DEFEATED** 13 - 16 (not voting 13)

SPONSOR/AMENDMENT Mr. Romero-Barcelo / Amendment to strike special rule that caps money to Puerto Rico.

MEMBER	AYE	NO	PRESENT	NOT VOTING
CHAIRMAN GOODLING		X		
Mr. PETRI		X		
Mrs. ROUKEMA				X
Mr. GUNDERSON				X
Mr. FAWELL		X		
Mr. BALLENGER		X		
Mr. BARRETT		X		
Mr. CUNNINGHAM		X		
Mr. HOEKSTRA		X		
Mr. McKEON		X		
Mr. CASTLE		X		
Mrs. MEYERS				X
Mr. JOHNSON		X		
Mr. TALENT		X		
Mr. GREENWOOD				X
Mr. HUTCHINSON		X		
Mr. KNOLLENBERG		X		
Mr. RIGGS				X
Mr. GRAHAM		X		
Mr. WELDON				X
Mr. FUNDERBURK		X		
Mr. SOUDER		X		
Mr. McINTOSH				X
Mr. NORWOOD				X
Mr. CLAY	X			
Mr. MILLER				X
Mr. KILDEE	X			
Mr. WILLIAMS	X			
Mr. MARTINEZ				X
Mr. OWENS	X			
Mr. SAWYER	X			
Mr. PAYNE				X
Mrs. MINK	X			
Mr. ANDREWS	X			
Mr. REED	X			
Mr. ROEMER	X			
Mr. BECERRA	X			
Mr. SCOTT				X
Mr. GREEN				X
Ms. WOOLSEY	X			
Mr. ROMERO-BARCELO	X			
Mr. FATTAH	X			
TOTALS	13	16		13

COMMITTEE ON ECONOMIC AND EDUCATIONAL OPPORTUNITIES

ROLL CALL #7 **BILL** H.R. 3268 **DATE** MAY 30, 1996

AMENDMENT NUMBER 16 **DEFEATED** 12 - 16 (not voting 14)

SPONSOR/AMENDMENT Mr. Becerra / Amendment that would require the in-state funding formula match the Federal formula.

MEMBER	AYE	NO	PRESENT	NOT VOTING
CHAIRMAN GOODLING		X		
Mr. PETRI		X		
Mrs. ROUKEMA				X
Mr. GUNDERSON		X		
Mr. FAWELL		X		
Mr. BALLENGER		X		
Mr. BARRETT				X
Mr. CUNNINGHAM		X		
Mr. HOEKSTRA		X		
Mr. McKEON		X		
Mr. CASTLE		X		
Mrs. MEYERS		X		
Mr. JOHNSON				X
Mr. TALENT		X		
Mr. GREENWOOD				X
Mr. HUTCHINSON				X
Mr. KNOLLENBERG		X		
Mr. RIGGS				X
Mr. GRAHAM		X		
Mr. WELDON				X
Mr. FUNDERBURK		X		
Mr. SOUDER		X		
Mr. McINTOSH				X
Mr. NORWOOD				X
Mr. CLAY	X			
Mr. MILLER				X
Mr. KILDEE	X			
Mr. WILLIAMS	X			
Mr. MARTINEZ				X
Mr. OWENS	X			
Mr. SAWYER	X			
Mr. PAYNE				X
Mrs. MINK	X			
Mr. ANDREWS	X			
Mr. REED		X		
Mr. ROEMER				X
Mr. BECERRA	X			
Mr. SCOTT	X			
Mr. GREEN	X			
Ms. WOOLSEY	X			
Mr. ROMERO-BARCELO				X
Mr. FATTAH	X			
TOTALS	12	16		14

COMMITTEE ON ECONOMIC AND EDUCATIONAL OPPORTUNITIES

ROLL CALL #8 **BILL** H.R. 3268 **DATE** MAY 30, 1996

AMENDMENT NO. 17 **DEFEATED** 13 - 17 with 1 voting present (not voting - 11)

SPONSOR/AMENDMENT Mr. Owens / Offered en bloc 2 amendments regarding funding for personnel.

MEMBER	AYE	NO	PRESENT	NOT VOTING
CHAIRMAN GOODLING		X		
Mr. PETRI		X		
Mrs. ROUKEMA				X
Mr. GUNDERSON		X		
Mr. FAWELL		X		
Mr. BALLENGER		X		
Mr. BARRETT		X		
Mr. CUNNINGHAM		X		
Mr. HOEKSTRA		X		
Mr. McKEON		X		
Mr. CASTLE		X		
Mrs. MEYERS		X		
Mr. JOHNSON				X
Mr. TALENT		X		
Mr. GREENWOOD		X		
Mr. HUTCHINSON		X		
Mr. KNOLLENBERG		X		
Mr. RIGGS				X
Mr. GRAHAM		X		
Mr. WELDON				X
Mr. FUNDERBURK				X
Mr. SOUDER		X		
Mr. McINTOSH				X
Mr. NORWOOD				X
Mr. CLAY	X			
Mr. MILLER				X
Mr. KILDEE	X			
Mr. WILLIAMS	X			
Mr. MARTINEZ				X
Mr. OWENS	X			
Mr. SAWYER			X	
Mr. PAYNE	X			
Mrs. MINK	X			
Mr. ANDREWS	X			
Mr. REED	X			
Mr. ROEMER				X
Mr. BECERRA	X			
Mr. SCOTT	X			
Mr. GREEN	X			
Ms. WOOLSEY	X			
Mr. ROMERO-BARCELO				X
Mr. FATTAH	X			
TOTALS	13	17	1	11

COMMITTEE ON ECONOMIC AND EDUCATIONAL OPPORTUNITIES

ROLL CALL #9 **BILL** H.R. 3268 **DATE** MAY 30, 1996

AMENDMENT NUMBER 18 **DEFEATED** 11 - 18 (not voting -13)

SPONSOR/AMENDMENT Ms. Woolsey / Amendment regarding technology development in the schools.

MEMBER	AYE	NO	PRESENT	NOT VOTING
CHAIRMAN GOODLING		X		
Mr. PETRI		X		
Mrs. ROUKEMA		X		
Mr. GUNDERSON		X		
Mr. FAWELL		X		
Mr. BALLENGER		X		
Mr. BARRETT				X
Mr. CUNNINGHAM		X		
Mr. HOEKSTRA				X
Mr. McKEON		X		
Mr. CASTLE		X		
Mrs. MEYERS		X		
Mr. JOHNSON		X		
Mr. TALENT		X		
Mr. GREENWOOD				X
Mr. HUTCHINSON		X		
Mr. KNOLLENBERG		X		
Mr. RIGGS		X		
Mr. GRAHAM		X		
Mr. WELDON				X
Mr. FUNDERBURK		X		
Mr. SOUDER		X		
Mr. McINTOSH				X
Mr. NORWOOD				X
Mr. CLAY				X
Mr. MILLER	X			
Mr. KILDEE	X			
Mr. WILLIAMS	X			
Mr. MARTINEZ	X			
Mr. OWENS	X			
Mr. SAWYER	X			
Mr. PAYNE				X
Mrs. MINK	X			
Mr. ANDREWS				X
Mr. REED	X			
Mr. ROEMER				X
Mr. BECERRA	X			
Mr. SCOTT	X			
Mr. GREEN				X
Ms. WOOLSEY	X			
Mr. ROMERO-BARCELO				X
Mr. FATTAH				X
TOTALS	11	18		13

COMMITTEE ON ECONOMIC AND EDUCATIONAL OPPORTUNITIES

ROLL CALL #10 **BILL** H.R. 3268 **DATE** MAY 30, 1996

H.R. 3268 ordered reported amended 32 - 5 (not voting - 5)

SPONSOR/MOTION Mr. Petri / Motion to report the bill as amended to the House with the recommendation that the bill as amended do pass.

MEMBER	AYE	NO	PRESENT	NOT VOTING
CHAIRMAN GOODLING	X			
Mr. PETRI	X			
Mrs. ROUKEMA		X		
Mr. GUNDERSON	X			
Mr. FAWELL	X			
Mr. BALLENGER	X			
Mr. BARRETT	X			
Mr. CUNNINGHAM	X			
Mr. HOEKSTRA	X			
Mr. McKEON	X			
Mr. CASTLE	X			
Mrs. MEYERS	X			
Mr. JOHNSON	X			
Mr. TALENT	X			
Mr. GREENWOOD				X
Mr. HUTCHINSON	X			
Mr. KNOLLENBERG	X			
Mr. RIGGS	X			
Mr. GRAHAM	X			
Mr. WELDON	X			
Mr. FUNDERBURK	X			
Mr. SOUDER	X			
Mr. McINTOSH	X			
Mr. NORWOOD				X
Mr. CLAY	X			
Mr. MILLER	X			
Mr. KILDEE	X			
Mr. WILLIAMS	X			
Mr. MARTINEZ		X		
Mr. OWENS		X		
Mr. SAWYER	X			
Mr. PAYNE				X
Mrs. MINK	X			
Mr. ANDREWS		X		
Mr. REED	X			
Mr. ROEMER		X		
Mr. BECERRA				X
Mr. SCOTT	X			
Mr. GREEN	X			
Ms. WOOLSEY	X			
Mr. ROMERO-BARCELO				X
Mr. FATTAH	X			
TOTALS	32	5		5

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

INDIVIDUALS WITH DISABILITIES EDUCATION ACT

[Parts A through C are amended to read as follows effective July 1, 1997. Section 605 is amended to read as follows effective on the date of enactment. Part D is amended to read as follows effective October 1, 1997. Parts E through G are repealed effective October 1, 1997. Part H is repealed effective July 1, 1997. Part I is repealed effective on the date of enactment.]

[PART A—GENERAL PROVISIONS

[SHORT TITLE; STATEMENT OF FINDINGS AND PURPOSE

[SEC. 601. (a) This title may be cited as the "Individuals with Disabilities Education Act".

[(b) The Congress finds that—

[(1) there are more than eight million children with disabilities in the United States today;

[(2) the special educational needs of such children are not being fully met;

[(3) more than half of the children with disabilities in the United States do not receive appropriate educational services which would enable them to have full equality of opportunity;

[(4) one million of the children with disabilities in the United States are excluded entirely from the public school system and will not go through the educational process with their peers;

[(5) there are many children with disabilities throughout the United States participating in regular school programs whose disabilities prevent them from having a successful educational experience because their disabilities are undetected;

[(6) because of the lack of adequate services within the public school system, families are often forced to find services outside the public school system, often at great distance from their residence and at their own expense;

[(7) developments in the training of teachers and in diagnostic and instructional procedures and methods have advanced to the point that, given appropriate funding, State and local educational agencies can and will provide effective special education and related services to meet the needs of children with disabilities;

[(8) State and local educational agencies have a responsibility to provide education for all children with disabilities, but present financial resources are inadequate to meet the special educational needs of children with disabilities; and

[(9) it is in the national interest that the Federal Government assist State and local efforts to provide programs to meet the educational needs of children with disabilities in order to assure equal protection of the law.

[(c) It is the purpose of this Act to assure that all children with disabilities have available to them, within the time periods specified in section 612(2)(B), a free appropriate public education which emphasizes special education and related services designed to meet their unique needs, to assure that the rights of children with disabilities and their parents or guardians are protected, to assist States and localities to provide for the education of all children with disabilities, and to assess and assure the effectiveness of efforts to educate children with disabilities.

[DEFINITIONS

[SEC. 602. (a) As used in this title—

[(1)(A) The term "children with disabilities" means children—

[(i) with mental retardation, hearing impairments including deafness, speech or language impairments, visual impairments including blindness, serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and

[(ii) who, by reason thereof, need special education and related services.

[(B) The term "children with disabilities" for children aged 3 to 5, inclusive, may, at a State's discretion, include children—

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

[(ii) who, by reason thereof, need special education and related services.

[(4) The term "construction", except where otherwise specified, means (A) erection of new or expansion of existing structures, and the acquisition and installation of equipment therefor; or (B) acquisition of existing structures not owned by any agency or institution making application for assistance under this title; or (C) remodeling or alteration (including the acquisition, installation, modernization, or replacement of equipment) of existing structures; or (D) acquisition of land in connection with the activities in clauses (A), (B), and (C); or (E) a combination of any two or more of the foregoing.

[(5) The term "equipment" includes machinery, utilities, and built-in equipment and any necessary enclosures or structures to house them, and includes all other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture, printed, published, and audio-visual instructional materials, telecommunications, sensory, and other technological aids and devices, and books, periodicals, documents, and other related materials.

[(6) The term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the

Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or Palau (until the Compact of Free Association with Palau takes effect pursuant to section 101(a) of Public Law 99–658).

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

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

[(9) The term "elementary school" means a day or residential school which provides elementary education, as determined under State law.

[(10) The term "secondary school" means a day or residential school which provides secondary education, as determined under State law, except that it does not include any education provided beyond grade 12.

[(11) The term "institution of higher education" means an educational institution in any State which—

[(A) admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;

[(B) is legally authorized within such State to provide a program of education beyond high school;

[(C) provides an educational program for which it awards a bachelor's degree, or provides not less than a two-year program which is acceptable for full credit toward such a degree, or offers a two-year program in engineering, mathematics, or the physical or biological sciences which is designed to prepare the student to work as a technician and at a semiprofessional level in engineering, scientific, or other technological fields which require the understanding and application of basic engineering, scientific, or mathematical principles or knowledge;

[(D) is a public or other nonprofit institution; and

[(E) is accredited by a nationally recognized accrediting agency or association listed by the Secretary pursuant to this paragraph or, if not so accredited, is an institution whose credits are accepted, on transfer, by not less than three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited: *Provided, however,* That in the case of an institution offering a two-year program in engineering, mathematics, or the physical or biological sciences which is designed to

prepare the student to work as a technician and at a semiprofessional level in engineering, scientific, or technological fields which require the understanding and application of basic engineering, scientific, or mathematical principles or knowledge, if the Secretary determines that there is no nationally recognized accrediting agency or association qualified to accredit such institutions, the Secretary shall appoint an advisory committee, composed of persons specially qualified to evaluate training provided by such institutions, which shall prescribe the standards of content, scope, and quality which must be met in order to qualify such institutions to participate under this Act and shall also determine whether particular institutions meet such standards. For the purposes of this paragraph the Secretary shall publish a list of nationally recognized accrediting agencies or associations which the Secretary determines to be reliable authority as to the quality of education or training offered.

The term includes community colleges receiving funding from the Secretary of the Interior under the Tribally Controlled Community College Assistance Act of 1978.

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

[(13) The term "research and related purposes" means research, research training (including the payment of stipends and allowances), surveys, or demonstrations in the field of education of children with disabilities, or the dissemination of information derived therefrom, including (but without limitation) experimental schools.

[(14) The term "Secretary" means the Secretary of Education.

[(15) The term "children with specific learning disabilities" means those children who have a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which disorder may manifest itself in imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. Such disorders include such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. Such term does not include children who have learning problems which are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

[(16) The term "special education" means specially designed instruction, at no cost to parents or guardians, to meet the unique needs of a child with a disability, including—

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

[(B) instruction in physical education.

[(17) The term "related services" means transportation, and such developmental, corrective, and other supportive services (including speech pathology and audiology, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, counseling services, including rehabilitation counseling, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions in children.

[(18) The term "free appropriate public education" means special education and related services that—

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

[(B) meet the standards of the State educational agency,

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

[(D) are provided in conformity with the individualized education program required under section 614(a)(5).

[(19) The term "transition services" means a coordinated set of activities for a student, designed within an outcome-oriented process, which promotes movement from school to post-school activities, including post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. The coordinated set of activities shall be based upon the individual student's needs, taking into account the student's preferences and interests, and shall include instruction, community experiences, the development of employment and other post-school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation.

[(20) The term "individualized education program" means a written statement for each child with a disability developed in any meeting by a representative of the local educational agency or an intermediate educational unit who shall be qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities, the teacher, the parents or guardian of such child, and, whenever appropriate, such child, which statement shall include—

[(A) a statement of the present levels of educational performance of such child,

[(B) a statement of annual goals, including short-term instructional objectives,

[(C) a statement of the specific educational services to be provided to such child, and the extent to which such child will be able to participate in regular educational programs,

[(D) a statement of the needed transition services for students beginning no later than age 16 and annually thereafter (and, when determined appropriate for the individual, beginning at age 14 or younger), including, when appropriate, a statement of the interagency reponsibilities

or linkages (or both) before the student leaves the school setting,

[(E) the projected date for initiation and anticipated duration of such services, and

[(F) appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether instructional objectives are being achieved.

In the case where a participating agency, other than the educational agency, fails to provide agreed upon services, the educational agency shall reconvene the IEP team to identify alternative strategies to meet the transition objectives.

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

[(A) amounts received—

[(i) under this part,

[(ii) under title I of the Elementary and Secondary Education Act of 1965, or

[(iii) under title VII of the Elementary and Secondary Education Act of 1965, and

[(B) any State or local funds expended for programs that would qualify for assistance under such part, chapter, or title.

[(22) The term "native language" has the meaning given that term by section 7003(a)(2) of the Bilingual Education Act.

[(23) The term "intermediate educational unit" means any public authority, other than a local educational agency, which is under the general supervision of a State educational agency, which is established by State law for the purpose of providing free public education on a regional basis, and which provides special education and related services to children with disabilities within that State.

[(24)(A) The term "public or private nonprofit agency or organization" includes an Indian tribe and the Bureau of Indian Affairs of the Department of the Interior (when acting on behalf of schools operated by the Bureau for children and students on Indian reservations) and tribally controlled schools funded by the Department of the Interior.

[(B) The terms "Indian", "American Indian", and "Indian American" mean an individual who is a member of an Indian tribe.

[(C) The term "Indian tribe" means any Federal or State Indian tribe, band, rancheria, pueblo, colony, or community, including any Alaskan native village or regional village corporation (as defined in or established under the Alaska Native Claims Settlement Act).

[(25) The term "assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of individuals with disabilities.

[(26) The term "assistive technology service" means any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device. Such term includes—

[(A) the evaluation of the needs of an individual with a disability, including a functional evaluation of the individual in the individual's customary environment;

[(B) purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by individuals with disabilities;

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

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

[(E) training or technical assistance for an individual with disabilities, or, where appropriate, the family of an individual with disabilities; and

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

[(27) The term "underrepresented" means populations such as minorities, the poor, the limited English proficient, and individuals with disabilities.

[(b) For purposes of part C of this title, "youth with a disability" means any child with a disability (as defined in subsection (a)(1)) who—

[(1) is twelve years of age or older; or

[(2) is enrolled in the seventh or higher grade in school.

[OFFICE OF SPECIAL EDUCATION PROGRAMS

[SEC. 603. (a) There shall be, within the Office of Special Education and Rehabilitative Services in the Department of Education, an Office of Special Education Programs which shall be the principal agency in the Department for administering and carrying out this Act and other programs and activities concerning the education and training of individuals with disabilities.

[(b)(1) The Office established under subsection (a) shall be headed by a Deputy Assistant Secretary who shall be selected by the Secretary and shall report directly to the Assistant Secretary for Special Education and Rehabilitative Services. The position of Deputy Assistant Secretary shall be in grade GS–18 of the General Schedule under section 5104 of title 5, United States Code, and shall be a Senior Executive Service position for the purposes of section 3132(a)(2) of such title.

[(2) In addition to such Deputy Assistant Secretary, there shall be established in such office not less than six positions for persons to assist the Deputy Assistant Secretary, including the position of Associate Deputy Assistant Secretary. Each such position shall be

in grade GS–15 of the General Schedule under section 5104 of title 5, United States Code.

[ABROGATION OF STATE SOVEREIGN IMMUNITY

[SEC. 604. (a) A State shall not be immune under the eleventh amendment to the Constitution of the United States from suit in Federal court for a violation of this Act.

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

[(c) The provisions of subsections (a) and (b) shall take effect with respect to violations that occur in whole or part after the date of the enactment of the Education of the Handicapped Act Amendments of 1990.

[ACQUISITION OF EQUIPMENT AND CONSTRUCTION OF NECESSARY FACILITIES

[SEC. 605. (a) In the case of any program authorized by this title, if the Secretary determines that such program will be improved by permitting the funds authorized for such program to be used for the acquisition of equipment and the construction of necessary facilities, the Secretary may authorize the use of such funds for such purposes.

[(b) If, within twenty years after the completion of any construction (except minor remodeling or alteration) for which funds have been paid pursuant to a grant or contract under this title, the facility constructed ceases to be used for the purposes for which it was constructed, the United States, unless the Secretary determines that there is good cause for releasing the recipient of the funds from its obligation, shall be entitled to recover from the applicant or other owner of the facility an amount which bears the same ratio to the then value of the facility as the amount of such Federal funds bore to the cost of the portion of the facility financed with such funds. Such value shall be determined by agreement of the parties or by action brought in the United States district court for the district in which the facility is situated.

[EMPLOYMENT OF INDIVIDUALS WITH DISABILITIES

[SEC. 606. The Secretary shall assure that each recipient of assistance under this Act shall make positive efforts to employ and advance in employment qualified individuals with disabilities in programs assisted under this Act.

[GRANTS FOR THE REMOVAL OF ARCHITECTURAL BARRIERS

[SEC. 607. (a) The Secretary is authorized to make grants and to enter into cooperative agreements with the Secretary of the Interior and with State educational agencies to assist such agencies in making grants to local educational agencies or intermediate educational units to pay part or all of the cost of altering existing buildings and equipment in accordance with standards promulgated under the Act entitled "An Act to insure that certain build-

ings financed with Federal funds are so designed and constructed as to be accessible to the physically handicapped", approved August 12, 1968.

[(b) For the purposes of carrying out the provisions of this section, there are authorized to be appropriated such sums as may be necessary.

[REQUIREMENTS FOR PRESCRIBING REGULATIONS

[SEC. 608. (a) For purposes of complying with section 431(b) of the General Education Provisions Act with respect to regulations promulgated under part B of this Act, the thirty-day period under such section shall be ninety days.

[(b) The Secretary may not implement, or publish in final form, any regulation prescribed pursuant to this Act which would procedurally or substantively lessen the protections provided to children with disabilities under this Act, as embodied in regulations in effect on July 20, 1983 (particularly as such protections relate to parental consent to initial evaluation or initial placement in special education, least restrictive environment, related services, timelines, attendance of evaluation personnel at individualized education program meetings, or qualifications of personnel), except to the extent that such regulation reflects the clear and unequivocal intent of the Congress in legislation.

[ELIGIBILITY FOR FINANCIAL ASSISTANCE

[SEC. 609. Effective for fiscal years for which the Secretary may make grants under section 619(b)(1), no State or local educational agency or intermediate educational unit or other public institution or agency may receive a grant under parts C through G which relate exclusively to programs, projects, and activities pertaining to children aged three to five, inclusive, unless the State is eligible to receive a grant under section 619(b)(1).

[ADMINISTRATIVE PROVISIONS APPLICABLE TO PARTS C THROUGH G AND SECTION 618

[SEC. 610. (a) The Secretary shall maintain a process for developing a program plan for the implementation of each of the programs authorized under section 618 and parts C through G. The plan shall include program goals, objectives, strategies, and priorities. In conducting the process, the Secretary shall involve individuals with disabilities, parents, professionals, and representatives of State and local educational agencies, private schools, institutions of higher education, and national organizations who have interest and expertise in the program.

[(b) In awarding grants, contracts, and cooperative agreements under parts C through G, the Secretary, where appropriate, shall require applicants to demonstrate how they will address, in whole or in part, the needs of infants, toddlers, children, and youth with disabilities from minority backgrounds.

[(c) In awarding grants, contracts, or cooperative agreements under parts C through G the Secretary, where appropriate, may require applicants to address the various transitions that a child

with a disability may face throughout such child's years in school, including—

[(1) the transition from medical care to special education for those children with disabilities, including chronic health impairments, who may require individualized health-related services to enable such children to participate in, or benefit from, special education;

[(2) the transition between residential placement and community-based special education services; and

[(3) the transition between a separate educational placement and the regular classroom setting.

[(d) The Secretary shall conduct directly, or by contract or cooperative agreement with appropriate entities, independent evaluations of the programs authorized under section 618 and under parts C through G, and may for such purpose use funds appropriated to carry out such provisions. The findings of the evaluators shall be utilized in the planning process under subsection (a) for the purpose of improving the programs. The evaluations shall determine the degree to which the program is being conducted consistent with the program plan and meeting its goals and objectives. The Secretary shall submit to the appropriate committees of the Congress the results of the evaluations required by this subsection.

[(e) The Secretary shall report on the program plans required in subsection (a) and findings from the evaluations under subsection (d) in the annual report to the Congress required under section 618.

[(f) The Secretary shall develop effective procedures for acquiring and disseminating information derived from programs and projects funded under parts C through G, as well as information generated from studies conducted and data collected under section 618.

[(g) The Secretary shall, where appropriate, require recipients of all grants, contracts, and cooperative agreements under parts C through G to prepare reports describing their procedures, findings, and other relevant information in a form that will maximize the dissemination and use of such procedures, findings, and information. The Secretary shall require their delivery, as appropriate, to the Regional and Federal Resource Centers, the Clearinghouses, and the Technical Assistance to Parents Programs (TAPP) assisted under parts C and D, as well as the National Diffusion Network, the ERIC Clearinghouse on the Handicapped and Gifted, and the Child and Adolescent Service Systems Program (CASSP) under the National Institute of Mental Health, appropriate parent and professional organizations, organizations representing individuals with disabilities, and such other networks as the Secretary may determine to be appropriate.

[(h)(1) The Secretary shall convene, in accordance with paragraph (2), panels of experts who are competent, by virtue of their training or experience, to evaluate proposals under section 618 and parts C through G.

[(2) Panels under paragraph (1) shall be composed of individuals with disabilities, parents of such individuals, individuals from the fields of special education, related services, and other relevant disciplines.

[(3) The Secretary shall convene panels under paragraph (1) for any application that includes a total funding request exceeding $60,000 and may convene or otherwise appoint panels for applications that include funding requests that are less than such amount.

[(4) Panels under paragraph (1) shall include a majority of non-Federal members. Such non-Federal members shall be provided travel and per diem not to exceed the rate provided to other educational consultants used by the Department of Education and shall be provided consultant fees at such a rate.

[(5) The Secretary may use funds available under section 618 and parts C through G to pay expenses and fees of non-Federal members of the panels.

[(i) The Secretary shall conduct at least 1 site visit for each grant, contract, and cooperative agreement receiving $300,000 or more annually under parts C through G.

[(j)(1) With respect to the discretionary programs authorized by parts C through G, the Congress finds as follows:

[(A)(i) The Federal Government must be responsive to the growing needs of an increasingly more diverse society. A more equitable allocation of resources is essential for the Federal Government to meet its responsibility to provide an equal educational opportunity for all individuals.

[(ii) America's racial profile is rapidly changing. While the rate of increase for white Americans is 3.2 percent, the rate of increase for racial and ethnic minorities is much higher: 38.6 percent for Hispanics, 14.6 percent for African-Americans, and 40.1 percent for Asians and other ethnic groups.

[(iii) By the year 2000, this Nation will have 260,000,000 people, one of every three of whom will be either African-American, Hispanic, or Asian-American.

[(iv) Taken together as a group, it is a more frequent phenomenon for minorities to comprise the majority of public school students. Large city school populations are overwhelmingly minority, e.g., Miami, 71 percent; Philadelphia, 73 percent; Baltimore, 80 percent.

[(v) Recruitment efforts within special education at the level of preservice, continuing education, and practice must focus on bringing larger numbers of minorities into the profession in order to provide appropriate practitioner knowledge, role models, and sufficient manpower to address the clearly changing demography of special education.

[(vi) The limited English proficient population is the fastest growing in our Nation, and the growth is occurring in many parts of our Nation. In the Nation's 2 largest school districts, limited-English students make up almost half of all students initially entering school at the kindergarten level. Studies have documented apparent discrepancies in the levels of referral and placement of limited-English proficient children in special education. The Department of Education has found that services provided to limited-English proficient students often do not respond primarily to the pupil's academic needs. These trends pose special challenges for special education in the referral, assessment, and services for our Nation's students from non-English language backgrounds.

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

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

[(iii) Poor African-American children are 3.5 times more likely to be identified by their teacher as mentally retarded than their white counterpart.

[(iv) Although African-Americans represent 12 percent of elementary and secondary enrollments, they constitute 28 percent of total enrollments in special education.

[(v) The drop out rate is 68 percent higher for minorities than for whites.

[(vi) More than 50 percent of minority students in large cities drop out of school.

[(C)(i) The opportunity for full participation in awards for grants and contracts; boards of organizations receiving funds under this Act; and peer review panels; and training of professionals in the area of special education by minority individuals, organizations, and historically Black colleges and universities is essential if we are to obtain greater success in the education of minority children with disabilities.

[(ii) In 1989, of the 661,000 college and university professors, 4.6 percent were African-American and 3.1 percent were Hispanic. Of the 3,600,000 teachers, prekindergarten through high school, 9.4 percent were African-American and 3.9 percent were Hispanic.

[(iii) Students from minority groups comprise more than 50 percent of K–12 public school enrollment in seven States yet minority enrollment in teacher training programs is less than 15 percent in all but six States.

[(iv) As the number of African-American and Hispanic students in special education increases, the number of minority teachers and related service personnel produced in our colleges and universities continues to decrease.

[(v) Ten years ago, 12.5 percent of the United States teaching force in public elementary and secondary schools were members of a minority group. Minorities comprised 21.3 percent of the national population at that time and were clearly underrepresented then among employed teachers. Today, the elementary and secondary teaching force is 3 to 5 percent minority, while one-third of the students in public schools are minority children.

[(vi) As recently as 1984–85, Historically Black Colleges and Universities (HBCUs) supplied nearly half of the African-American teachers in the Nation. However, in 1988, HBCUs received only 2 percent of the discretionary funds for special education and related services personnel training.

[(vii) While African-American students constitute 28 percent of total enrollment in special education, only 11.2 percent of individuals enrolled in preservice training programs for special education are African-American.

[(viii) In 1986–87, of the degrees conferred in education at the B.A., M.A., and Ph.D. levels, only 6, 8, and 8 percent, respectively, were awarded to African-American or Hispanic students.

[(D) Minorities and underserved persons are socially disadvantaged because of the lack of opportunities in training and educational programs, undergirded by the practices in the private sector that impede their full participation in the mainstream of society.

[(2) The Congress further finds that these conditions can be greatly improved by providing opportunities for the full participation of minorities through the implementation of the following recommendations:

[(A) Implementation of a policy to mobilize the Nation's resources to prepare minorities for careers in special education and related services.

[(B) This policy should focus on—

[(i) the recruitment of minorities into teaching; and

[(ii) financially assisting HBCUs and other institutions of higher education (whose minority student enrollment is at least 25 percent) to prepare students for special education and related service careers.

[(C)(i) The Secretary shall develop a plan for providing outreach services to the entities described in clause (ii) in order to increase the participation of such entities in competitions for grants, contracts, and cooperative agreements under any of parts C through G.

[(ii) The entities referred to in clause (i) are—

[(I) Historically Black Colleges and Universities and other institutions of higher education whose minority student enrollment is at least 25 percent;

[(II) eligible institutions as defined in section 312 of the Higher Education Act of 1965;

[(III) nonprofit and for-profit agencies at least 51 percent owned or controlled by one or more minority individuals; and

[(IV) underrepresented populations.

[(iii) For the purpose of implementing the plan required in clause (i), the Secretary shall, for each of the fiscal years 1991 through 1994, expend 1 percent of the funds appropriated for the fiscal year involved for carrying out parts C through G.

[(3) The Secretary shall exercise his/her utmost authority, resourcefulness, and diligence to meet the requirements of this subsection.

[(4) Not later than January 31 of each year, starting with fiscal year 1991, the Secretary shall submit to Congress a final report on the progress toward meeting the goals of this subsection during the preceding fiscal year. The report shall include—

[(i) a full explanation of any progress toward meeting the goals of this subsection; and

[(ii) a plan to meet the goals, if necessary.

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

[SETTLEMENTS AND ALLOCATIONS

[SEC. 611. (a)

[(1) Except as provided in paragraph (5), the maximum amount of the grant for which a State is entitled under this section for any fiscal year is—

[(A) the sum of—

[(i) the number of children with disabilities in the State, aged 6 through 21, who are receiving special education and related services, as determined under paragraph (3); and

[(ii) if the State is eligible for a grant under section 619, the number of such children in the State, aged 3 through 5; multiplied by

[(B) 40 percent of the average per-pupil expenditure in public elementary and secondary schools in the United States.

[(2) For the purpose of this section, the term "State" means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

[(3) The number of children with disabilities receiving special education and related services in any fiscal year shall be equal to the number of such children receiving special education and related services on December 1 of the fiscal year preceding the fiscal year for which the determination is made.

[(4) For purposes of paragraph (1)(B), the term "average per pupil expenditure", in the United States, means the aggregate current expenditures, during the second fiscal year preceding the fiscal year for which the computation is made (or, if satisfactory data for such year are not available at the time of computation, then during the most recent preceding fiscal year for which satisfactory data are available) of all local educational agencies in the United States (which, for purposes of this subsection, means the fifty States and the District of Columbia), as the case may be, plus any direct expenditures by the State for operation of such agencies (without regard to the source of funds from which either of such expenditures are made), divided by the aggregate number of children in average daily attendance to whom such agencies provided free public education during such preceding year.

[(5)(A) In determining the allotment of each State under paragraph (1), the Secretary may not count—

[(i) children with disabilities aged three to seventeen, inclusive, in such State under paragraph (1)(A) to the extent the number of such children is greater than 12 percent of the number of all children aged three to seventeen, inclusive, in such State, or the combined percentage of such children counted by the Secretary for the purpose of making fiscal year 1994 allocations under this section and under subpart 2 of part D of chapter 1 of title I of the Elementary and Secondary Education Act of 1965 (as such subpart was in effect on the day preceding the date of en-

actment of the Improving America's Schools Act of 1994), whichever is greater, if the State serves all children with disabilities aged three to five, inclusive, in the State pursuant to State law or practice or the order of any court, and

[(ii) children with disabilities aged five to seventeen, inclusive, in such State under paragraph (1)(A) to the extent the number of such children is greater than 12 percent of the number of all children aged five to seventeen, inclusive, in such State, or the combined percentage of such children counted by the Secretary for the purpose of making fiscal year 1994 allocations under this section and under subpart 2 of part D of chapter 1 of title I of the Elementary and Secondary Education Act of 1965 (as such subpart was in effect on the day preceding the date of enactment of the Improving America's Schools Act of 1994), whichever is greater, if the State does not serve all children with disabilities aged three to five, inclusive, in the State pursuant to State law or practice or the order of any court.

[(B) For purposes of subparagraph (A), the number of children aged three to seventeen, inclusive, in any State shall be determined by the Secretary on the basis of the most recent satisfactory data available to the Secretary.

[(b)(1) Notwithstanding subsections (a) and (g), no State shall receive an amount under this section for any of the fiscal years 1995 through 1999 that is less than the sum of the amount such State received for fiscal year 1994 under—

[(A) this section; and

[(B) subpart 2 of part D of chapter 1 of title I of the Elementary and Secondary Education Act of 1965 (as such subpart was in effect on the day preceding the date of enactment of the Improving America's Schools Act of 1994) for children with disabilities aged 3 through 21.

[(2) If, for fiscal year 1998 or 1999, the number of children determined under subsection (a)(3) for any State is less than the total number of children with disabilities, aged 3 through 21, counted for that State's fiscal year 1994 grants under this section and under subpart 2 of part D of chapter 1 of title I of the Elementary and Secondary Education Act of 1965 (as such subpart was in effect on the day preceding the date of enactment of the Improving America's Schools Act of 1994), then the amount determined under paragraph (1) for that State shall be reduced by the same percentage by which the number of those children so declined.

[(3)(A) If the sums made available under this part for any fiscal year are insufficient to pay the full amounts that all States are eligible to receive under paragraphs (1) and (2) for such year, the Secretary shall ratably reduce the allocations to such States for such year.

[(B) If additional funds become available for making payments under paragraphs (1) and (2) for such fiscal year, allocations that were reduced under subparagraph (A) shall be increased on the same basis as such allocations were reduced.

[(c)(1) Of the funds received under subsection (a) by any State for any fiscal year—

[(A) a State may use not more than 25 percent of such funds in accordance with paragraph (2); and

[(B) except as provided in paragraph (4), the State shall distribute at least 75 percent of such funds to local educational agencies and intermediate educational units, in accordance with subsection (d), for use in accordance with priorities established under section 612(3).

[(2)(A) From the funds that any State may use under paragraph (1)(A) for any fiscal year, the State—

[(i) may use 5 percent of the funds received under this section or $450,000, whichever is greater, for administrative costs related to carrying out sections 612 and 613; and

[(ii) shall use the remainder—

[(I) to provide support services and direct services, subject to subparagraph (B), in accordance with priorities established under section 612(3); and

[(II) for the administrative costs of monitoring and complaint investigation, but only to the extent that such costs exceed the costs of administration incurred during fiscal year 1985.

[(B) The amount expended by any State from the funds available to such State under paragraph (1)(A) in any fiscal year for the provision of support services or for the provision of direct services shall be matched on a program basis by such State, from funds other than Federal funds, for the provision of support services or for the provision of direct services for the fiscal year involved.

[(3) The provisions of section 613(a)(9) shall not apply with respect to amounts available for use by any State under paragraph (2).

[(4)(A) No funds shall be distributed by any State under this subsection in any fiscal year to any local educational agency or intermediate educational unit in such State if—

[(i) such local educational agency or intermediate educational unit is entitled, under subsection (d), to less than $7,500 for such fiscal year; or

[(ii) such local educational agency or intermediate educational unit has not submitted an application for such funds which meets the requirements of section 614.

[(B) Whenever the provisions of subparagraph (A) apply, the State involved shall use such funds to assure the provision of a free appropriate education to children with disabilities residing in the area served by such local educational agency or such intermediate educational unit. The provisions of paragraph (2)(B) shall not apply to the use of such funds.

[(d)(1) From the total amount of funds available for any fiscal year under subsection (c)(1)(B), the State shall provide to each local educational agency or intermediate educational unit an amount that bears the same ratio to such total amount as the number of children, aged 3 through 21, determined under subsection (a)(3) for such agency or unit bears to the total number of such children determined for all such agencies and units that apply for such funds.

[(2)(A) To the extent necessary, the State—

[(i) shall use funds available under subsection (c)(2)(A)(ii) to ensure that each State agency that received funds for fiscal year 1994 under subpart 2 of part D of chapter 1 of title I of the Elementary and Secondary Education Act of 1965 (as such subpart was in effect on the day preceding the date of enactment of the Improving America's Schools Act of 1994) receives, from the sum of such funds and funds provided under paragraph (1), an amount equal to—

[(I) the number of children, aged 6 through 21, determined under subsection (a)(3) for such agency; multiplied by

[(II) the per-child amount provided under such subpart for fiscal year 1994; and

[(ii) may use such funds to ensure that each local educational agency that received for fiscal year 1994 under such subpart for children who had transferred from a State-owned, State-operated, or State-supported school or program assisted under such subpart receives, from the sum of such funds and funds provided under paragraph (1), an amount for each such child, aged 3 through 21, determined under subsection (a)(3) for such agency, equal to the per-child amount the agency received under such subpart for fiscal year 1994.

[(B) For the purpose of subparagraph (A), the number of children determined under subsection (a)(3) for any State agency or local educational agency shall not exceed the number of children aged 3 through 21 for whom such agency received funds under such subpart for such fiscal year.

[(e)(1) The jurisdictions to which this subsection applies are Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and Palau (until the Compact of Free Association with the Government of Palau takes effect).

[(2) Each jurisdiction to which this subsection applies shall be entitled to a grant for the purposes set forth in section 601(c) in an amount equal to an amount determined by the Secretary in accordance with criteria based on respective needs, except that the aggregate of the amount to which such jurisdictions are so entitled for any fiscal year shall not exceed an amount equal to 1 per centum of the aggregate of the amounts available to all States under this part for that fiscal year. If the aggregate of the amounts, determined by the Secretary pursuant to the preceding sentence, to be so needed for any fiscal year exceeds an amount equal to such 1 per centum limitation, the entitlement of each such jurisdiction shall be reduced proportionately until such aggregate does not exceed such 1 per centum limitation.

[(3) The amount expended for administration by each jurisdiction under this subsection shall not exceed 5 per centum of the amount allotted to such jurisdiction for any fiscal year, or $35,000, whichever is greater.

[(f)(1) The Secretary shall make payments to the Secretary of the Interior to meet the need for assistance for the education of children with disabilities on reservations aged 5–21, inclusive, enrolled in elementary and secondary schools for Indian children operated or funded by the Secretary of the Interior. In the case of Indian students ages 3–5, inclusive, who are enrolled in programs affili-

ated with Bureau of Indian Affairs (hereafter in this subsection referred to as "BIA") schools and that are required by the States in which such schools are located to attain or maintain State accreditation, and which schools have such accreditation prior to the date of enactment of the Individuals with Disabilities Education Act Amendments of 1991, the school shall be allowed to count those children for the purpose of distribution of the funds provided under this paragraph to the Secretary of the Interior. The Secretary of the Interior shall be responsible for meeting all of the requirements of this part for these children, in accordance with paragraph (3). The amount of such payment for any fiscal year shall be 1 percent of the aggregate amounts available for all States under this section for that fiscal year.

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

[(3) The Secretary of the Interior may receive an allotment under paragraph (1) only after submitting to the Secretary of Education an application that—

[(A) meets the appropriate requirements, as determined by the Secretary of Education, of sections 612 (including monitoring and evaluation activities), 613, and 614(a);

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

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

[(D) includes an assurance that the Secretary of the Interior will provide such information as the Secretary of Education may require to comply with section 618(b)(1), including data on the number of children and youth with disabilities served and the types and amounts of services provided and needed and this information shall be included in the annual report of the Secretary of Education to Congress required in section 618(g);

[(E) includes an assurance that, by October 1, 1992, the Secretaries of the Interior and Health and Human Services will enter into a memorandum of agreement, to be provided to the Secretary of Education, for the coordination of services, resources, and personnel between their respective Federal, State, and local offices and with State and local educational agencies and other entities to facilitate the provision of services to Indian children with disabilities residing on or near reservations. Such agreement shall provide for the apportionment of responsibilities and costs including, but not limited to, child find, evaluation, diagnosis, remediation or therapeutic measures, and (where appropriate) equipment and medical/personal supplies as needed for a child to remain in school or a program; and

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

Section 616(a) shall apply to any such application.

[(4)(A) Beginning with funds appropriated under section 611(a) for fiscal year 1992, the Secretary shall, subject to this paragraph, make payments to the Secretary of the Interior to be distributed to tribes or tribal organizations (as defined under section 4 of the Indian Self-Determination and Education Assistance Act) or consortiums of the above to provide for the coordination of assistance for special education and related services for children with disabilities aged 3–5, inclusive, on reservations served by elementary and secondary schools for Indian children operated or funded by the Department of the Interior. The amount of such payments under subparagraph (B) for any fiscal year shall be .25 percent of the aggregate amounts available for all States under this section for that fiscal year.

[(B) The Secretary of the Interior shall distribute the total amount of the .25 percent under subparagraph (A) in the following manner:

[(i) For the first fiscal year, each tribe or tribal organization shall receive an amount proportionate to the amount of weighted student units for special education programs for BIA operated or funded schools serving such reservation generated under the formula established under section 1128 of the Education Amendments of 1978, divided by the total number of such students in all BIA operated or funded schools.

[(ii) For each fiscal year thereafter, each tribe or tribal organization shall receive an amount based on the number of children with disabilities, ages 3–5, inclusive, residing on reservations as reported annually divided by the total of such children served by all tribes or tribal organizations.

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

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

[(E) To be eligible to receive a grant pursuant to subparagraph (A), the tribe or tribal organization shall make a biennial report to the Secretary of the Interior of activities undertaken under this

paragraph, including the number of contracts and cooperative agreements entered into, the number of children contacted and receiving services for each year and the estimated number of children needing services during the 2 years following the one in which the report is made. The Secretary of the Interior shall include a summary of this information on a biennial basis in the report to the Secretary of Education required under this subsection. The Secretary of Education may require any additional information from the Secretary of the Interior.

[(F) The Secretary of the Interior shall offer and, on request, provide technical assistance (especially in the areas of child find, diagnosis, and referral) to State and local educational agencies (where appropriate, intermediate educational units), and tribes and tribal organizations. Such assistance may be provided through its divisions and offices at the national and local level.

[(G) None of the funds allocated under this paragraph can be used by the Secretary of the Interior for administrative purposes, including child count, and the provision of technical assistance.

[(5) Before January 1, 1992, the Secretary of the Interior shall submit to the Committee on Education and Labor of the House of Representatives and the Committee on Labor and Human Resources of the Senate a plan for the coordination of services for all Indian children with disabilities residing on reservations covered under this Act. Such plan shall provide for the coordination of services benefiting these children from whatever source, including tribes, the Indian Health Service, other BIA divisions, and other Federal agencies. In developing such a plan, the Secretary of the Interior shall consult with all interested and involved parties. It shall be based upon the needs of the children and the system best suited for meeting those needs, and may involve the establishment of cooperative agreements between the BIA, other Federal agencies, and other entities. Such plan shall also be distributed upon request to States, State and local educational agencies, and other agencies providing services to infants, toddlers, children, and youth with disabilities, to tribes, and to other interested parties.

[(6) To meet the requirements of sections 613(a)(12) of this Act, the Secretary of the Interior shall establish, within 6 months of the date of the enactment of the Individuals with Disabilities Education Act Amendments of 1991, under the Bureau of Indian Affairs (BIA), an advisory board composed of individuals involved in or concerned with the education and provision of services to Indian infants, toddlers, children, and youth with disabilities, including Indians with disabilities, Indian parents or guardians of such children, teachers, service providers, State and local educational officials, representatives of tribes or tribal organizations, representatives from State Interagency Coordinating Councils in States having reservations, and other members representing the various divisions and entities of the BIA. The chairperson shall be selected by the Secretary of the Interior. The advisory board shall—

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

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

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

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

[(E) provide assistance in the preparation of information required under paragraph (3)(D).

[(g)(1)(A) If the sums appropriated under subsection (h) for any fiscal year are not sufficient to pay in full the total of the amounts that all States are eligible to receive under subsection (a), each such amount shall be ratably reduced.

[(B) If additional funds become available for making such payments for any fiscal year, such reduced amounts shall be increased on the same basis as such payments were reduced.

[(C) Any State that receives any such additional funds shall distribute such funds in accordance with this section, except that any State that has used funds available under subsection (c)(2)(A)(ii) for the purposes described in subsection (d)(2) may—

[(i) deduct, from the amount that the State would otherwise be required to make available to local educational agencies and intermediate educational units, the same amount of such additional funds as the State so used; and

[(ii) use such funds in accordance with subsection (c)(2)(A)(ii).

[(2)(A) In any fiscal year for which payments have been reduced and additional funds have not been made available under paragraph (1) to pay in full the amounts for which all States are eligible under this section, each State educational agency shall fix dates by which each local educational agency or intermediate educational unit shall report to the State agency the amount of funds available to such agency under this section that such agency estimates such agency will expend.

[(B) The State educational agency shall, in accordance with this section, reallocate any funds that the State educational agency determines will not be used during the period of availability by local educational agencies and intermediate educational units, and by any such agency or unit to which such funds would be available if such agency or unit applied for such funds under this part, to those local educational agencies and intermediate educational units that the State educational agency determines will need, and be able to use, additional funds to carry out approved programs.

[(h) For grants under subsection (a) there are authorized to be appropriated such sums as may be necessary.

[ELIGIBILITY

[SEC. 612. In order to qualify for assistance under this part in any fiscal year, a State shall demonstrate to the Secretary that the following conditions are met:

[(1) The State has in effect a policy that assures all children with disabilities the right to a free appropriate public education.

[(2) The State has developed a plan pursuant to section 613(b) in effect prior to the date of the enactment of the Education for All Handicapped Children Act of 1975 and submitted not later than August 21, 1975, which will be amended so as to comply with the provisions of this paragraph. Each such amended plan shall set forth in detail the policies and procedures which the State will undertake or has undertaken in order to assure that—

[(A) there is established (i) a goal of providing full educational opportunity to all children with disabilities, (ii) a detailed timetable for accomplishing such a goal, and (iii) a description of the kind and number of facilities, personnel, and services necessary throughout the State to meet such a goal;

[(B) a free appropriate public education will be available for all children with disabilities between the ages of three and eighteen within the State not later than September 1, 1978, and for all children with disabilities between the ages of three and twenty-one within the State not later than September 1, 1980, except that, with respect to children with disabilities aged three to five and aged eighteen to twenty-one, inclusive, the requirements of this clause shall not be applied in any State if the application of such requirements would be inconsistent with State law or practice, or the order of any court, respecting public education within such age groups in the State;

[(C) all children residing in the State who are disabled, regardless of the severity of their disability, and who are in need of special education and related services are identified, located, and evaluated, and that a practical method is developed and implemented to determine which children are currently receiving needed special education and related services and which children are not currently receiving needed special education and related services;

[(D) policies and procedures are established in accordance with detailed criteria prescribed under section 617(c); and

[(E) any amendment to the plan submitted by the State required by this section shall be available to parents, guardians, and other members of the general public at least thirty days prior to the date of submission of the amendment to the Secretary.

[(3) The State has established priorities for providing a free appropriate public education to all children with disabilities, which priorities shall meet the timetables set forth in clause (B) of paragraph (2) of this section, first with respect to chil-

dren with disabilities who are not receiving an education, and second with respect to children with disabilities, within each disability category, with the most severe disabilities who are receiving an inadequate education, and has made adequate progress in meeting the timetables set forth in clause (B) of paragraph (2) of this section.

[(4) Each local educational agency in the State will maintain records of the individualized education program for each child with a disability, and such program shall be established, reviewed, and revised as provided in section 614(a)(5).

[(5) The State has established (A) procedural safeguards as required by section 615, (B) procedures to assure that, to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and that special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily, and (C) procedures to assure that testing and evaluation materials and procedures utilized for the purposes of evaluation and placement of children with disabilities will be selected and administered so as not to be racially or culturally discriminatory. Such materials or procedures shall be provided and administered in the child's native language or mode of communication, unless it clearly is not feasible to do so, and no single procedure shall be the sole criterion for determining an appropriate educational program for a child.

[(6) The State educational agency shall be responsible for assuring that the requirements of this part are carried out and that all educational programs for children with disabilities within the State, including all such programs administered by any other State or local agency, will be under the general supervision of the persons responsible for educational programs for children with disabilities in the State educational agency and shall meet educational standards of the State educational agency. This paragraph shall not be construed to limit the responsibility of agencies other than educational agencies in a State from providing or paying for some or all of the costs of a free appropriate public education to be provided children with disabilities in the State.

[(7) The State shall assure that (A) in carrying out the requirements of this section procedures are established for consultation with individuals involved in or concerned with the education of children with disabilities, including individuals with disabilities and parents or guardians of children with disabilities, and (B) there are public hearings, adequate notice of such hearings, and an opportunity for comment available to the general public prior to adoption of the policies, programs, and procedures required pursuant to the provisions of this section and section 613.

[STATE PLANS

[SEC. 613. (a) Any State meeting the eligibility requirements set forth in section 612 and desiring to participate in the program under this part shall submit to the Secretary, through its State educational agency, a State plan at such time, in such manner, and containing or accompanied by such information, as the Secretary deems necessary. Each such plan shall—

[(1) set forth policies and procedures designed to assure that funds paid to the State under this part will be expended in accordance with the provisions of this part, with particular attention given to the provisions of sections 611(b), 611(c), 611(d), 612(2), and 612(3);

[(2) provide that programs and procedures will be established to assure that funds received by the State or any of its political subdivisions under any other Federal program under which there is specific authority for the provision of assistance for the education of children with disabilities, will be utilized by the State, or any of its political subdivisions, only in a manner consistent with the goal of providing a free appropriate public education for all children with disabilities, except that nothing in this clause shall be construed to limit the specific requirements of the laws governing such Federal programs;

[(3) describe, consistent with the purposes of this Act and with the comprehensive system of personnel development described in section 676(b)(8), a comprehensive system of personnel development that shall include—

[(A) a description of the procedures and activities the State will undertake to ensure an adequate supply of qualified special education and related services personnel, including—

[(i) the development and maintenance of a system for determining, on an annual basis—

[(I) the number and type of personnel, including leadership personnel, that are employed in the provision of special education and related services, by area of specialization, including the number of such personnel who are employed on an emergency, provisional, or other basis, who do not hold appropriate State certification or licensure; and

[(II) the number and type of personnel, including leadership personnel, needed, and a projection of the numbers of such personnel that will be needed in five years, based on projections of individuals to be served, retirement and other leaving of personnel from the field, and other relevant factors;

[(ii) the development and maintenance of a system for determining, on an annual basis, the institutions of higher education within the State that are preparing special education and related services personnel, including leadership personnel, by area of specialization, including—

[(I) the numbers of students enrolled in such programs, and

[(II) the number who graduated with certification or licensure, or with credentials to qualify for certification or licensure, during the past year; and

[(iii) the development, updating, and implementation of a plan that—

[(I) will address current and projected special education and related services personnel needs, including the need for leadership personnel; and

[(II) coordinates and facilitates efforts among State and local educational agencies, institutions of higher education, and professional associations to recruit, prepare, and retain qualified personnel, including personnel from minority backgrounds, and personnel with disabilities; and

[(B) a description of the procedures and activities the State will undertake to ensure that all personnel necessary to carry out this part are appropriately and adequately prepared, including—

[(i) a system for the continuing education of regular and special education and related services personnel;

[(ii) procedures for acquiring and disseminating to teachers, administrators, and related services personnel significant knowledge derived from education research and other sources; and

[(iii) procedures for adopting, where appropriate, promising practices, materials, and technology.

[(4) set forth policies and procedures to assure—

[(A) that, to the extent consistent with the number and location of children with disabilities in the State who are enrolled in private elementary and secondary schools, provision is made for the participation of such children in the program assisted or carried out under this part by providing for such children special education and related services; and

[(B) that—

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

[(ii) in all such instances, the State educational agency shall determine whether such schools and facilities meet standards that apply to State and local educational agencies and that children so served have

all the rights they would have if served by such agencies;

[(5) set forth policies and procedures which assure that the State shall seek to recover any funds made available under this part for services to any child who is determined to be erroneously classified as eligible to be counted under section 611(a) or section 611(d);

[(6) provide satisfactory assurance that the control of funds provided under this part, and title to property derived therefrom, shall be in a public agency for the uses and purposes provided in this part, and that a public agency will administer such funds and property;

[(7) provide for—

[(A) making such reports in such form and containing such information as the Secretary may require to carry out the Secretary's functions under this part, and

[(B) keeping such records and affording such access thereto as the Secretary may find necessary to assure the correctness and verification of such reports and proper disbursement of Federal funds under this part;

[(8) provide procedures to assure that final action with respect to any application submitted by a local educational agency or an intermediate educational unit shall not be taken without first affording the local educational agency or intermediate educational unit involved reasonable notice and opportunity for a hearing;

[(9) provide satisfactory assurance that Federal funds made available under this part—

[(A) will not be commingled with State funds, and

[(B) will be so used as to supplement and increase the level of Federal, State, and local funds (including funds that are not under the direct control of State or local educational agencies) expended for special education and related services provided to children with disabilities under this part and in no case to supplant such Federal, State and local funds, except that, where the State provides clear and convincing evidence that all children with disabilities have available to them a free appropriate public education, the Secretary may waive in part the requirement of this subparagraph if the Secretary concurs with the evidence provided by the State;

[(10) provide, consistent with procedures prescribed pursuant to section 617(a)(2), satisfactory assurance that such fiscal control and fund accounting procedures will be adopted as may be necessary to assure proper disbursement of, and accounting for, Federal funds paid under this part to the State, including any such funds paid by the State to local educational agencies and intermediate educational units;

[(11) provide for procedures for evaluation at least annually of the effectiveness of programs in meeting the educational needs of children with disabilities (including evaluation of individualized education programs), in accordance with such criteria that the Secretary shall prescribe pursuant to section 617;

[(12) provide that the State has an advisory panel, appointed by the Governor or any other official authorized under State law to make such appointments, composed of individuals involved in or concerned with the education of children with disabilities, including individuals with disabilities, teachers, parents or guardians of children with disabilities, State and local education officials, and administrators of programs for children with disabilities, which—

[(A) advises the State educational agency of unmet needs within the State in the education of children with disabilities,

[(B) comments publicly on any rules or regulations proposed for issuance by the State regarding the education of children with disabilities and the procedures for distribution of funds under this part, and

[(C) assists the State in developing and reporting such data and evaluations as may assist the Secretary in the performance of the responsibilities of the Secretary under section 618;

[(13) set forth policies and procedures for developing and implementing interagency agreements between the State educational agency and other appropriate State and local agencies to—

[(A) define the financial responsibility of each agency for providing children and youth with disabilities with free appropriate public education, and

[(B) resolve interagency disputes, including procedures under which local educational agencies may initiate proceedings under the agreement in order to secure reimbursement from other agencies or otherwise implement the provisions of the agreement;

[(14) set forth policies and procedures relating to the establishment and maintenance of standards to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained, including—

[(A) the establishment and maintenance of standards which are consistent with any State approved or recognized certification, licensing, registration, or other comparable requirements which apply to the area in which such personnel are providing special education or related services, and

[(B) to the extent such standards are not based on the highest requirements in the State applicable to a specific profession or discipline, the steps the State is taking to require the retraining or hiring of personnel that meet appropriate professional requirements in the State; and

[(15) set forth policies and procedures relating to the smooth transition for those individuals participating in the early intervention program assisted under part H who will participate in preschool programs assisted under this part, including a method of ensuring that when a child turns age three an individualized education program, or, if consistent with sections 614(a)(5) and 677(d), an individualized family service plan, has been de-

veloped and is being implemented by such child's third birthday.

[(b) Whenever a State educational agency provides free appropriate public education for children with disabilities, or provides direct services to such children, such State educational agency shall include, as part of the State plan required by subsection (a) of this section, such additional assurances not specified in such subsection (a) as are contained in section 614(a), except that funds available for the provision of such education or services may be expended without regard to the provisions relating to excess costs in section 614(a).

[(c)(1) The Secretary shall approve any State plan and any modification thereof which—

[(A) is submitted by a State eligible in accordance with section 612; and

[(B) meets the requirements of subsection (a) and subsection (b).

[(2) The Secretary shall disapprove any State plan which does not meet the requirements of paragraph (1), but shall not finally disapprove a State plan except after reasonable notice and opportunity for a hearing to the State.

[(d)(1) If, on the date of enactment of the Education of the Handicapped Act Amendments of 1983, a State educational agency is prohibited by law from providing for the participation in special programs of children with disabilities enrolled in private elementary and secondary schools as required by subsection (a)(4), the Secretary shall waive such requirement, and shall arrange for the provision of services to such children through arrangements which shall be subject to the requirements of subsection (a)(4).

[(2)(A) When the Secretary arranges for services pursuant to this subsection, the Secretary, after consultation with the appropriate public and private school officials, shall pay to the provider of such services an amount per child which may not exceed the Federal amount provided per child under this part to all children with disabilities enrolled in the State for services for the fiscal year preceding the fiscal year for which the determination is made.

[(B) Pending final resolution of any investigation or complaint that could result in a determination under this subsection, the Secretary may withhold from the allocation of the affected State educational agency the amount the Secretary estimates would be necessary to pay the cost of such services.

[(C) Any determination by the Secretary under this section shall continue in effect until the Secretary determines that there will no longer be any failure or inability on the part of the State educational agency to meet the requirements of subsection (a)(4).

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

[(B) If a State educational agency is dissatisfied with the Secretary's final action after a proceeding under subparagraph (A) of this paragraph, it may, within 60 days after notice of such action,

file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings on which the Secretary based the Secretary's action, as provided in section 2112 of title 28, United States Code.

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

[(D) Upon the filing of a petition under subparagraph (B), the court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

[(e) This Act shall not be construed to permit a State to reduce medical and other assistance available or to alter eligibility under titles V and XIX of the Social Security Act with respect to the provision of a free appropriate public education for children with disabilities within the State.

[APPLICATION

[SEC. 614. (a) A local educational agency or an intermediate educational unit which desires to receive payments under section 611(d) for any fiscal year shall submit an application to the appropriate State educational agency. Such application shall—

[(1) provide satisfactory assurance that payments under this part will be used for excess costs directly attributable to programs which—

[(A) provide that all children residing within the jurisdiction of the local educational agency or the intermediate educational unit who are disabled, regardless of the severity of their disability, and are in need of special education and related services will be identified, located, and evaluated, and provide for the inclusion of a practical method of determining which children are currently receiving needed special education and related services and which children are not currently receiving such education and services;

[(B) establish policies and procedures in accordance with detailed criteria prescribed under section 617(c);

[(C) establish a goal of providing full educational opportunities to all children with disabilities, including—

[(i) procedures for the implementation and use of the comprehensive system of personnel development established by the State educational agency under section 613(a)(3);

[(ii) the provision of, and the establishment of priorities for providing, a free appropriate public education

to all children with disabilities, first with respect to handicapped children who are not receiving an education, and second with respect to children with disabilities, within each disability, with the most severe disabilities who are receiving an inadequate education;

[(iii) the participation and consultation of the parents or guardian of such children; and

[(iv) to the maximum extent practicable and consistent with the provisions of section 612(5)(B), the provision of special services to enable such children to participate in regular educational programs;

[(D) establish a detailed timetable for accomplishing the goal described in subclause (C); and

[(E) provide a description of the kind and number of facilities, personnel, and services necessary to meet the goal described in subclause (C);

[(2) provide satisfactory assurance that—

[(A) the control of funds provided under this part, and title to property derived from such funds, shall be in a public agency for the uses and purposes provided in this part, and that a public agency will administer such funds and property,

[(B) Federal funds expended by local educational agencies and intermediate educational units for programs under this part—

[(i) shall be used to pay only the excess costs directly attributable to the education of children with disabilities; and

[(ii) shall be used to supplement and, to the extent practicable, increase the level of State and local funds expended for the education of children with disabilities, and in no case to supplant such State and local funds; and

[(C) State and local funds will be used in the jurisdiction of the local educational agency or intermediate educational unit to provide services in program areas that, taken as a whole, are at least comparable to services being provided in areas of such jurisdiction that are not receiving funds under this part;

[(3) provide for—

[(A) furnishing such information (which, in the case of reports relating to performance, is in accordance with specific performance criteria related to program objectives), as may be necessary to enable the State educational agency to perform its duties under this part, including information relating to the educational achievement of children with disabilities participating in programs carried out under this part; and

[(B) keeping such records, and affording such access to such records, as the State educational agency may find necessary to assure the correctness and verification of such information furnished under subparagraph (A);

[(4) provide for making the application and all pertinent documents related to such application available to parents, guard-

ians, and other members of the general public, and provide that all evaluations and reports required under clause (3) shall be public information;

[(5) provide assurances that the local educational agency or intermediate educational unit will establish or revise, whichever is appropriate, an individualized education program for each child with a disability (or, if consistent with State policy and at the discretion of the local educational agency or intermediate educational unit, and with the concurrence of the parents or guardian, an individualized family service plan described in section 677(d) for each child with a disability aged 3 to 5, inclusive) at the beginning of each school year and will then review and, if appropriate, revise, its provisions periodically, but not less than annually;

[(6) provide satisfactory assurance that policies and programs established and administered by the local educational agency or intermediate educational unit shall be consistent with the provisions of paragraph (1) through paragraph (7) of section 612 and section 613(a); and

[(7) provide satisfactory assurance that the local educational agency or intermediate educational unit will establish and maintain procedural safeguards in accordance with the provisions of sections 612(5)(B), 612(5)(C), and 615.

[(b)(1) A State educational agency shall approve any application submitted by a local educational agency or an intermediate educational unit under subsection (a) if the State educational agency determines that such application meets the requirements of subsection (a), except that no such application may be approved until the State plan submitted by such State educational agency under subsection (a) is approved by the Secretary under section 613(c). A State educational agency shall disapprove any application submitted by a local educational agency or an intermediate educational unit under subsection (a) if the State educational agency determines that such application does not meet the requirements of subsection (a).

[(2)(A) Whenever a State educational agency, after reasonable notice and opportunity for a hearing, finds that a local educational agency or an intermediate educational unit, in the administration of an application approved by the State educational agency under paragraph (1), has failed to comply with any requirement set forth in such application, the State educational agency, after giving appropriate notice to the local educational agency or the intermediate educational unit, shall—

[(i) make no further payments to such local educational agency or such intermediate educational unit under section 620 until the State educational agency is satisfied that there is no longer any failure to comply with the requirement involved; or

[(ii) take such finding into account in its review of any application made by such local educational agency or such intermediate educational unit under subsection (a).

[(B) The provisions of the last sentence of section 616(a) shall apply to any local educational agency or any intermediate edu-

cational unit receiving any notification from a State educational agency under this paragraph.

[(3) In carrying out its functions under paragraph (1), each State educational agency shall consider any decision made pursuant to a hearing held under section 615 which is adverse to the local educational agency or intermediate educational unit involved in such decision.

[(c)(1) A State educational agency may, for purposes of the consideration and approval of applications under this section, require local educational agencies to submit a consolidated application for payments if such State educational agency determines that any individual application submitted by any such local educational agency will be disapproved because such local educational agency is ineligible to receive payments because of the application of section 611(c)(4)(A)(i) or such local educational agency would be unable to establish and maintain programs of sufficient size and scope to effectively meet the educational needs of children with disabilities.

[(2)(A) In any case in which a consolidated application of local educational agencies is approved by a State educational agency under paragraph (1), the payments which such local educational agencies may receive shall be equal to the sum of payments to which each such local educational agency would be entitled under section 611(d) if an individual application of any such local educational agency had been approved.

[(B) The State educational agency shall prescribe rules and regulations with respect to consolidated applications submitted under this subsection which are consistent with the provisions of paragraph (1) through paragraph (7) of section 612 and section 613(a) and which provide participating local educational agencies with joint responsibilities for implementing programs receiving payments under this part.

[(C) In any case in which an intermediate educational unit is required pursuant to State law to carry out the provisions of this part, the joint responsibilities given to local educational agencies under subparagraph (B) shall not apply to the administration and disbursement of any payments received by such intermediate educational unit. Such responsibilities shall be carried out exclusively by such intermediate educational unit.

[(d) Whenever a State educational agency determines that a local educational agency—

[(1) is unable or unwilling to establish and maintain programs of free appropriate public education which meet the requirements established in subsection (a);

[(2) is unable or unwilling to be consolidated with other local educational agencies in order to establish and maintain such programs; or

[(3) has one or more children with disabilities who can best be served by a regional or State center designed to meet the needs of such children;

the State educational agency shall use the payments which would have been available to such local educational agency to provide special education and related services directly to children with disabilities residing in the area served by such local educational agency. The State educational agency may provide such education and

services in such manner, and at such locations (including regional or State centers), as it considers appropriate, except that the manner in which such education and services are provided shall be consistent with the requirements of this part.

[(e) Whenever a State educational agency determines that a local educational agency is adequately providing a free appropriate public education to all children with disabilities residing in the area served by such agency with State and local funds otherwise available to such agency, the State educational agency may reallocate funds (or such portion of those funds as may not be required to provide such education and services) made available to such agency, pursuant to section 611(d), to such other local educational agencies within the State as are not adequately providing special education and related services to all children with disabilities residing in the areas served by such other local educational agencies.

[(f) Notwithstanding the provisions of subsection (a)(2)(B)(ii), any local educational agency which is required to carry out any program for the education of children with disabilities pursuant to a State law shall be entitled to receive payments under section 611(d) for use in carrying out such program, except that such payments may not be used to reduce the level of expenditures for such program made by such local educational agency from State or local funds below the level of such expenditures for the fiscal year prior to the fiscal year for which such local educational agency seeks such payments.

[TREATMENT OF CHAPTER 1 STATE AGENCIES

[SEC. 614A. (a) For the purpose of making payments under sections 611 and 619 of this Act, any State agency that received funds for fiscal year 1994 under subpart 2 of part D of chapter 1 of title I of the Elementary and Secondary Education Act of 1965 (as such subpart was in existence on the day preceding the date of enactment of the Improving America's Schools Act of 1994) shall be treated as if the State agency were a local educational agency.

[(b) Any State agency which desires to receive payments under section 611(d) and section 619(c)(3) for any fiscal year shall submit an application to the State educational agency. Such application shall—

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

[(2) meet those requirements of section 614 that the Secretary finds appropriate.

[(c) Section 611(c)(4) shall not apply with respect to a State agency that is eligible for a payment under this part by application of this section.

[PROCEDURAL SAFEGUARDS

[SEC. 615. (a) Any State educational agency, any local educational agency, and any intermediate educational unit which receives assistance under this part shall establish and maintain procedures in accordance with subsection (b) through subsection (e) of

this section to assure that children with disabilities and their parents or guardians are guaranteed procedural safeguards with respect to the provision of free appropriate public education by such agencies and units.

[(b)(1) The procedures required by this section shall include, but shall not be limited to—

[(A) an opportunity for the parents or guardian of a child with a disability to examine all relevant records with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to such child, and to obtain an independent educational evaluation of the child;

[(B) procedures to protect the rights of the child whenever the parents or guardian of the child are not known, unavailable, or the child is a ward of the State, including the assignment of an individual (who shall not be an employee of the State educational agency, local educational agency, or intermediate educational unit involved in the education or care of the child) to act as a surrogate for the parents or guardian;

[(C) written prior notice to the parents or guardian of the child whenever such agency or unit—

[(i) proposes to initiate or change, or

[(ii) refuses to initiate or change,

the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child;

[(D) procedures designed to assure that the notice required by clause (C) fully informs the parents or guardian, in the parents' or guardian's native language, unless it clearly is not feasible to do so, of all procedures available pursuant to this section; and

[(E) an opportunity to present complaints with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.

[(2) Whenever a complaint has been received under paragraph (1) of this subsection, the parents or guardian shall have an opportunity for an impartial due process hearing which shall be conducted by the State educational agency or by the local educational agency or intermediate educational unit, as determined by State law or by the State educational agency. No hearing conducted pursuant to the requirements of this paragraph shall be conducted by an employee of such agency or unit involved in the education or care of the child.

[(c) If the hearing required in paragraph (2) of subsection (b) of this section is conducted by a local educational agency or an intermediate educational unit, any party aggrieved by the findings and decision rendered in such a hearing may appeal to the State educational agency which shall conduct an impartial review of such hearing. The officer conducting such review shall make an independent decision upon completion of such review.

[(d) Any party to any hearing conducted pursuant to subsections (b) and (c) shall be accorded—

[(1) the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities,

[(2) the right to present evidence and confront, cross-examine, and compel the attendance of witnesses,

[(3) the right to a written or electronic verbatim record of such hearing, and

[(4) the right to written findings of fact and decisions (which findings and decisions shall be made available to the public consistent with the requirements of section 617(c) and shall also be transmitted to the advisory panel established pursuant to section 613(a)(12)).

[(e)(1) A decision made in a hearing conducted pursuant to paragraph (2) of subsection (b) shall be final, except that any party involved in such hearing may appeal such decision under the provisions of subsection (c) and paragraph (2) of this subsection. A decision made under subsection (c) shall be final, except that any party may bring an action under paragraph (2) of this subsection.

[(2) Any party aggrieved by the findings and decision made under subsection (b) who does not have the right to an appeal under subsection (c), and any party aggrieved by the findings and decision under subsection (c), shall have the right to bring a civil action with respect to the complaint presented pursuant to this section, which action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy. In any action brought under this paragraph the court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and, basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.

[(3)(A) Except as provided in subparagraph (B), during the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents or guardian otherwise agree, the child shall remain in the then current educational placement of such child, or, if applying for initial admission to a public school, shall, with the consent of the parents or guardian, be placed in the public school program until all such proceedings have been completed.

[(B)(i) Except as provided in clause (iii), if the proceedings conducted pursuant to this section involve a child with a disability who is determined to have brought a weapon to school under the jurisdiction of such agency, then the child may be placed in an interim alternative educational setting, in accordance with State law, for not more than 45 days.

[(ii) The interim alternative educational setting described in clause (i) shall be decided by the individuals described in section 602(a)(20).

[(iii) If a parent or guardian of a child described in clause (i) requests a due process hearing pursuant to paragraph (2) of subsection (b), then the child shall remain in the alternative educational setting described in such clause during the pendency of any proceedings conducted pursuant to this section, un-

less the parents and the local educational agency agree otherwise.

[(iv) For the purpose of this section, the term "weapon" means a firearm as such term is defined in section 921 of title 18, United States Code.

[(4)(A) The district courts of the United States shall have jurisdiction of actions brought under this subsection without regard to the amount in controversy.

[(B) In any action or proceeding brought under this subsection, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to the parents or guardian of a child or youth with a disability who is the prevailing party.

[(C) For the purpose of this subsection, fees awarded under this subsection shall be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this subsection.

[(D) No award of attorneys' fees and related costs may be made in any action or proceeding under this subsection for services performed subsequent to the time of a written offer of settlement to a parent or guardian, if—

[(i) the offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than ten days before the proceeding begins;

[(ii) the offer is not accepted within ten days; and

[(iii) the court or administrative officer finds that the relief finally obtained by the parents or guardian is not more favorable to the parents or guardian than the offer of settlement.

[(E) Notwithstanding the provisions of subparagraph (D), an award of attorneys' fees and related costs may be made to a parent or guardian who is the prevailing party and who was substantially justified in rejecting the settlement offer.

[(F) Whenever the court finds that—

[(i) the parent or guardian, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;

[(ii) the amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, experience, and reputation; or

[(iii) the time spent and legal services furnished were excessive considering the nature of the action or proceeding,

the court shall reduce, accordingly, the amount of the attorneys' fees awarded under this subsection.

[(G) The provisions of subparagraph (F) shall not apply in any action or proceeding if the court finds that the State or local educational agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of section 615 of this Act.

[(f) Nothing in this title shall be construed to restrict or limit the rights, procedures, and remedies available under the Constitution, title V of the Rehabilitation Act of 1973, or other Federal statutes protecting the rights of children and youth with disabilities, except

that before the filing of a civil action under such laws seeking relief that is also available under this part, the procedures under subsections (b)(2) and (c) shall be exhausted to the same extent as would be required had the action been brought under this part.

[WITHHOLDING AND JUDICIAL REVIEW

[SEC. 616. (a) Whenever the Secretary, after reasonable notice and opportunity for hearing to the State educational agency involved (and to any local educational agency or intermediate educational unit affected by any failure described in clause (2)), finds—

[(1) that there has been a failure to comply substantially with any provision of section 612 or section 613, or

[(2) that in the administration of the State plan there is a failure to comply with any provision of this part or with any requirements set forth in the application of a local educational agency or intermediate educational unit approved by the State educational agency pursuant to the State plan, the Secretary—

[(A) shall, after notifying the State educational agency, withhold any further payments to the State under this part, and

[(B) may, after notifying the State educational agency, withhold further payments to the State under the Federal programs specified in section 613(a)(2) within the Secretary's jurisdiction, to the extent that funds under such programs are available for the provision of assistance for the education of children with disabilities.

If the Secretary withholds further payments under clause (A) or clause (B) the Secretary may determine that such withholding will be limited to programs or projects under the State plan, or portions thereof, affected by the failure, or that the State educational agency shall not make further payments under this part to specified local educational agencies or intermediate educational units affected by the failure. Until the Secretary is satisfied that there is no longer any failure to comply with the provisions of this part, as specified in clause (1) or clause (2), no further payments shall be made to the State under this part or under the Federal programs specified in section 613(a)(2) within the Secretary's jurisdiction to the extent that funds under such programs are available for the provision of assistance for the education of children with disabilities, or payments by the State educational agency under this part shall be limited to local educational agencies and intermediate educational units whose actions did not cause or were not involved in the failure, as the case may be. Any State educational agency, local educational agency, or intermediate educational unit in receipt of a notice pursuant to the first sentence of this subsection shall, by means of a public notice, take such measures as may be necessary to bring the pendency of an action pursuant to this subsection to the attention of the public within the jurisdiction of such agency or unit.

[(b)(1) If any State is dissatisfied with the Secretary's final action with respect to its State plan submitted under section 613, such State may, within sixty days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of

the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings upon which the Secretary's action was based, as provided in section 2112 of title 28, United States Code.

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

[(3) Upon the filing of such petition, the court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

[ADMINISTRATION

[SEC. 617. (a)(1) In carrying out the Secretary's duties under this part, the Secretary shall—

[(A) cooperate with, and furnish all technical assistance necessary, directly or by grant or contract, to the States in matters relating to the education of children with disabilities and the execution of the provisions of this part;

[(B) provide such short-term training programs and institutes as are necessary;

[(C) disseminate information, and otherwise promote the education of all handicapped children within the States; and

[(D) assure that each State shall, within one year after the date of the enactment of the Education for All Handicapped Children Act of 1975 and every year thereafter, provide certification of the actual number of children with disabilities receiving special education and related services in such State.

[(2) As soon as practicable after the date of the enactment of the Education for All Handicapped Children Act of 1975, the Secretary shall, by regulation, prescribe a uniform financial report to be utilized by State educational agencies in submitting plans under this part in order to assure equity among the States.

[(b) In carrying out the provisions of this part, the Secretary shall issue, not later than January 1, 1977, amend, and revoke such rules and regulations as may be necessary. No other less formal method of implementing such provisions is authorized.

[(c) The Secretary shall take appropriate action, in accordance with the provisions of section 438 of the General Education Provisions Act, to assure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by the Secretary and by State and local educational agencies pursuant to the provisions of this part.

[(d) The Secretary is authorized to hire qualified personnel necessary to conduct data collection and evaluation activities required by subsections (b), (c) and (d) of section 618 and to carry out the Secretary's duties under subsection (a)(1) of this subsection without

regard to the provisions of title 5, United States Code, relating to appointments in the competitive service and without regard to chapter 51 and subchapter III of chapter 53 of such title relating to classification and general schedule pay rates except that no more than twenty such personnel shall be employed at any time.

[EVALUATION AND PROGRAM INFORMATION

[SEC. 618. (a) The Secretary shall, directly or by grant, contract, or cooperative agreement, collect data and conduct studies, investigations, analyses, and evaluations—

[(1) to assess progress in the implementation of this Act;

[(2) to assess the impact and effectiveness of State and local efforts, and efforts by the Secretary of the Interior, to provide—

[(A) free appropriate public education to children and youth with disabilities; and

[(B) early intervention services to infants and toddlers with disabilities; and

[(3) to provide—

[(A) Congress with information relevant to policymaking; and

[(B) State, local, and Federal agencies, including the Department of the Interior, with information relevant to program management, administration, delivery, and effectiveness with respect to such education and early intervention services.

[(b)(1) In carrying out subsection (a), the Secretary, on at least an annual basis (except as provided in subparagraph (E)), shall obtain data concerning programs and projects assisted under this Act and under other Federal laws relating to infants, toddlers, children, and youth with disabilities, and such additional information, from State and local educational agencies, the Secretary of the Interior, and other appropriate sources, including designated lead agencies under part H (except that during fiscal year 1992 such entities may not under this subsection be required to provide data regarding traumatic brain injury or autism), including—

[(A) the number of infants, toddlers, children, and youth with disabilities in each State receiving a free appropriate public education or early intervention services—

[(i) in age groups 0–2 and 3–5, and

[(ii) in age groups 6–11, 12–17, and 18–21, by disability category;

[(B) the number of children and youth with disabilities in each State, by disability category, who—

[(i) are participating in regular educational programs (consistent with the requirements of section 612(5)(B) and 614(a)(1)(C)(iv));

[(ii) are in separate classes, separate schools or facilities, or public or private residential facilities; or

[(iii) have been otherwise removed from the regular education environment;

[(C) the number of children and youth with disabilities exiting the educational system each year through program

completion or otherwise, by disability category, for each year of age from age 14 through 21;

[(D) the number and type of personnel that are employed in the provision of—

[(i) special education and related services to children and youth with disabilities, by disability category served; and

[(ii) early intervention services to infants and toddlers with disabilities; and

[(E) at least every three years, using the data collection method the Secretary finds most appropriate, a description of the services expected to be needed, by disability category, for youth with disabilities in age groups 12–17 and 18–21 who have left the educational system.

[(2) Beginning with fiscal year 1993, the Secretary shall obtain and report data from the States under section 613(a)(3)(A), including data addressing current and projected special education and related services needs, and data on the number of personnel who are employed on an emergency, provisional, or other basis, who do not hold appropriate State certification or licensure, and other data for the purpose of meeting the requirements of this subsection pertaining to special education and related services personnel.

[(3) The Secretary shall provide, directly or by grant, contract, or cooperative agreement, technical assistance to State agencies providing the data described in paragraphs (1) and (2) to achieve accurate and comparable information.

[(c)(1) The Secretary shall make grants to, or enter into contracts or cooperative agreements with, State or local educational agencies, institutions of higher education, public agencies, and private nonprofit organizations, and, when necessary because of the unique nature of the study, private-for-profit organizations, for the purpose of conducting studies, analyses, syntheses, and investigations for improving program management, administration, delivery, and effectiveness necessary to provide full educational opportunities and early interventions for all children with disabilities from birth through age 21. Such studies and investigations shall gather information necessary for program and system improvements including—

[(A) developing effective, appropriate criteria and procedures to identify, evaluate, and serve infants, toddlers, children, and youth with disabilities from minority backgrounds for purposes of program eligibility, program planning, delivery of services, program placement, and parental involvement;

[(B) planning and developing effective early intervention services, special education, and related services to meet the complex and changing needs of infants, toddlers, children, and youth with disabilities;

[(C) developing and implementing a comprehensive system of personnel development needed to provide qualified personnel in sufficient number to deliver special education, related services, and early intervention services;

[(D) developing the capacity to implement practices having the potential to integrate children with disabilities, to the maximum extent appropriate, with children who are not disabled;

[(E) effectively allocating and using human and fiscal resources for providing early intervention, special education, and related services;

[(F) strengthening programs and services to improve the progress of children and youth with disabilities while in special education, and to effect a successful transition when such children and youth leave special education;

[(G) achieving interagency coordination to maximize resource utilization and continuity in services provided to infants, toddlers, children, and youth with disabilities;

[(H) strengthening parent-school communication and coordination to improve the effectiveness of planning and delivery of interventions and instruction, thereby enhancing development and educational progress; and

[(I) the identification of environmental, organizational, resource, and other conditions necessary for effective professional practice.

[(2)(A) The studies and investigations authorized under this subsection may be conducted through surveys, interviews, case studies, program implementation studies, secondary data analyses and syntheses, and other appropriate methodologies.

[(B) The studies and investigations conducted under this subsection shall address the information needs of State and local educational agencies for improving program management, administration, delivery, and effectiveness.

[(3) The Secretary shall develop and implement a process for the on-going identification of national program information needed for improving the management, administration, delivery, and effectiveness of programs and services provided under this Act. The process shall identify implementation issues, desired improvements, and information needed by State and local agencies to achieve such improvements, and shall be conducted in cooperation with State educational agencies that can ensure broad-based statewide input from each cooperating State. The Secretary shall publish for public comment in the Federal Register every 3 years a program information plan describing such information needs. Such program information plan shall be used to determine the priorities for, and activities carried out under, this subsection to produce, organize, and increase utilization of program information. Such program information plan shall be included in the annual report submitted under section 618 every 3 years.

[(4) In providing funds under this subsection, the Secretary shall require recipients to prepare their procedures, findings, and other relevant information in a form that will maximize their dissemination and use, especially through dissemination networks and mechanisms authorized by this Act, and in a form for inclusion in the annual report to Congress authorized under subsection (g).

[(d)(1) The Secretary shall enter into cooperative agreements with State educational agencies and other State agencies to carry out studies to assess the impact and effectiveness of programs, policies, and procedures assisted under this Act.

[(2) The agreements referred to in paragraph (1) shall—

[(A) provide for the payment of not more than 60 percent of the total cost of studies conducted by a participating State agency to assess the impact and effectiveness of this Act; and

[(B) be developed in consultation with the State Advisory Panel established under section 613(a)(12), local educational agencies, and others involved in, or concerned with, the education of children and youth with disabilities and the provision of early intervention services to infants and toddlers with disabilities.

[(3) The Secretary shall provide technical assistance to participating State agencies in the implementation of the study design, analysis, and reporting procedures.

[(e)(1) The Secretary shall by grant, contract, or cooperative agreement, provide for special studies to assess progress in the implementation of this Act, and to assess the impact and effectiveness of State and local efforts and efforts by the Secretary of the Interior to provide free appropriate public education to children and youth with disabilities, and early intervention services to infants and toddlers with disabilities. Reports from such studies shall include recommendations for improving programs and services to such individuals. The Secretary shall, beginning in fiscal year 1993 and for every third year thereafter, submit to the appropriate committees of each House of the Congress and publish in the Federal Register proposed priorities for review and comment.

[(2) In selecting priorities for fiscal years 1991 through 1994, the Secretary may give first consideration to—

[(A) completing a longitudinal study of a sample of students with disabilities, examining—

[(i) the full range of disabling conditions;

[(ii) the educational progress of students with disabilities while in special education; and

[(iii) the occupational, educational, and independent living status of students with disabilities after graduating from secondary school or otherwise leaving special education.

[(B) conducting pursuant to this subsection a nationally representative study focusing on the types, number, and intensity of related services provided to children with disabilities by disability category.

[(C) conducting pursuant to this subsection a study that examines the degree of disparity among States with regard to the placement in various educational settings of children and youth with similar disabilities, especially those with mental retardation, and, to the extent that such disparity exists, the factors that lead such children and youth to be educated in significantly different educational settings.

[(D) conducting pursuant to this subsection a study that examines the factors that have contributed to the decline in the number of children classified as mentally retarded since the implementation of this Act, and examines the current disparity among States in the percentage of children so classified.

[(E) conducting pursuant to this subsection a study that examines the extent to which out-of-community residential programs are used for children and youth who are seriously emo-

tionally disturbed, the factors that influence the selection of such placements, the degree to which such individuals transition back to education programs in their communities, and the factors that facilitate or impede such transition.

[(F) conducting pursuant to this subsection a study that examines (i) the factors that influence the referral and placement decisions and types of placements, by disability category and English language proficiency, of minority children relative to other children, (ii) the extent to which these children are placed in regular education environments, (iii) the extent to which the parents of these children are involved in placement decisions and in the development and implementation of the individualized education program and the results of such participation, and (iv) the type of support provided to parents of these children that enable these parents to understand and participate in the educational process.

[(f) The Secretary shall make grants to, or enter into contracts or cooperative agreements with, State or local educational agencies, institutions of higher education, other public agencies, and private nonprofit organizations to support activities that organize, synthesize, interpret, and integrate information obtained under subsections (c) and (e) with relevant knowledge obtained from other sources. Such activities shall include the selection and design of content, formats, and means for communicating such information effectively to specific or general audiences, in order to promote the use of such information in improving program administration and management, and service delivery and effectiveness.

[(g)(1)(A) The Secretary is authorized to conduct activities, directly or by grant, contract, or cooperative agreement, to prepare an annual report on the progress being made toward the provision of—

[(i) a free appropriate public education to all children and youth with disabilities; and

[(ii) early intervention services for infants and toddlers with disabilities.

[(B) Not later than 120 days after the close of each fiscal year, the Secretary shall transmit a copy of the report authorized under subparagraph (A) to the appropriate committees of each House of Congress. The annual report shall be published and disseminated in sufficient quantities to the education and disability communities and to other interested parties.

[(2) The Secretary shall include in each annual report under paragraph (1)—

[(A) a compilation and analysis of data gathered under subsection (b) and under part H; and

[(B) a description of findings and determinations resulting from monitoring reviews of State implementation of this part.

[(3) In the annual report under paragraph (1) for fiscal year 1991 (which is published in 1992) and for every third year thereafter, the Secretary shall include in the annual report—

[(A) an index of all current projects funded under parts C through G; and

[(B) data reported under sections 622 and 634.

[(4) The Secretary shall include in each annual report under paragraph (1) the results of research and related activities conducted under part E that the Secretary determines are relevant to the effective implementation of this Act.

[(5) The Secretary shall, in consultation with the National Council on Disability and the Bureau of Indian Affairs Advisory Committee for Exceptional Children, include a description of the status of early intervention services for infants and toddlers with disabilities from birth through age 2, and special education and related services to children with disabilities from 3 through 5 years of age (including those receiving services through Head Start, developmental disabilities programs, crippled children's services, mental health/mental retardation agencies, and State child-development centers and private agencies under contract with local schools).

[(h) There are authorized to be appropriated $12,000,000 for fiscal year 1991 and such sums as may be necessary for fiscal years 1992 through 1994 to carry out the purposes of this section and not more than 30 percent may be used to carry out the purposes of subsection (e) of this section.

[PRESCHOOL GRANTS

[SEC. 619. (a)(1) For fiscal years 1987 through 1989 (or fiscal year 1990 if the Secretary makes a grant under this paragraph for such fiscal year) the Secretary shall make a grant to any State which—

[(A) has met the eligibility requirements of section 612,

[(B) has a State plan approved under section 613, and

[(C) provides special education and related services to children with disabilities aged three to five, inclusive.

[(2)(A) For fiscal year 1987 the amount of a grant to a State under paragraph (1) may not exceed—

[(i) $300 per child with a disability aged three to five, inclusive, who received special education and related services in such State as determined under section 611(a)(3), or

[(ii) if the amount appropriated under subsection (e) exceeds the product of $300 and the total number of children with disabilities aged three to five, inclusive, who received special education and related services as determined under section 611(a)(3)—

[(I) $300 per child with a disability aged three to five, inclusive, who received special education and related services in such State as determined under section 611(a)(3), plus

[(II) an amount equal to the portion of the appropriation available after allocating funds to all States under subclause (I) (the excess appropriation) divided by the estimated increase, from the preceding fiscal year, in the number of children with disabilities aged three to five, inclusive, who will be receiving special education and related services in all States multiplied by the estimated increase in the number of such children in such State.

[(B) For fiscal year 1988, funds shall be distributed in accordance with clause (i) or (ii) of paragraph (2)(A), except that the amount specified therein shall be $400 instead of $300.

[(C) For fiscal year 1989, funds shall be distributed in accordance with clause (i) or (ii) of paragraph (2)(A), except that the amount specified therein shall be $500 instead of $300.

[(D) If the Secretary makes a grant under paragraph (1) for fiscal year 1990, the amount of a grant to a State under such paragraph may not exceed $1,000 per child with a disability aged three to five, inclusive, who received special education and related services in such State as determined under section 611(a)(3).

[(E) If the actual number of additional children served in a fiscal year differs from the estimate made under subparagraph (A)(ii)(II), the Secretary shall adjust (upwards or downwards) a State's allotment in the subsequent fiscal year.

[(F)(i) The amount of a grant under subparagraph (A), (B), or (C) to any State for a fiscal year may not exceed $3,800 per estimated child with a disability aged three to five, inclusive, who will be receiving or child with a disability, age three to five, inclusive, who is receiving special education and related services in such State.

[(ii) If the amount appropriated under subsection (e) for any fiscal year exceeds the amount of grants which may be made to the States for such fiscal year, the excess amount appropriated shall remain available for obligation under this section for 2 succeeding fiscal years.

[(3) To receive a grant under paragraph (1) a State shall make an application to the Secretary at such time, in such manner, and containing or accompanied by such information as the Secretary may reasonably require.

[(b)(1) For fiscal year 1990 (or fiscal year 1991 if required by paragraph (2)) and fiscal years thereafter the Secretary shall make a grant to any State which—

[(A) has met the eligibility requirements of section 612, and

[(B) has a State plan approved under section 613 which includes policies and procedures that assure the availability under the State law and practice of such State of a free appropriate public education for all children with disabilities aged three to five, inclusive, and for any two-year-old children provided services by the State under subsection (c)(2)(B)(iii) or by a local educational agency or intermediate educational unit under subsection (f)(2).

[(2) The Secretary may make a grant under paragraph (1) only for fiscal year 1990 and fiscal years thereafter, except that if—

[(A) the aggregate amount that was appropriated under subsection (e) for fiscal years 1987, 1988, and 1989 was less than $656,000,000, or

[(B) the amount appropriated for fiscal year 1990 under subsection (e) is less than $306,000,000,

the Secretary may not make a grant under paragraph (1) until fiscal year 1991 and shall make a grant under subsection (a)(1) for fiscal year 1990.

[(3) The amount of any grant to any State under paragraph (1) for any fiscal year may not exceed $1,500 for each child with a disability in such State aged three to five, inclusive.

[(4) To receive a grant under paragraph (1) a State shall make an application to the Secretary at such time, in such manner, and

containing or accompanied by such information as the Secretary may reasonably require.

[(c)(1) For fiscal year 1987, a State which receives a grant under subsection (a)(1) shall—

[(A) distribute at least 70 percent of such grant to local educational agencies and intermediate educational units in such State in accordance with paragraph (3), except that in applying such section only children with disabilities aged three to five, inclusive, shall be considered,

[(B) use not more than 25 percent of such grant for the planning and development of a comprehensive delivery system for which a grant could have been made under section 623(b) in effect through fiscal year 1987 and for direct and support services for children with disabilities, and

[(C) use not more than 5 percent of such grant for administrative expenses related to the grant.

[(2) For fiscal years beginning after fiscal year 1987, a State which receives a grant under subsection (a)(1) or (b)(1) shall—

[(A) distribute at least 75 percent of such grant to local educational agencies and intermediate educational units in such State in accordance with paragraph (3), except that in applying such section only children with disabilities aged three to five, inclusive, shall be considered,

[(B) use not more than 20 percent of such grant—

[(i) for planning and development of a comprehensive delivery system,

[(ii) for direct and support services for children with disabilities, aged 3 to 5, inclusive, and

[(iii) at the State's discretion, to provide a free appropriate public education, in accordance with this Act, to 2-year-old children with disabilities who will reach age 3 during the school year, whether or not such children are receiving, or have received, services under part H, and

[(C) use not more than 5 percent of such grant for administrative expenses related to the grant.

[(3) From the amount of funds available to local educational agencies and intermediate educational units in any State under this section, each local educational agency or intermediate educational unit shall be entitled to—

[(A) an amount which bears the same ratio to the amount available under subsection (a)(2)(A)(i) or subsection (a)(2)(A)(ii)(I), as the case may be, as the number of children with disabilities aged three to five, inclusive, who received special education and related services as determined under section 611(a)(3) in such local educational agency or intermediate educational unit bears to the aggregate number of children with disabilities aged three to five, inclusive, who received special education and related services in all local educational agencies and intermediate educational units in the State entitled to funds under this section, and

[(B) to the extent funds are available under subsection (a)(2)(A)(ii)(II), an amount which bears the same ratio to the amount of such funds as the estimated number of additional children with disabilities aged three to five, inclusive, who will

be receiving special education and related services in such local educational agency or intermediate educational unit bears to the aggregate number of such children in all local educational agencies and intermediate educational units in the State entitled to funds under this section.

[(d) If the sums appropriated under subsection (e) for any fiscal year for making payments to States under subsection (a)(1) or (b)(1) are not sufficient to pay in full the maximum amounts which all States may receive under such subsection for such fiscal year, the maximum amounts which all States may receive under such subsection for such fiscal year shall be ratably reduced by first ratably reducing amounts computed under the excess appropriation provision of subsection (a)(2)(A)(ii)(II). If additional funds become available for making such payments for any fiscal year during which the preceding sentence is applicable, the reduced maximum amounts shall be increased on the same basis as they were reduced.

[(e) For grants under subsections (a)(1) and (b)(1) there are authorized to be appropriated such sums as may be necessary.

[(f) Each local educational agency or intermediate educational unit receiving funds under this section—

[(1) shall use such funds to provide special education and related services to children with disabilities aged 3 to 5, inclusive, and

[(2) may, if consistent with State policy, use such funds to provide a free appropriate public education, in accordance with this part, to 2-year-old children with disabilities who will reach age 3 during the school year, whether or not such children are receiving, or have received, services under part H.

[(g) Part H of this Act does not apply to any child with disabilities receiving a free appropriate public education, in accordance with this part, with funds received under this section.

[PAYMENTS

[SEC. 620. (a) The Secretary shall make payments to each State in amounts which the State educational agency of such State is eligible to receive under this part. Any State educational agency receiving payments under this subsection shall distribute payments to the local educational agencies and intermediate educational units of such State in amounts which such agencies and units are eligible to receive under this part after the State educational agency has approved applications of such agencies or units for payments in accordance with section 614(b).

[(b) Payments under this part may be made in advance or by way of reimbursement and in such installments as the Secretary may determine necessary.

[PART C—CENTERS AND SERVICES TO MEET SPECIAL NEEDS OF INDIVIDUALS WITH DISABILITIES

[REGIONAL RESOURCE AND FEDERAL CENTERS

[SEC. 621. (a) The Secretary may make grants to, or enter into contracts or cooperative agreements with, institutions of higher education, public agencies, private nonprofit organizations, State

educational agencies, or combinations of such agencies or institutions (which combinations may include one or more local educational agencies) within particular regions of the United States, to pay all or part of the cost of the establishment and operation of regional resource centers that focus on special education and related services and early intervention services. Each regional resource center shall provide consultation, technical assistance, and training, as requested, to State educational agencies and through such State educational agencies to local educational agencies and to other appropriate public agencies providing special education and related services and early intervention services. The services provided by a regional resource center shall be consistent with the priority needs identified by the States served by the center. Each regional resource center established or operated under this section shall—

[(1) assist in identifying and solving persistent problems in providing quality special education and related services for children and youth with disabilities and early intervention services to infants and toddlers with disabilities and their families,

[(2) assist in developing, identifying, and replicating successful programs and practices which will improve special education and related services to children and youth with disabilities and their families and early intervention services to infants and toddlers with disabilities and their families,

[(3) gather and disseminate information to all State educational agencies within the region and coordinate activities with other centers assisted under this subsection and other relevant programs and projects conducted under parts C through G and by the Department of Education,

[(4) assist in the improvement of information dissemination to and training activities for professionals and parents of infants, toddlers, children, and youth with disabilities, and

[(5) provide information to and training for agencies, institutions, and organizations, regarding techniques and approaches for submitting applications for grants, contracts, and cooperative agreements under this part and parts D through G.

[(b) In determining whether to approve an application for a project under subsection (a), the Secretary shall utilize criteria for setting criteria that are consistent with the needs identified by States within the region served by such center, consistent with requirements established by the Secretary under subsection (f), and, to the extent appropriate, consistent with requirements under section 610, and shall consider the need for such a center in the region to be served by the applicant and the capability of the applicant to fulfill the responsibilities under subsection (a).

[(c) Each regional resource center shall report a summary of materials produced or developed and the summaries reported shall be included in the annual report to Congress required under section 618.

[(d) The Secretary may establish one coordinating technical assistance center focusing on national priorities established by the Secretary to assist the regional resource centers in the delivery of

technical assistance, consistent with such national priorities. Such coordinating technical assistance center is authorized to—

[(1) provide information to, and training for, agencies, institutions, and organizations, regarding techniques and approaches for submitting applications for grants, contracts, and cooperative agreements under this part and parts D through G, and shall make such information available to the regional resource centers on request;

[(2) give priority to providing technical assistance concerning the education of children with disabilities from minority backgrounds;

[(3) exchange information with, and, where appropriate, cooperate with, other centers addressing the needs of children with disabilities from minority backgrounds; and

[(4) provide assistance to State educational agencies, through the regional resource centers, for the training of hearing officers.

[(e) Before using funds made available in any fiscal year to carry out this section for purposes of subsection (d), not less than the amount made available in the previous fiscal year for regional resource centers under subsection (a) shall be made available for such centers and in no case shall more than $500,000 be made available for the center under subsection (d).

[(f)(1) The Secretary shall develop guidelines and criteria for the operation of Regional and Federal Resource Centers. In developing such criteria and guidelines, the Secretary shall establish a panel representing the Office of Special Education Programs staff, State special education directors, representatives of disability advocates, and, when appropriate, consult with the regional resource center directors.

[(2) Such guidelines and criteria shall include—

[(A) a description of how the Federal and Regional Resource Centers Program will be administered by the Secretary;

[(B) a description of the geographic region each Center is expected to serve;

[(C) a description of the role of a Center in terms of expected leadership and dissemination efforts;

[(D) a description of expected relationships with State agencies, research and demonstration centers, and with other entities deemed necessary;

[(E) a description of how a Center will be evaluated; and

[(F) other guidelines and criteria deemed necessary.

[(3) The Secretary shall publish in the Federal Register by July 1, 1991, for review and comment, proposed and (then following such review and comment) final guidelines developed by the panel.

[SERVICES FOR DEAF-BLIND CHILDREN AND YOUTH

[SEC. 622. (a)(1) The Secretary is authorized to make grants to, or to enter into cooperative agreements or contracts with, public or nonprofit private agencies, institutions, or organizations to assist State educational agencies, local educational agencies, and designated lead agencies under part H to—

[(A) assure deaf-blind infants, toddlers, children and youth provision of special education, early intervention, and related services as well as vocational and transitional services; and

[(B) make available to deaf-blind youth (who are in the process of transitioning into adult services) programs, services, and supports to facilitate such transition, including assistance related to independent living and competitive employment.

[(2) For purposes of this section, the term "deaf-blind", with respect to children and youth, means having auditory and visual impairments, the combination of which creates such severe communication and other developmental and learning needs that they cannot be appropriately educated in special education programs solely for children and youth with hearing impairments, visual impairments, or severe disabilities, without supplementary assistance to address their educational needs due to these dual, concurrent disabilities.

[(3)(A) A grant, cooperative agreement, or contract may be made under paragraph (1)(A) only for programs providing—

[(i) technical assistance to agencies, institutions, or organizations providing educational or early intervention services to deaf-blind infants, toddlers, children, or youth;

[(ii) preservice or inservice training to paraprofessionals, professionals, or related services personnel preparing to serve, or serving, deaf-blind infants, toddlers, children, or youth;

[(iii) replication of successful innovative approaches to providing educational, early intervention, or related services to deaf-blind infants, toddlers, children, and youth;

[(iv) pilot projects that are designed to—

[(I) expand local educational agency capabilities by providing services to deaf-blind children and youth that supplement services already provided to children and youth through State and local resources; and

[(II) encourage eventual assumption of funding responsibility by State and local authorities;

[(v) the development, improvement, or demonstration of new or existing methods, approaches, or techniques that contribute to the adjustment and education of deaf-blind infants, toddlers, children, and youth; or

[(vi) facilitation of parental involvement in the education of their deaf-blind infants, toddlers, children, and youth.

[(B) The programs described in subparagraph (A) may include—

[(i) the diagnosis and educational evaluation of infants, toddlers, children, and youth who are likely to be diagnosed as deaf-blind;

[(ii) programs of adjustment, education, and orientation for deaf-blind infants, toddlers, children, and youth; and

[(iii) consultative, counseling, and training services for the families of deaf-blind infants, toddlers, children, and youth.

[(4) A grant, cooperative agreement, or contract pursuant to paragraph (1)(B) may be made only for programs providing (A) technical assistance to agencies, institutions, and organizations that are preparing deaf-blind adolescents for adult placements, or that are preparing to receive deaf-blind young adults into adult living and work environments, or that serve, or propose to serve,

deaf-blind individuals; (B) training or inservice training to paraprofessionals or professionals serving, or preparing to serve, such individuals; and (C) assistance in the development or replication of successful innovative approaches to providing rehabilitative, supervised, semisupervised, or independent living programs.

[(5) In carrying out this subsection, the Secretary is authorized to enter into a number of grants or cooperative agreements to establish and support single and multi-State centers for the provision of technical assistance and pilot supplementary services, for the purposes of program development and expansion, for children and youth with deaf-blindness and their families.

[(b) The Secretary is also authorized to enter into a limited number of cooperative agreements or contracts to establish and support regional programs for the provision of technical assistance in the education of deaf-blind children and youth.

[(c)(1) Programs supported under this section shall report annually to the Secretary on (A) the numbers of deaf-blind children and youth served by age, severity, sex, and nature of deaf-blindness; (B) the number of paraprofessionals, professionals, and family members directly served by each activity; (C) the types of services provided and the setting in which the services are provided; and (D) student outcomes, where appropriate.

[(2) The Secretary shall examine the number of deaf-blind children and youth (A) reported under subparagraph (c)(1)(A) and by the States; (B) served by the programs under part B of this Act; and (C) the Deaf-Blind Registry of each State. The Secretary shall revise the count of deaf-blind children and youth to reflect the most accurate count.

[(3) The Secretary shall summarize these data for submission in the annual report required under section 618.

[(d) The Secretary shall make a grant, or enter into a contract or cooperative agreement, for a national clearinghouse for children and youth with deaf-blindness—

[(1) to identify, coordinate, and disseminate information on deaf-blindness, emphasizing information concerning effective practices in working with deaf-blind infants, toddlers, children, and youth;

[(2) to interact with educators, professional groups, and parents to identify areas for programming, materials development, training, and expansion of specific services;

[(3) to maintain a computerized data base on local, regional, and national resources; and

[(4) to respond to information requests from professionals, parents, and members of the community.

[(e) In carrying out this section, the Secretary shall take into consideration the availability and quality of existing services for deaf-blind infants, toddlers, children, and youth in the country, and, to the extent practicable, ensure that all parts of the country have an opportunity to receive assistance under this section.

[(f) The Secretary may make grants to, or enter into contracts or cooperative agreements with organizations or public or nonprofit private agencies, as determined by the Secretary to be appropriate, to address the needs of children and youth with deaf-blindness, for—

[(1) research to identify and meet the full range of special needs of such children and youth; and

[(2) the development and demonstration of new, or improvements in existing methods, approaches, or techniques that would contribute to the adjustment and education of children and youth with deaf-blindness.

[EARLY EDUCATION FOR CHILDREN WITH DISABILITIES

[SEC. 623. (a)(1) The Secretary may arrange by contract, grant, or cooperative agreement with appropriate public agencies and private nonprofit organizations, for the development and operation of experimental, demonstration, and outreach preschool and early intervention programs for children with disabilities, including individuals who are at risk of having substantial developmental delays if early intervention services are not provided, which the Secretary determines show promise of promoting a comprehensive and strengthened approach to the special needs of these children. Such programs shall include activities and services designed to—

[(A) facilitate the intellectual, emotional, physical, mental, social, speech or other communication mode, language development, and self-help skills of such children,

[(B) provide family education and include a parent or their representative of such child, as well as encourage the participation of the parents of such children in the development and operation of any such program,

[(C) acquaint the community to be served by any such program with the special needs and potentialities of such children,

[(D) offer training about exemplary models and practices, including interdisciplinary models and practices, to State and local personnel who provide services to children with disabilities from birth through age 8 and to the parents of such children,

[(E) support the adoption of exemplary models and practices in States and local communities, including the involvement of adult role models with disabilities at all levels of the program,

[(F) facilitate and improve the early identification of infants and toddlers with disabilities or those infants and toddlers at risk of having developmental disabilities,

[(G) facilitate the transition of infants with disabilities or infants at risk of having developmental delays, from medical care to early intervention services, and the transition from early intervention services to preschool special education or regular education services (especially where the lead agency for early intervention programs under part H is not the State educational agency),

[(H) promote the use of assistive technology devices and assistive technology services, where appropriate, to enhance the development of infants and toddlers with disabilities,

[(I) facilitate and improve outreach to low-income, minority, rural, and other underserved populations eligible for assistance under parts B and H,

[(J) support statewide projects in conjunction with a State's application under part H and a State's plan under part B, to change the delivery of early intervention services to infants

and toddlers with disabilities, and to change the delivery of special education and related services to preschool children with disabilities, from segregated to integrated environments, and

[(K) increase the understanding of, and address, the early intervention and preschool needs of children exposed prenatally to maternal substance abuse.

[(2) Programs authorized by paragraph (1) shall be coordinated with similar programs in the schools operated or supported by State or local educational agencies of the community to be served and with similar programs operated by other public agencies in such community.

[(3) As much as is feasible, programs assisted under paragraph (1) shall be geographically dispersed throughout the Nation in urban as well as rural areas.

[(4)(A) Except as provided in subparagraph (B), no arrangement under paragraph (1) shall provide for the payment of more than 90 percent of the total annual costs of development, operation, and evaluation of any program. Non-Federal contributions may be in cash or in kind, fairly evaluated, including plant, equipment, and services.

[(B) The Secretary may waive the requirement of subparagraph (A) in the case of an arrangement entered into under paragraph (1) with governing bodies of Indian tribes located on Federal or State reservations and with consortia of such bodies.

[(b) The Secretary shall fund up to 5 grants to States for 3 years for the purpose of establishing an inter-agency, multi-disciplinary, and coordinated statewide system for the identification, tracking, and referral to appropriate services for all categories of children who are biologically and/or environmentally at-risk of having developmental delays. To the extent feasible, such grants shall be geographically dispersed throughout the Nation in urban and rural areas. Each grantee must—

[(1) create a data system within the first year to document the numbers and types of at-risk children in the State and that develops linkages with all appropriate existing child data and tracking systems that assist in providing information;

[(2) coordinate activities with the child find component required under parts B and H of this Act;

[(3) demonstrate the involvement of the lead agency and the State interagency coordinating council under part H as well as the State educational agency under part B;

[(4) coordinate with other relevant prevention activities across appropriate service agencies, organizations, councils, and commissions;

[(5) define an appropriate service delivery system based on children with various types of at-risk factors;

[(6) document the need for additional services as well as barriers; and

[(7) disseminate findings and information in the manner prescribed in section 610(g).

[(c) The Secretary shall arrange by contract, grant, or cooperative agreement with appropriate public agencies and private nonprofit organizations for the establishment of a technical assistance

development system to assist entities operating experimental, demonstration, and outreach programs and to assist State agencies to expand and improve services provided to children with disabilities. This technical assistance development system shall provide assistance to parents of and advocates for infants, toddlers, and children with disabilities, as well as direct service and administrative personnel involved with such children. Information from the system should be aggressively disseminated through established information networks and other mechanisms to ensure both an impact and benefits at the community level. The Secretary shall ensure that the technical assistance provided under this subsection includes assistance to part H State agencies on procedures for use by primary referral sources in referring a child to the appropriate agency within the system for evaluation, assessment, or service.

[(d) The Secretary shall arrange by contract, grant, or cooperative agreement with appropriate public agencies and private nonprofit organizations for the establishment of early childhood research institutes to carry on sustained research to generate and disseminate new information on preschool and early intervention for children with disabilities and their families. Such institutes shall disseminate this information in the manner prescribed in section 610(g).

[(e) The Secretary may make grants to, or enter into contracts or cooperative agreements under this section with, such organizations or institutions, as are determined by the Secretary to be appropriate, for research to identify and meet the full range of special needs of children with disabilities and for training of personnel for programs specifically designed for children with disabilities, including programs to integrate children with disabilities into regular preschool programs.

[(f) At least one year before the termination of a grant, contract, or cooperative agreement made or entered into under subsections (c) and (d), the Secretary shall publish in the Federal Register a notice of intent to accept applications for such a grant, contract, or cooperative agreement contingent on the appropriation of sufficient funds by Congress.

[(g) For purposes of this section the term "children with disabilities" includes children from birth through eight years of age, including infants and toddlers with disabilities.

[(h) The Secretary may make grants to, or enter into contracts or cooperative agreements with, institutions of higher education and nonprofit private organizations to synthesize the knowledge developed under this section and organize, integrate, and present such knowledge so it can be incorporated and imparted to parents, professionals, and others providing or preparing to provide preschool or early intervention services and to persons designing preschool or early intervention programs.

[PROGRAMS FOR CHILDREN WITH SEVERE DISABILITIES

[SEC. 624. (a) The Secretary may make grants to, or enter into contracts or cooperative agreements with, appropriate public agencies and nonprofit organizations to address the special education, related services, early intervention, and integration needs of in-

fants, toddlers, children, and youth with severe disabilities through—

[(1) research to identify and meet the full range of special education, related services, and early intervention needs of such children and youth with disabilities, including their need for transportation to and from school,

[(2) the development or demonstration of new, or improvements in existing, methods, approaches, or techniques which would contribute to the adjustment and education of such children and youth with disabilities,

[(3) training of special and regular education, related services, and early intervention personnel for programs specifically designed for such infants, toddlers, children and youth, including training of regular teachers, instructors, and administrators in strategies (the goal of which is to serve infants, toddlers, children, and youth with disabilities) that include integrated settings for educating such children along side their nondisabled peers,

[(4) dissemination of materials and information about practices found effective in working with such children and youth by utilizing existing networks as prescribed in section 610(g) and

[(5) statewide projects, in conjunction with the State's plan under part B, to improve the quality of special education and related services for children and youth with severe disabilities, and to change the delivery of those services from segregated to integrated environments.

[(b) The Secretary is authorized to make grants to, or enter into contracts or cooperative agreements with, public or private nonprofit private agencies, institutions, or organizations for the development and operation of extended school year demonstration programs for infants, toddlers, children, and youth with severe disabilities.

[(c) In making grants and entering into contracts and cooperative agreements under subsection (a), the Secretary shall ensure that the activities funded under such grants, contracts, or cooperative agreements will be coordinated with similar activities funded from grants and contracts under other sections of this Act.

[(d) To the extent feasible, programs authorized by subsection (a) shall be geographically dispersed throughout the Nation in urban and rural areas.

[(e) In awarding such grants and contracts under this section, the Secretary shall include a priority on programs that increase the likelihood that these children and youth will be educated with their nondisabled peers.

[POSTSECONDARY EDUCATION

[SEC. 625. (a)(1) The Secretary may make grants to, or enter into contracts with, State educational agencies, institutions of higher education, junior and community colleges, vocational and technical institutions, and other appropriate nonprofit educational agencies for the development, operation, and dissemination of specially designed model programs of postsecondary, vocational, technical, continuing, or adult education for individuals with disabilities. Such

model programs may include joint projects that coordinate with special education and transition services.

[(2) In making grants or contracts on a competitive basis under paragraph (1), the Secretary shall give priority consideration to 4 regional centers for the deaf and to model programs for individuals with disabling conditions other than deafness—

[(A) for developing and adapting programs of postsecondary, vocational, technical, continuing, or adult education to meet the special needs of individuals with disabilities, and

[(B) for programs that coordinate, facilitate, and encourage education of individuals with disabilities with their non-disabled peers; and

[(C) for outreach activities that include the provision of technical assistance to strengthen efforts in the development, operation, and design of model programs that are adapted to the special needs of individuals with disabilities.

[(3) Persons operating programs for persons with disabilities under a grant or contract under paragraph (1) must coordinate their efforts with and disseminate information about their activities to the clearinghouse on postsecondary programs established under section 633(b).

[(4) At least one year before the termination of a grant or contract with any of the 4 regional centers for the deaf, the Secretary shall publish in the Federal Register a notice of intent to accept applications for such grant or contract, contingent on the appropriation of sufficient funds by Congress.

[(5) To the extent feasible, programs authorized by paragraph (1) shall be geographically dispersed throughout the Nation in urban and rural areas.

[(6) Of the sums made available for programs under paragraph (1), not less than $4,000,000 shall first be available for the 4 regional centers for the deaf. The Secretary shall continue to provide assistance through September 30, 1994, to the current grantees operating the four regional centers for the deaf under subsection (a) of this section. The Secretary shall continue to provide such assistance through September 30, 1995, unless the authorization of appropriations for parts C–G of the Act is extended by September 30, 1994.

[(b) For purposes of subsection (a), the term "individuals with disabilities" means individuals—

[(1) with mental retardation, hearing impairments including deafness, speech or language impairments, visual impairments including blindness, serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and

[(2) who, by reason thereof, need special education and related services.

[SECONDARY EDUCATION AND TRANSITIONAL SERVICES FOR YOUTH WITH DISABILITIES

[SEC. 626. (a) The Secretary may make grants to, or enter into contracts with, institutions of higher education, State educational agencies, local educational agencies, or other appropriate public and private nonprofit institutions or agencies (including the State

job training coordinating councils and service delivery area administrative entities established under the Job Training Partnership Act) to—

[(1) strengthen and coordinate special education and related services for youth with disabilities currently in school or who recently left school to assist them in the transition to postsecondary education, vocational training, competitive employment (including supported employment), continuing education, independent and community living, or adult services,

[(2) stimulate the improvement and development of programs for secondary special education, and

[(3) stimulate the improvement of the vocational and life skills of students with disabilities to enable them to be better prepared for transition to adult life and services.

To the extent feasible, such programs shall be geographically dispersed throughout the Nation in urban and rural areas.

[(b) Projects assisted under subsection (a) may include—

[(1) developing strategies and techniques for transition to independent living, vocational training, vocational rehabilitation, postsecondary education, and competitive employment (including supported employment) for youth with disabilities,

[(2) establishing demonstration models for services, programs, and individualized education programs, which emphasize vocational training, independent living, transitional services, and placement for youth with disabilities,

[(3) conducting demographic studies which provide information on the numbers, age levels, types of disabling conditions, and services required for youth with disabilities in need of transitional programs,

[(4) specially designed vocational programs to increase the potential for competitive employment for youth with disabilities,

[(5) research and development projects for exemplary service delivery models and the replication and dissemination of successful models,

[(6) initiating cooperative models among educational agencies and adult service agencies, including vocational rehabilitation, mental health, mental retardation, and public employment, and employers, which facilitate the planning and developing of transitional services for youth with disabilities to postsecondary education, vocational training, employment, continuing education, and adult services,

[(7) developing appropriate procedures for evaluating vocational training, placement, and transitional services for youth with disabilities,

[(8) conducting studies which provide information on the numbers, age levels, types of disabling conditions and reasons why some youth with disabilities remain to complete school programs while others drop out,

[(9) developing curriculum and instructional techniques in special education and related services that will improve the acquisition of skills by students with disabilities necessary for transition to adult life and services,

[(10) specially designed or adapted physical education and therapeutic recreation programs to facilitate the full participation of youths with disabilities in community programs, and

[(11) developing and disseminating exemplary programs and practices that meet the unique needs of students who utilize assistive technology devices and assistive technology services as such students make the transition to postsecondary education, vocational training, competitive employment (including supported employment), and continuing education or adult services.

[(c) For purposes of paragraphs (1) and (2) of subsection (b), if an applicant is not an educational agency, such applicant shall coordinate its activities with the State educational agency.

[(d) Applications for assistance under subsection (a) other than for the purpose of conducting studies or evaluations shall—

[(1) describe the procedures to be used for disseminating relevant findings and data to regional resource centers, clearinghouses, and other interested persons, agencies, or organizations,

[(2) describe the procedures that will be used for coordinating services among agencies for which youth with disabilities are or will be eligible, and

[(3) provide for the direct participation of students with disabilities and the parents of students with disabilities in the planning, development, and implementation of such projects.

[(e)(1) The Secretary shall make one-time, 5-year grants, on a competitive basis, to States in which the State vocational rehabilitation agency and State educational agency submit a joint application to develop, implement, and improve systems to provide transition services for youth with disabilities from age 14 through the age they exit school.

[(2) In the case of a State whose vocational rehabilitation agency does not participate regarding a joint application described in paragraph (1), the Secretary may make a grant under such paragraph to the State if a joint application for the grant is submitted by the State educational agency and one other State agency that provides transition services to individuals who are leaving programs under this Act.

[(3) States that receive grants shall use grant funds to:

[(A) Increase the availability, access, and quality of transition assistance through the development and improvement of policies, procedures, systems, and other mechanisms for youth with disabilities and their families as such youth prepare for and enter adult life.

[(B) Improve the ability of professionals, parents, and advocates to work with such youth in ways that promote the understanding of and the capability to successfully make the transition from "student" to "adult".

[(C) Improve working relationships among education personnel, bothwithin LEAs and in postsecondary training programs, relevant State agencies, the private sector (especially employers), rehabilitation personnel, local and State employment agencies, local Private Industry Councils (PICS) authorized by the Job Training Partnership Act (JTPA), and families of stu-

dents with disabilities and their advocates to identify and achieve consensus on the general nature and specific application of transition services to meet the needs of youth with disabilities.

[(D) Create an incentive for accessing and using the expertise and resources of programs, projects, and activities related to transition funded through this section and with other sources.

[(4)(A) In order to receive funding under this subsection, a State vocational rehabilitation agency and State educational agency shall describe in their application how they will use the first year, if necessary, to plan how to implement transition services, the second through fourth years to develop and implement transition services, and the fifth year to evaluate transition services. The application shall describe how the grant funds will be used during the planning period and phased out during the evaluation period to ensure the continuation of transition services. Such applications shall also include—

[(i) a description of the current availability, access, and quality of transition services for eligible youth and a description of how, over 5 years, the State will improve and expand the availability, access, and quality of transition services for youth with disabilities and their families as such youth prepare for and enter adult life;

[(ii) a description of how the State will improve and increase the ability of professionals, parents, and advocates to work with such youth in ways that promote the understanding of and the capability to successfully make the transition from "student" to "adult";

[(iii) a description of how the State will improve and increase working relationships among education personnel, both within LEAs and in postsecondary training programs, relevant State agencies, the private sector (especially employers), rehabilitation personnel, local and State employment agencies, local Private Industry Councils (PICS) authorized by the JTPA, and families of students with disabilities and their advocates to identify and achieve consensus on the general nature and specific application of transition services to meet the needs of youth with disabilities; and

[(iv) a description of how the State will use grant funds as an incentive for accessing and using the expertise and resources of programs, projects, and activities related to transition funded through this section and with other sources.

[(B) The Secretary shall give preference to those applications that, in addition to clearly addressing the requirements under subparagraph (A), describe how the State will—

[(i) target resources to school settings, such as providing access to rehabilitation counselors for students with disabilities who are in school settings;

[(ii) target a substantial amount of grant funds, received under this subsection, to case management, program evaluation and documentation of, and dissemination of information about, transition services;

[(iii) provide incentives for interagency and private sector resource pooling and otherwise investing in transition services, especially in the form of cooperative agreements, particularly with PICS authorized by the JTPA and local branches of State employment agencies;

[(iv) provide for early, ongoing information and training for those involved with or who could be involved with transition services—professionals, parents, youth with disabilities, including self-advocacy training for such youth, and advocates for such youth as well as PICS authorized by the JTPA and local branches of State employment agencies;

[(v) provide for the early and direct involvement of all relevant parties, including PICS authorized by the JTPA and local branches of State employment agencies, in operating and planning improvements in transition services, and the early and direct involvement of all relevant parties in planning and implementing transition services for individual youth;

[(vi) provide access to training for eligible youth that matches labor market needs in their communities;

[(vii) integrate transition services with relevant opportunities in communities, including those sponsored by PICS authorized by the JTPA and local employment agencies;

[(viii) use a transition services evaluation plan that is outcome oriented and that focuses on individual youth-focused benefits; and

[(ix) ensure that, when appropriate and no later than age 22, eligible youth who participate in transition services under this program would be served as appropriate in the State section 110 and/or title VI, part C program authorized under the Rehabilitation Act of 1973.

[(f)(1) The Secretary is authorized to make grants to, or to enter into contracts or cooperative agreements with, such organizations or institutions as are determined by the Secretary to be appropriate for the development or demonstration of new or improvements in existing methods, approaches, or techniques which will contribute to the adjustment and education of children and youth with disabilities and the dissemination of materials and information concerning practices found effective in working with such children and youth. Such organizations and institutions shall disseminate such materials and information as prescribed under section 610(g).

[(2) The Secretary shall fund one or more demonstration models designed to establish appropriate methods of providing, or continuing to provide, assistive technology devices and services to secondary school students as they make the transition to vocational rehabilitation, employment, postsecondary education, or adult services. Such demonstration models shall include, as appropriate—

[(A) cooperative agreements with the Rehabilitation Services Administration and/or State vocational rehabilitation agencies that ensure continuity of funding for assistive technology devices and services to such students; and

[(B) methods for dissemination of exemplary practices that can be adapted or adopted by transitional programs for secondary school students with disabilities.

[(3)(A) The Secretary shall award one, five-year cooperative agreement through a separate competition to an institution of higher education, or nonprofit public or private organization. The purpose of this agreement will be to evaluate and document the approaches and outcomes of the projects funded under subsection (e). The results of this agreement shall be disseminated through the appropriate clearinghouses, networks, and through direct communication with Federal, State, and local agencies.

[(B) The evaluation carried out pursuant to subparagraph (A) of transition services under subsection (e) shall include an evaluation of—

[(i) the outcomes of the transition services provided under such subsection, including the effect of the services regarding postsecondary education, job training, employment, and other appropriate matters;

[(ii) the impact of including in the individualized education program a statement of needed transition services (as required under section 602(a)(20)(D));

[(iii) the extent to which, in the provision of the transition services, agencies are cooperating effectively, including evaluation of the extent of coordination of the staff of the agencies, of procedures regarding confidentiality, assessment of needs, and referrals, and coordination regarding data bases and training;

[(iv) the extent to which obstacles exist regarding cooperation and coordination among agencies in the provision of the transition services, and the extent to which Federal law creates disincentives to such cooperation and coordination; and

[(v) the extent to which the transition services have been provided in a cost-effective manner.

[(C) The evaluation carried out pursuant to subparagraph (A) shall include recommendations on the manner in which the program under subsection (e) can be improved.

[(D) In the annual report required under section 618(g), the Secretary shall include a report of the activities and results associated with the agreement under subparagraph (A).

[(g) The Secretary, as appropriate, shall coordinate programs described under subsection (a) with projects developed under section 311 of the Rehabilitation Act of 1973, the Job Training Partnership Act (JTPA), and the Carl D. Perkins Vocational and Applied Technology Education Act.

[PROGRAMS FOR CHILDREN AND YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE

[SEC. 627. (a) The Secretary is authorized to make grants to, or enter into contracts or cooperative agreements with, institutions of higher education, State and local educational agencies, and other appropriate public and private nonprofit institutions or agencies to establish projects for the purpose of improving special education and related services to children and youth with serious emotional disturbance. Such projects may include—

[(1) studies regarding the present state of special education and related services to such children and youth and their fami-

lies, including information and data to enable assessments of the status of such services over time;

[(2) developing methodologies and curricula designed to improve special education and related services for these children and youth;

[(3) developing and demonstrating strategies and approaches to reduce the use of out-of-community residential programs and the increased use of school district-based programs (which may include day treatment programs, after-school programs, and summer programs);

[(4) developing the knowledge, skills, and strategies for effective collaboration among special education, regular education, related services, and other professionals and agencies; or

[(5) developing and demonstrating innovative approaches to assist and to prevent children with emotional and behavioral problems from developing serious emotional disturbances that require the provision of special education and related services.

[(b)(1) The Secretary is authorized to make grants, on a competitive basis, to local educational agencies in collaboration with mental health entities to provide services for children and youth with serious emotional disturbance. Such demonstration projects shall—

[(A) increase the availability, access, and quality of community services for such children and youth and their families;

[(B) improve working relationships among education, school, and community mental health and other relevant personnel, families of such children and youth, and their advocates;

[(C) target resources to school settings, such as providing access to school and/or community mental health professionals and other community resources for students with serious emotional disturbance who are in community school settings; and

[(D) take into account the needs of minority children and youth in all phases of project activity.

[(2) Funds received under this subsection may also be used to facilitate interagency and private sector resource pooling to improve services for such children and youth and to provide information and training for those involved with, or who could be involved with, such children and youth.

[(c) Each project assisted under this section shall—

[(1) apply existing research outcomes from multi-disciplinary fields;

[(2) use a grant evaluation plan that is outcome-oriented and that focuses on the benefits to individual children and youth;

[(3) report on the effectiveness of such project; and

[(4) disseminate the findings of such project, where appropriate, in accordance with section 610(g).

[AUTHORIZATION OF APPROPRIATIONS

[SEC. 628. (a) There are authorized to be appropriated to carry out section 621 $8,525,000 for fiscal year 1991, $9,300,000 for fiscal year 1992, $10,140,000 for fiscal year 1993, and $11,052,000 for fiscal year 1994.

[(b) There are authorized to be appropriated to carry out section 622 $21,900,000 for fiscal year 1991, $24,100,000 for fiscal year 1992, $26,500,000 for fiscal year 1993, and $29,200,000 for fiscal year 1994.

[(c) There are authorized to be appropriated to carry out section 623 $31,400,000 for fiscal year 1991, $34,235,000 for fiscal year 1992, $37,325,000 for fiscal year 1993, and $40,705,000 for fiscal year 1994.

[(d) There are authorized to be appropriated to carry out section 624 $9,500,000 for fiscal year 1991, $10,500,000 for fiscal year 1992, $11,600,000 for fiscal year 1993, and $12,700,000 for fiscal year 1994.

[(e) There are authorized to be appropriated to carry out section 625 $9,470,000 for fiscal year 1991, $10,230,000 for fiscal year 1992, $11,050,000 for fiscal year 1993, and $11,930,000 for fiscal year 1994.

[(f) There are authorized to be appropriated to carry out section 626 (except subsection (e)) $9,800,000 for fiscal year 1991, $10,800,000 for fiscal year 1992, $11,900,000 for fiscal year 1993, and $13,050,000 for fiscal year 1994.

[(g) There are authorized to be appropriated to carry out section 626(e) $27,500,000 for fiscal year 1991, $30,250,000 for fiscal year 1992, $33,275,000 for fiscal year 1993, and $36,602,000 for fiscal year 1994.

[(h) There are authorized to be appropriated to carry out section 627 $6,500,000 for fiscal year 1991, $8,000,000 for fiscal year 1992, $9,500,000 for fiscal year 1993, and $11,500,000 for fiscal year 1994.

[PART D—TRAINING PERSONNEL FOR THE EDUCATION OF INDIVIDUALS WITH DISABILITIES

[GRANTS FOR PERSONNEL TRAINING

[SEC. 631. (a)(1) The Secretary may make grants, which may include scholarships with necessary stipends and allowances, to institutions of higher education (including university affiliated programs and satellite centers participating in programs under part D of the Developmental Disabilities Assistance and Bill of Rights Act) and other appropriate nonprofit agencies to assist them in training personnel for careers in special education, related services, and early intervention, including—

[(A) special education teaching, including speech-language pathology and audiology, and adapted physical education and instructional and assistive technology services,

[(B) related services to children and youth with disabilities in educational settings, and other settings,

[(C) special education and other careers in preschool and early intervention services for infants and toddlers with disabilities,

[(D) special education leadership, including supervision and administration (at the advanced graduate, doctoral, and post-doctoral levels), special education research, and special education personnel preparation (at the doctoral and post-doctoral levels),

[(E) training of special education personnel and other personnel providing special services and pre-school and early intervention services for children with disabilities, and

[(F) training in the use, applications, and benefits of assistive technology devices and assistive technology services (as defined in paragraphs (2) and (3) of section 3 of the Technology-Related Assistance for Individuals With Disabilities Act of 1988 (29 U.S.C. 2202 (2) and (3))).

[(2)(A) The Secretary shall base the award of grants under paragraph (1) on information relating to the present and projected need for special education, related services, early intervention, and other personnel to be trained based on identified State, regional, or national shortages, including the need for personnel in the provision of special education to children of limited English proficiency, and the capacity of the institution or agency to train qualified personnel, and other information considered appropriate by the Secretary.

[(B) The Secretary shall ensure that grants are only made under paragraph (1) to applicant agencies and institutions that meet State and professionally recognized standards for the preparation of special education and related services personnel unless the grant is for the purpose of assisting the applicant agency or institution to meet such standards, and that include in their applications a detailed description of strategies that will be utilized to recruit and train members of minority groups and persons with disabilities.

[(3) Grants under paragraph (1) may be used by institutions to assist in covering the cost of courses of training or study for such personnel and for establishing and maintaining fellowships or traineeships with such stipends and allowances as may be determined by the Secretary. Such institutions shall give priority consideration in the selection of qualified recipients of fellowships and traineeships to individuals from disadvantaged backgrounds, including minorities and individuals with disabilities who are underrepresented in the teaching profession or in the specializations in which they are being trained.

[(4) The Secretary in carrying out paragraph (1) may reserve a sum not to exceed 5 percent of the amount available for paragraph (1) in each fiscal year for contracts to prepare personnel in areas where shortages exist when a response to that need has not been adequately addressed by the grant process.

[(5) In making grants under subsection (a)(1), the Secretary may determine that a portion of training supported through such grants shall be conducted on an interdisciplinary basis, and shall be designed to assist special educators in properly coordinating service provision with related services personnel. To the extent feasible, training programs funded under subsection (a)(1)(B) and (a)(1)(E) shall require practica to demonstrate the delivery of related services in an array of regular and special education and community settings.

[(6) Nothing in this subsection shall be construed to prevent regular education or special education personnel from benefiting or participating in training activities conducted under this subsection on a preservice or inservice basis.

[(7) The Secretary, in carrying out paragraph (1), shall make grants to Historically Black Colleges and Universities, and other

institutions of higher education whose minority student enrollment is at least 25 percent.

[(8)(A) In making grants under paragraph (1), the Secretary may make grants through a separate competition to institutions of higher education, in partnership with local educational agencies and center schools for students who are deaf, to carry out not less than 4 regional model demonstration training programs on deafness and secondary disabilities.

[(B) Such programs shall provide preservice and inservice training to teachers and school administrators, and leadership personnel, in the education of students who are deaf and to related services personnel.

[(9) In making grants under paragraph (1), the Secretary may provide for the training or retraining of regular education teachers who are involved in providing instruction to individuals who are deaf, but who are not certified as teachers of such individuals, to meet the communications needs of such individuals.

[(b)(1) The Secretary may make grants to institutions of higher education, and other appropriate nonprofit agencies or organizations for the establishment or continuation of educational interpreter training programs to train personnel to effectively meet the various communication needs of elementary and secondary students who are deaf or deaf-blind. To the extent feasible, grants shall be geographically dispersed throughout the Nation in urban and rural areas.

[(2) The Secretary may make a grant under paragraph (1) only if the applicant for the grant provides an assurance that all interpreters receiving training under the grant will be provided training designed to develop skills necessary for facilitating effective communication for students who are deaf or deaf-blind.

[(3) In making grants under paragraph (1), the Secretary may provide for the training or retraining (including short-term and inservice training) of regular education teachers who are involved in providing instruction to individuals who are deaf, but who are not certified as teachers of such individuals, and other personnel who work with such individuals, on the role of educational interpreters.

[(c) The Secretary may make grants to institutions of higher education, State agencies, and other appropriate nonprofit agencies and organizations to develop and demonstrate effective ways for preservice training programs to prepare regular educators to work with children and youth with disabilities and their families; for training teachers to work in community and school settings with school students with disabilities and their families; for inservice and preservice training of personnel to work with infants, toddlers, children, and youth with disabilities and their families; for inservice and preservice training of personnel to work with minority infants, toddlers, children, and youth with disabilities and their families; for preservice and inservice training of special education and related services personnel in the use of assistive and instructional technology to benefit infants, toddlers, children, and youth with disabilities; and for the recruitment and retention of special education, related services, and early intervention personnel. Both preservice and inservice training shall include a component that

addresses the coordination among all service providers, including regular educators.

[(d)(1) The Secretary shall fund up to 5 grants to States or entities to support the formation of consortia or partnerships of public and private entities for the purpose of providing opportunities for career advancement and/or competency-based training, including but not limited to, certificate or degree granting programs in special education, related services, and early intervention for current workers at public and private agencies that provide services to infants, toddlers, children, and youth with disabilities. Recipients shall meet the requirements of section 610(g) for the dissemination of information. The purposes for which such a grant may be expended include, but are not limited to, the following:

[(A) Establishing a program with colleges and universities to develop creative new programs and coursework options and/or to expand existing programs in the field of special education, related services, or early intervention. Funds may be used to provide release time for faculty and staff for curriculum development, instructional costs, and modest start-up and other program development costs.

[(B) Establishing a career development mentoring program using faculty and professional staff members of participating agencies as role models, career sponsors, and academic advisors for experienced State, city, county, and voluntary sector workers who have demonstrated a commitment to working in the above fields and who are enrolled in higher education institution programs relating to these fields.

[(C) Supporting a wide range of programmatic and research activities aimed at increasing opportunities for career advancement and competency-based training in the above fields.

[(D) Identifying existing public and private agency and labor union personnel policies and benefit programs that may facilitate the ability of workers to take advantage of higher education opportunities such as leave time, tuition reimbursement, etc.

[(2) To the extent feasible, projects authorized under paragraph (1) shall be geographically dispersed throughout the Nation in urban and rural areas.

[(3) The Secretary shall award, for the purpose of providing technical assistance to States or entities receiving grants under paragraph (1), a cooperative agreement through a separate competition to an entity that has successfully demonstrated the capacity and expertise in the education, training, and retention of workers to serve children and youth with disabilities through the use of consortia or partnerships established for the purpose of retaining the existing workforce and providing opportunities for career enhancement.

[(4) The Secretary may conduct an evaluation of projects funded under this subsection.

[(5) During the period in which an entity is receiving financial assistance under paragraph (1) or (3), the entity may not receive financial assistance under the other paragraph.

[(e)(1) The Secretary may make grants through a separate competition to private nonprofit organizations for the purpose of pro-

viding training and information to parents of infants, toddlers, children, and youth with disabilities and persons who work with parents to enable such individuals to participate more effectively with professionals in meeting the educational needs of children with disabilities. Such grants shall be designed to meet the unique training and information needs of parents of infants, toddlers, children, and youth with disabilities living in the area to be served by the grant, particularly those who are members of groups that have been traditionally underrepresented.

[(2) In order to receive a grant under paragraph (1) a private nonprofit organization shall—

[(A) be governed by a board of directors of which a majority of the members are parents of infants, toddlers, children, and youth with disabilities, particularly minority parents, and that includes members who are professionals, especially minority professionals, in the field of special education, early intervention, and related services, and individuals with disabilities, or, if the nonprofit private organization does not have such a board, such organization shall have a membership that represents the interests of individuals with disabilities, and shall establish a special governing committee of which a majority of the members are parents of infants, toddlers, children, and youth with disabilities, particularly parents of minority children, and which includes members who are professionals, especially minority professionals, in the field of special education, early intervention, and related services, to operate the training and information program under paragraph (1), and parent and professional membership of these boards or special governing committees shall be broadly representative of minority and other individuals and groups having an interest in special education, early intervention, and related services;

[(B) serve the parents of infants, toddlers, children, and youth with the full range of disabling conditions under such grant program; and

[(C) demonstrate the capacity and expertise to conduct effectively the training and information activities for which a grant may be made under paragraph (1), and, for purposes of paragraph (1), network with clearinghouses, including those established under section 633 and other organizations and agencies, and network with other established national, State, and local parent groups representing the full range of parents of infants, toddlers, children, and youth with disabilities, especially parents of minority children.

Nothing in subparagraph (A) shall be construed to authorize or permit the denial to any person of the due process of law required by the United States Constitution.

[(3) The board of directors or special governing committee of a private nonprofit organization receiving a grant under paragraph (1) shall meet at least once in each calendar quarter to review the parent training and information activities for which the grant is made, and each such committee shall advise the governing board directly of its views and recommendations. Whenever a private nonprofit organization requests the renewal of a grant under paragraph (1) for a fiscal year, the board of directors or the special gov-

erning committee shall submit to the Secretary a written review of the parent training and information program conducted by that private nonprofit organization during the preceding fiscal year.

[(4) The Secretary shall ensure that grants under paragraph (1) will—

[(A) be distributed geographically to the greatest extent possible throughout all the States and give priority to grants which involve unserved areas,

[(B) be targeted to parents of children with disabilities in both urban and rural areas or on a State or regional basis,

[(C) serve parents of minority children with disabilities (including parents served pursuant to paragraph (10)) representative to the proportion of the minority population in the areas being served by requiring that applicants for the grants identify with specificity the special efforts that will be undertaken to involve such parents, including efforts to work with community-based and cultural organizations and the specification of supplementary aids, services, and supports that will be made available, and by specifying budgetary items earmarked to accomplish this subparagraph, and

[(D) be funded at a sufficient size, scope, and quality to ensure that the program is adequate to serve the parents in the area.

[(5) Parent training and information programs assisted under paragraph (1) shall assist parents to—

[(A) better understand the nature and needs of the disabling conditions of children,

[(B) provide followup support for educational programs of children with disabilities,

[(C) communicate more effectively with special and regular educators, administrators, related services personnel, and other relevant professionals,

[(D) participate in educational decisionmaking processes, including the development of the individualized education program for a child with a disability,

[(E) obtain appropriate information about the range of options, programs, services, and resources available at the national, State, and local levels to assist infants, toddlers, children, and youth with disabilities and their families, and

[(F) understand the provisions for the education of infants, toddlers, children, and youth with disabilities under this Act.

[(6) Parent training and information programs may, at a grant recipient's discretion, include State or local educational personnel where such participation will further an objective of the program assisted by the grant.

[(7) Each private nonprofit organization operating a program receiving a grant under paragraph (1) shall consult and network with appropriate national, State, regional, and local agencies and organizations, such as protection and advocacy agencies, that serve or assist infants, toddlers, children, and youth with disabilities and their families and are located in the jurisdictions served by the program.

[(8) The Secretary shall provide technical assistance, by grant or contract, for establishing, developing, and coordinating parent training and information programs.

[(9) After the establishment in each State of a parent training and information center, the Secretary shall provide for the establishment of 3 experimental centers to serve large numbers of parents of children with disabilities located in high density areas that do not have such centers and 2 such centers to serve large numbers of parents of children with disabilities located in rural areas.

[(10)(A) In the case of a grant under paragraph (1) to a private nonprofit organization for fiscal year 1993 or 1994, the organization, in expending the amounts described in subparagraph (B), shall give priority to providing services under this subsection to parents of children with disabilities aged 0–5.

[(B) With respect to a grant under paragraph (1) to a private nonprofit organization for fiscal year 1993 or 1994, the amounts described in this subparagraph are any amounts provided in the grant in excess of the amount of any grant under such paragraph provided to the organization for fiscal year 1992.

[(11) Effective for fiscal year 1991 and every year thereafter, the Secretary shall obtain data concerning programs and centers assisted under this subsection on—

[(A) the number of parents provided information and training by disability category of their children,

[(B) the types and modes of information or training provided,

[(C) strategies used to reach and serve parents of minority infants, toddlers, children, and youth with disabilities,

[(D) the number of parents served as a result of activities described under subparagraph (C),

[(E) activities to network with other information clearinghouses and parent groups as required in subsection (c)(2)(C),

[(F) the number of agencies and organizations consulted with at the national, State, regional, and local levels, and

[(G) the number of parents served under this subsection who are parents of children with disabilities aged 0–5.

The Secretary shall include a summary of this information in the annual report to Congress as required in section 618(g).

[GRANTS TO STATE EDUCATIONAL AGENCIES AND INSTITUTIONS FOR TRAINEESHIPS

[SEC. 632. (a) The Secretary shall make a grant of sufficient size and scope to each State educational agency for the purposes described in subsection (c) and, in any State in which the State educational agency does not apply for such a grant, to an institution of higher education within such State for such purposes.

[(b) The Secretary may also make a limited number of grants to State educational agencies on a competitive basis for the purposes described in subsection (c). In any fiscal year, the Secretary may not expend for purposes of this subsection an amount that exceeds 10 percent of the amount expended for purposes of this section in the preceding fiscal year.

[(c) Grants made under this section shall be for the purpose of assisting States in establishing and maintaining preservice and in-

service programs to prepare special and regular education, related services and early intervention personnel to meet the needs of infants, toddlers, children, and youth with disabilities or supervisors of such persons, consistent with the personnel needs identified in the State's comprehensive system of personnel development under section 613 and under section 676(b)(8), and to assist the State in developing and maintaining such systems and conducting personnel recruitment and retention activities.

[(d) The Secretary is authorized to provide directly or by grant, contract, or cooperative agreement, technical assistance to State educational agencies on matters pertaining to the effective implementation of section 613(a)(3).

[CLEARINGHOUSES

[SEC. 633. (a) The Secretary is authorized to make grants to, or enter into contracts or cooperative agreements with, public agencies or private nonprofit organizations or institutions for the establishment of three national clearinghouses: on children and youth with disabilities; on postsecondary education for individuals with disabilities; and on careers in special education, to—

[(1) collect, develop, and disseminate information,

[(2) provide technical assistance,

[(3) conduct coordinated outreach activities,

[(4) provide for the coordination and networking with other relevant national, State, and local organizations and information and referral resources,

[(5) respond to individuals and organizations seeking information, and

[(6) provide for the synthesis of information for its effective utilization by parents, professionals, individuals with disabilities, and other interested parties.

[(b) The national clearinghouse for children and youth with disabilities shall:

[(1) Collect and disseminate information (including the development of materials) on characteristics of infants, toddlers, children, and youth with disabilities and on programs, legislation, and services relating to their education under this Act and other Federal laws.

[(2) Participate in programs and services related to disability issues for providing outreach, technical assistance, collection, and dissemination of information; and promoting networking of individuals with appropriate national, State, and local agencies and organizations.

[(3) Establish a coordinated network and conduct outreach activities with relevant Federal, State, and local organizations and other sources for promoting public awareness of disability issues and the availability of information, programs, and services.

[(4) Collect, disseminate, and develop information on current and future national, Federal, regional, and State needs for providing information to parents, professionals, individuals with disabilities, and other interested parties relating to the education and related services of individuals with disabilities.

[(5) Provide technical assistance to national, Federal, regional, State and local agencies and organizations seeking to establish information and referral services for individuals with disabilities and their families.

[(6) In carrying out the activities in this subsection, the clearinghouse will include strategies to disseminate information to underrepresented groups such as those with limited English proficiency.

[(c) The national clearinghouse on postsecondary education for individuals with disabilities shall:

[(1) Collect and disseminate information nationally on characteristics of individuals entering and participating in education and training programs after high school; legislation affecting such individuals and such programs; policies, procedures, and support services, as well as adaptations, and other resources available or recommended to facilitate the education of individuals with disabilities; available programs and services that include, or can be adapted to include, individuals with disabilities; and sources of financial aid for the education and training of individuals with disabilities.

[(2) Identify areas of need for additional information.

[(3) Develop new materials (in both print and nonprint form), especially by synthesizing information from a variety of fields affecting disability issues and the education, rehabilitation, and retraining of individuals with disabilities.

[(4) Develop a coordinated network of professionals, related organizations and associations, mass media, other clearinghouses, and governmental agencies at the Federal, regional, State, and local level for the purposes of disseminating information and promoting awareness of issues relevant to the education of individuals with disabilities after high school and referring individuals who request information to local resources.

[(5) Respond to requests from individuals with disabilities, their parents, and professionals who work with them, for information that will enable them to make appropriate decisions about postsecondary education and training.

[(d) The national clearinghouse designed to encourage students to seek careers and professional personnel to seek employment in the various fields relating to the education of children and youth with disabilities shall:

[(1) Collect and disseminate information on current and future national, regional, and State needs for special education and related services personnel.

[(2) Disseminate information to high school counselors and others concerning current career opportunities in special education, location of programs, and various forms of financial assistance (such as scholarships, stipends, and allowances).

[(3) Identify training programs available around the country.

[(4) Establish a network among local and State educational agencies and institutions of higher education concerning the supply of graduates and available openings.

[(5) Provide technical assistance to institutions seeking to meet State and professionally recognized standards.

[(e)(1) In awarding grants, contracts, and cooperative agreements under this section, the Secretary shall give priority consideration to any applicant with demonstrated, proven effectiveness (at the national level) in performing the functions established in this section; and with the ability to conduct such projects, communicate with intended consumers of information, and maintain the necessary communication with national, regional, State, and local agencies and organizations.

[(2) In awarding grants, contracts, and cooperative agreements under this section, the Secretary shall give priority consideration to any applicant with demonstrated, proven effectiveness (at the national level) in providing informational services to minorities and minority organizations.

[(f)(1) Beginning in fiscal year 1991, and for each year thereafter, the Secretary shall obtain information on each project assisted under this section, including—

[(A) the number of individuals served by disability category, as appropriate, including parents, professionals, students, and individuals with disabilities;

[(B) a description of responses utilized;

[(C) a listing of new products developed and disseminated; and

[(D) a description of strategies and activities utilized for outreach to urban and rural areas with populations of minorities and underrepresented groups.

[(2) A summary of the data required by this subsection shall be included in the annual report to Congress required under section 618.

[REPORTS TO THE SECRETARY

[SEC. 634. (a) Not more than sixty days after the end of any fiscal year, each recipient of a grant or contract under this part during such fiscal year shall prepare and submit a report to the Secretary. Each such report shall be in such form and detail as the Secretary determines to be appropriate, and shall include—

[(1) the number of individuals trained under the grant or contract, by category of training and level of training;

[(2) the number of individuals trained under the grant or contract receiving degrees and certification, by category and level of training; and

[(3) information described in section 631(d)(11) and section 633(f)(1), as applicable.

[(b) A summary of the data required by this section shall be included in the annual report of the Secretary under section 618 of this Act.

[AUTHORIZATION OF APPROPRIATIONS

[SEC. 635. (a)(1) There are authorized to be appropriated to carry out this part (other than sections 631(a)(7), 631(d), and 633) $94,725,000 for fiscal year 1991, $103,255,000 for fiscal year 1992, $113,580,000 for fiscal year 1993, and $123,760,000 for fiscal year 1994.

[(2) There are authorized to be appropriated to carry out section 631(a)(7) $19,250,000 for fiscal year 1991, $21,175,000 for fiscal

year 1992, $23,292,500 for fiscal year 1993, and $25,621,750 for fiscal year 1994.

[(3) There are authorized to be appropriated to carry out section 631(d) $11,000,000 for fiscal year 1991, $15,100,000 for fiscal year 1992, $16,300,000 for fiscal year 1993, and $17,600,000 for fiscal year 1994.

[(4) There are authorized to be appropriated to carry out section 633 $2,900,000 for fiscal year 1991, $2,465,000 for fiscal year 1992, $2,710,000 for fiscal year 1993, and $2,960,000 for fiscal year 1994.

[(b) Of the funds appropriated pursuant to subsection (a) for any fiscal year, the Secretary shall reserve not less than 65 per centum for activities described in subparagraphs (A) through (E) of section 631(a)(1).

[PART E—RESEARCH IN THE EDUCATION OF HANDICAPPED INDIVIDUALS

[RESEARCH AND RELATED ACTIVITIES

[SEC. 641. (a) The Secretary may make grants to, or enter into contracts or cooperative agreements with, State and local educational agencies, institutions of higher education, other public agencies and nonprofit private organizations for the purpose of advancing and improving the knowledge base and improving the practice of professionals, parents, and others providing early intervention, special education, and related services, including professionals who work with children and youth with disabilities in regular education environments, to provide such children effective instruction and enable them to successfully learn. The activities supported under this section shall support innovation, development, exchange, and use of such advancements in knowledge and practice designed to contribute to the improvement of instruction and learning of infants, toddlers, children, and youth with disabilities. In carrying out this section, the Secretary may support a wide range of research and related activities designed to—

[(1) advance knowledge regarding the provision of instruction and other interventions to infants, toddlers, children, and youth with disabilities including—

[(A) the organization, synthesis, and interpretation of current knowledge and the identification of knowledge gaps;

[(B) the identification of knowledge and skill competencies needed by personnel providing special education, related services, and early intervention services;

[(C) the improvement of knowledge regarding the developmental and learning characteristics of infants, toddlers, children, and youth with disabilities in order to improve the design and effectiveness of interventions and instruction;

[(D) the evaluation of approaches and interventions;

[(E) the development of instructional strategies, techniques, and activities;

[(F) the improvement of curricula and instructional tools such as textbooks, media, materials, and technology;

[(G) the development of assessment techniques, instruments (including tests, inventories, and scales), and strategies for measurement of progress and the identification, location, and evaluation of infants, toddlers, children, and youth with disabilities for the purpose of determining eligibility, program planning, and placement for special education, related services, and early intervention services. Particular attention should be given to the development of alternative assessment procedures and processes for minority individuals and those with limited English proficiency;

[(H) the testing of research findings in practice settings to determine the application, usability, effectiveness, and generalizability of such research findings;

[(I) the improvement of knowledge regarding families, minorities, limited English proficiency, and disabling conditions; and

[(J) the identification of environmental, organizational, resource, and other conditions necessary for effective professional practice; and

[(2) advance the use of knowledge by personnel providing special education, related services, and early intervention services including—

[(A) the improvement of knowledge regarding how such individuals learn new knowledge and skills, and strategies for effectively facilitating such learning in preservice, inservice, and continuing education;

[(B) the organization, integration, and presentation of knowledge so that such knowledge can be incorporated and imparted in personnel preparation, continuing education programs, and other relevant training and communication vehicles; and

[(C) the expansion and improvement of networks that exchange knowledge and practice information.

[(b) In carrying out subsection (a), the Secretary shall consider the special education, related services, or early intervention and research experience of applicants.

[(c) The Secretary shall publish proposed priorities under this part in the Federal Register not later than 12 months preceding the fiscal year for which they are being announced, and shall allow a period of 60 days for public comments and suggestions. The Secretary shall, after analyzing and considering the public comments, publish final priorities in the Federal Register not later than 90 days after the close of the comment period.

[(d) The Secretary shall provide an index (including the title of each project and the name and address of the funded organization) of all projects conducted under this part in the prior fiscal year in the annual report described under section 618.

[(e) The Secretary shall—

[(1) coordinate the priorities established under subsection (b) with research priorities established by the National Institute for Disability and Rehabilitation Research and other appropriate agencies conducting research pertaining to the education of individuals with disabilities; and

[(2) provide information concerning priorities established under subsection (b) to the National Council on Disability and to the Bureau of Indian Affairs Advisory Committee for Exceptional Children.

[(f)(1) The Secretary shall make grants or enter into contracts or cooperative agreements for the establishment of a center or centers designed to organize, synthesize, and disseminate current knowledge relating to children with attention deficit disorder with respect to the following:

[(A) Assessment techniques, instruments, and strategies used for identification, location, evaluation and for measurement of progress.

[(B) Knowledge and skill competencies needed by professionals providing special and regular education and related services.

[(C) Environmental, organizational, resource, and other conditions necessary for effective professional practice.

[(D) Developmental and learning characteristics.

[(E) Instructional strategies, techniques, and activities.

[(F) Curricula and instructional tools such as textbooks, media, materials, and technology.

[(G) Strategies, techniques, and activities related to involvement of families.

[(2) In awarding grants, contracts, and cooperative agreements under paragraph (1), the Secretary shall give priority consideration to applicants with—

[(A) demonstrated knowledge concerning the disorder;

[(B) proven effectiveness in performing the functions established in this subsection; and

[(C) the ability to—

[(i) conduct such projects;

[(ii) communicate with intended consumers of information; and

[(iii) maintain the necessary communication with national, regional, State, and local agencies.

[(g)(1) The Secretary shall make grants, or enter into contracts or cooperative agreements, for the establishment of model demonstration programs, of which some will be school-based models, that provide the services of an ombudsman to assist in resolving problems that are barriers to appropriate educational, related services, or other services for children and youth with disabilities.

[(2) Programs under paragraph (1) shall provide or identify personnel to assist children and youth with disabilities, their parents or guardians, special and regular education teachers, State and local education administrators, and related services personnel to resolve problems in a timely manner through dispute mediation and other methods, notwithstanding due process procedures, in order to further the delivery of appropriate education and related services. Participation in this program does not preclude or delay due process under part B of this Act.

[(3) Ombudsman services for programs under paragraph (1) shall be provided by social workers, parent advocates, psychologists, and persons with similar qualifications designated by the Secretary.

[(h)(1) The Secretary may make grants to institutions of higher education, in partnership with other appropriate agencies and organizations such as local educational agencies and center schools for students who are deaf, to—

[(A) conduct research in the unique needs of children and youth, including minority children and youth, with disabilities;

[(B) develop and evaluate specialized instructional methods, materials, curricula, and technologies for use with such children and youth; and

[(C) develop and evaluate assessment techniques, instruments, and strategies used to identify, evaluate, and measure the progress of such children and youth.

[(2) Each grantee under this subsection shall provide for the meaningful involvement in its project of parents and family members and adult role models.

[RESEARCH AND DEMONSTRATION PROJECTS IN PHYSICAL EDUCATION AND RECREATION FOR CHILDREN WITH DISABILITIES

[SEC. 642. The Secretary is authorized to make grants to States, State or local educational agencies, institutions of higher education, and other public or nonprofit private educational or research agencies and organizations, and to make contracts with States, State or local educational agencies, institutions of higher education, and other public or private educational or research agencies and organizations, for research and related purposes relating to physical education or recreation for children with disabilities, including therapeutic recreation, and to conduct research, surveys, or demonstrations relating to physical education or recreation for children with disabilities, including therapeutic recreation.

[AUTHORIZATION OF APPROPRIATIONS

[SEC. 643. For purposes of carrying out this part, there are authorized to be appropriated $21,100,000 for fiscal year 1990, $24,650,000 for fiscal year 1991, $27,400,000 for fiscal year 1992, $30,200,000 for fiscal year 1993, and $33,200,000 for fiscal year 1994.

[PART F—INSTRUCTIONAL MEDIA FOR INDIVIDUALS WITH DISABILITIES

[PURPOSES

[SEC. 651. The purposes of this part are to promote—

[(1) the general welfare of deaf and hard of hearing individuals by—

[(A) bringing to such individuals understanding and appreciation of those films and television programs that play such an important part in the general and cultural advancement of hearing individuals;

[(B) providing through these films and television programs enriched educational and cultural experiences through which deaf and hard of hearing individuals can be brought into better touch with the realities of their environment; and

[(C) providing a wholesome and rewarding experience that deaf and hard of hearing individuals may share together; and

[(2) the educational advancement of individuals with disabilities by—

[(A) carrying on research in the use of educational media for individuals with disabilities;

[(B) producing and distributing educational media for the use of individuals with disabilities, their parents, their actual or potential employers, and other individuals directly involved in work for the advancement of individuals with disabilities;

[(C) training individuals in the use of educational media for the instruction of individuals with disabilities; and

[(D) utilizing educational media to help eliminate illiteracy among individuals with disabilities;[1]

[(3) the general welfare of visually impaired individuals by—

[(A) bringing to such individuals an understanding and appreciation of textbooks, films, television programs, video material, and other educational publications and materials that play such an important part in the general and cultural advancement of visually unimpaired individuals; and

[(B) ensuring access to television programming and other video materials.

[CAPTIONED FILMS, TELEVISION, DESCRIPTIVE VIDEO, AND EDUCATIONAL MEDIA FOR HANDICAPPED INDIVIDUALS

[SEC. 652. (a) The Secretary shall establish a loan service of captioned films, descriptive video and educational media for the purpose of making such materials available, in accordance with regulations, in the United States for nonprofit purposes to individuals with disabilities, parents of individuals with disabilities, and other individuals directly involved in activities for the advancement of individuals with disabilities, including for the purpose of addressing problems of illiteracy among individuals with disabilities.

[(b) The Secretary is authorized to—

[(1) acquire films (or rights thereto) and other educational media by purchase, lease, or gift;

[(2) acquire by lease or purchase equipment necessary for the administration of this part;

[(3) provide, by grant or contract, for the captioning for deaf and hard of hearing individuals and video description for the visually impaired, of films, television programs, and video materials;

[(4) provide, by grant or contract, for the distribution of captioned and video-described films, video materials, and other educational media and equipment through State schools for handicapped individuals, public libraries, and such other agencies or entities as the Secretary may deem appropriate to serve as local or regional centers for such distribution;

[(5) provide, by grant or contract, for the conduct of research in the use of educational and training films and other educational media for individuals with disabilities, for the production and distribution of educational and training films and

other educational media for individuals with disabilities and the training of individuals in the use of such films and media, including the payment to those individuals of such stipends (including allowances for travel and other expenses of such individuals and their dependents) as the Secretary may determine, which shall be consistent with prevailing practices under comparable federally supported programs;

[(6) utilize the facilities and services of other governmental agencies;

[(7) accept gifts, contributions, and voluntary and uncompensated services of individuals and organizations; and

[(8) provide by grant or contract for educational media and materials for deaf and hard of hearing individuals.

[(c) The Secretary may make grants to or enter into contracts or cooperative agreements with the National Theatre of the Deaf, Inc. and other appropriate non-profit organizations for the purpose of providing cultural experiences to—

[(1) enrich the lives of deaf and hard of hearing children and adults,

[(2) increase public awareness and understanding of deafness and of the artistic and intellectual achievements of deaf and hard of hearing individuals, and

[(3) promote the integration of hearing and deaf and hard of hearing individuals through shared cultural, educational, and social experiences.

[(d)(1) The Secretary is authorized to make a grant or enter into a contract for the purpose of providing current, free textbooks and other educational publications and materials to blind and other print-handicapped students in elementary, secondary, postsecondary, and graduate schools and other institutions of higher education through the medium of transcribed tapes and cassettes.

[(2) For the purpose of this subsection, the term "print-handicapped" refers to any individual who is blind or severely visually impaired, or who, by reason of a physical or perceptual disability, is unable to read printed material unassisted.

[AUTHORIZATION OF APPROPRIATIONS

[SEC. 653. For the purpose of carrying out section 652 there are authorized to be appropriated $20,010,000 for fiscal year 1991, $22,010,000 for fiscal year 1992, $24,200,000 for fiscal year 1993, and $26,600,000 for fiscal year 1994.

[PART G—TECHNOLOGY, EDUCATIONAL MEDIA, AND MATERIALS FOR INDIVIDUALS WITH DISABILITIES

[FINANCIAL ASSISTANCE

[SEC. 661. (a) The Secretary may make grants or enter into contracts or cooperative agreements with institutions of higher education, State and local educational agencies, or other appropriate agencies and organizations for the purpose of advancing the use of new technology, media, and materials in the education of students with disabilities and the provision of related services and early intervention services to infants and toddlers with disabilities. In

carrying out this section, the Secretary may fund projects or centers for the purposes of—

[(1) determining how technology, assistive technology, media, and materials are being used in the education of individuals with disabilities and how they can be used most effectively, efficiently, and appropriately,

[(2) designing and adapting technology, assistive technology, media, and materials to improve the education of students with disabilities,

[(3) assisting the public and private sectors in the development and marketing of technology, assistive technology, media, and materials for the education of individuals with disabilities,

[(4) disseminating information on the availability and use of technology, assistive technology, media, and materials for the education of individuals with disabilities, where appropriate, to entities described in section 610(g),

[(5) increasing access to and use of assistive technology devices and assistive technology services in the education of infants, toddlers, children, and youth with disabilities, and other activities authorized under the Technology-Related Assistance for Individuals With Disabilities Act of 1988, as such Act relates to the education of students with disabilities, and

[(6) examining how these purposes can address the problem of illiteracy among individuals with disabilities.

[(b)(1) With respect to new technology, media, and materials utilized with funds under this part to improve the education of students with disabilities, the Secretary shall make efforts to ensure that such instructional materials are closed captioned.

[(2) The Secretary may not award a grant, contract, or cooperative agreement under paragraphs (1) through (4) of subsection (a) unless the applicant for such assistance agrees that activities carried out with the assistance will be coordinated, as appropriate, with the State entity receiving funds under title I of the Technology–Related Assistance for Individuals with Disabilities Act of 1988.

[AUTHORIZATION OF APPROPRIATIONS

[SEC. 662. For the purpose of carrying out this part, there are authorized to be appropriated $11,900,000 for fiscal year 1991, $12,860,000 for fiscal year 1992, $13,890,000 for fiscal year 1993, and $15,000,000 for fiscal year 1994.

[PART H—INFANTS AND TODDLERS WITH DISABILITIES

[FINDINGS AND POLICY

[SEC. 671. (a) FINDINGS.—The Congress finds that there is an urgent and substantial need—

[(1) to enhance the development of infants and toddlers with disabilities and to minimize their potential for developmental delay,

[(2) to reduce the educational costs to our society, including our Nation's schools, by minimizing the need for special education and related services after infants and toddlers with disabilities reach school age,

[(3) to minimize the likelihood of institutionalization of individuals with disabilities and maximize the potential for their independent living in society,

[(4) to enhance the capacity of families to meet the special needs of their infants and toddlers with disabilities, and

[(5) to enhance the capacity of State and local agencies and service providers to identify, evaluate, and meet the needs of historically underrepresented populations, particularly minority, low-income, inner-city, and rural populations.

[(b) POLICY.—It is therefore the policy of the United States to provide financial assistance to States—

[(1) to develop and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency program of early intervention services for infants and toddlers with disabilities and their families,

[(2) to facilitate the coordination of payment for early intervention services from Federal, State, local, and private sources (including public and private insurance coverage), and

[(3) to enhance their capacity to provide quality early intervention services and expand and improve existing early intervention services being provided to infants and toddlers with disabilities and their families.

[DEFINITIONS

[SEC. 672. As used in this part—

[(1) The term "infants and toddlers with disabilities" means individuals from birth to age 2, inclusive, who need early intervention services because they—

[(A) are experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures in one or more of the following areas: cognitive development, physical development, language and speech development (hereafter in this part referred to as "communication development"), psychosocial development (hereafter in this part referred to as "social or emotional development"), or self-help skills (hereafter in this part referred to as "adaptive development"), or

[(B) have a diagnosed physical or mental condition which has a high probability of resulting in developmental delay.

Such term may also include, at a State's discretion, individuals from birth to age 2, inclusive, who are at risk of having substantial developmental delays if early intervention services are not provided.

[(2) The term "early intervention services" are developmental services which—

[(A) are provided under public supervision,

[(B) are provided at no cost except where Federal or State law provides for a system of payments by families, including a schedule of sliding fees,

[(C) are designed to meet the developmental needs of an infant or toddler with a disability in any one or more of the following areas:

[(i) physical development,

[(ii) cognitive development,
[(iii) communication development,
[(iv) social or emotional development, or
[(v) adaptive development,

[(D) meet the standards of the State, including the requirements of this part,

[(E) include—

[(i) family training, counseling, and home visits,
[(ii) special instruction,
[(iii) speech pathology and audiology,
[(iv) occupational therapy,
[(v) physical therapy,
[(vi) psychological services,
[(vii) case management services (hereafter in this part referred to as "service coordination services"),
[(viii) medical services only for diagnostic or evaluation purposes,
[(ix) early identification, screening, and assessment services,
[(x) health services necessary to enable the infant or toddler to benefit from the other early intervention services,
[(xi) social work services,
[(xii) vision services,
[(xiii) assistive technology devices and assistive technology services, and
[(xiv) transportation and related costs that are necessary to enable an infant or toddler and the infant's or toddler's family to receive early intervention services,

[(F) are provided by qualified personnel, including—

[(i) special educators,
[(ii) speech and language pathologists and audiologists,
[(iii) occupational therapists,
[(iv) physical therapists,
[(v) psychologists,
[(vi) social workers,
[(vii) nurses,
[(viii) nutritionists,
[(ix) family therapists,
[(x) orientation and mobility specialists, and
[(xi) pediatricians and other physicians,

[(G) to the maximum extent appropriate, are provided in natural environments, including the home, and community settings in which children without disabilities participate, and

[(H) are provided in conformity with an individualized family service plan adopted in accordance with section 677.

[(3) The term "developmental delay" has the meaning given such term by a State under section 676(b)(1).

[(4) The term "Council" means the State Interagency Coordinating Council established under section 682.

[GENERAL AUTHORITY

[SEC. 673. The Secretary shall, in accordance with this part, make grants to States (from their allocations under section 684) to assist each State to develop a statewide, comprehensive, coordinated, multidisciplinary, interagency system to provide early intervention services for infants and toddlers with disabilities and their families.

[GENERAL ELIGIBILITY

[SEC. 674. In order to be eligible for a grant under section 673 for any fiscal year, a State shall demonstrate to the Secretary (in its application under section 678) that the State has established a State Interagency Coordinating Council which meets the requirements of section 682.

[CONTINUING ELIGIBILITY

[SEC. 675. (a) FIRST TWO YEARS.—In order to be eligible for a grant under section 673 for the first or second year of a State's participation under this part, a State shall include in its application under section 678 for that year an assurance that funds received under section 673 shall be used to assist the State to plan, develop, and implement the statewide system required by section 676.

[(b) THIRD AND FOURTH YEAR.—(1) In order to be eligible for a grant under section 673 for the third or fourth year of a State's participation under this part, a State shall include in its application under section 678 for that year information and assurances demonstrating to the satisfaction of the Secretary that—

[(A) the State has adopted a policy which incorporates all of the components of a statewide system in accordance with section 676 or obtained a waiver from the Secretary under paragraph (2),

[(B) funds shall be used to plan, develop, and implement the statewide system required by section 676, and

[(C) such statewide system will be in effect no later than the beginning of the fourth year of the State's participation under section 673, except that in order to comply with section 676(b)(4), a State need only conduct multidisciplinary assessments, develop individualized family service plans, and make available case management services.

[(2) Notwithstanding paragraph (1), the Secretary may permit a State to continue to receive assistance under section 673 during such third year even if the State has not adopted the policy required by paragraph (1)(A) before receiving assistance if the State demonstrates in its application—

[(A) that the State has made a good faith effort to adopt such a policy,

[(B) the reasons why it was unable to meet the timeline and the steps remaining before such a policy will be adopted, and

[(C) an assurance that the policy will be adopted and go into effect before the fourth year of such assistance.

[(c) FIFTH AND SUCCEEDING YEARS.—In order to be eligible for a grant under section 673 for a fifth and any succeeding year of a State's participation under this part, a State shall include in its ap-

plication under section 678 for that year information and assurances demonstrating to the satisfaction of the Secretary that the State has in effect the statewide system required by section 676 and a description of services to be provided under section 676(b)(2).

[(d) EXCEPTION.—Notwithstanding subsections (a) and (b), a State which has in effect a State law, enacted before September 1, 1986, that requires the provision of free appropriate public education to children with disabilities from birth through age 2, inclusive, shall be eligible for a grant under section 673 for the first through fourth years of a State's participation under this part.

[(e) DIFFERENTIAL FUNDING FOR FOURTH OR FIFTH YEAR.—

[(1) IN GENERAL.—Notwithstanding any other provision of this part, a State shall be eligible for a grant under section 673 for fiscal years 1990, 1991, or 1992 if—

[(A) the State satisfies the eligibility criteria described in subsection (b)(1) pertaining to the State's third or fourth year of participation under this part; and

[(B) the Governor, on behalf of the State, submits, by a date that the Secretary may establish for each such year, a request for extended participation, including—

[(i) information demonstrating to the Secretary's satisfaction that the State is experiencing significant hardships in meeting the requirements of this section for the fourth or fifth year of participation; and

[(ii) a plan, including timelines, for meeting the eligibility criteria described in subsections (b)(1) and (c) for the fourth, fifth, or succeeding years of participation.

[(2) APPROVAL OF REQUEST.—

[(A) FIRST YEAR.—The Secretary shall approve a State's request for a first year of extended participation under this subsection if the State meets the requirements of paragraph (1).

[(B) SECOND YEAR.—The Secretary shall approve a State's request for a second year of extended participation under this subsection if the State—

[(i) meets the requirements of paragraph (1); and

[(ii) demonstrates to the Secretary's satisfaction that the State has made reasonable progress in implementing the plan described in paragraph (1)(B)(ii).

[(3) DURATION.—The Secretary may not approve more than two requests from the same State for extended participation under this subsection.

[(4) PAYMENT.—

[(A) FISCAL YEAR 1990.—Notwithstanding any other provision of law, each State qualifying for extended participation under this subsection for fiscal year 1990 shall receive a payment under this part in an amount equal to such State's payment under this part for fiscal year 1989.

[(B) FISCAL YEAR 1991 OR 1992.—Except as provided in subparagraph (C) and notwithstanding any other provision of law, each State qualifying for extended participation under this subsection for fiscal year 1991 or fiscal year 1992 shall receive a payment under this part for such fis-

cal years in an amount equal to the payment such State would have received under this part for fiscal year 1990 if such State had met the criteria for the fourth year of participation described in subsection (b)(1).

[(C) MINIMUM PAYMENT FOR FISCAL YEAR 1991 OR 1992 FOR CERTAIN STATES.—Notwithstanding any other provision of law, each State qualifying for extended participation under this subsection for fiscal year 1991 or fiscal year 1992 shall receive a payment under this part of not less than $500,000. For purposes of the preceding sentence, the term "State" means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

[(5) REALLOTMENT.—

[(A) FISCAL YEAR 1990.—The amount by which the allotment computed under section 684 for any State for fiscal year 1990 exceeds the amount that such State may be allotted under paragraph (4)(A) of this subsection (and, notwithstanding section 684(d), any fiscal year 1990 funds allotted to any State that such State elects not to receive) shall be reallotted, notwithstanding the percentage limitations set forth in sections 684 (a) and (b), among those States satisfying the eligibility criteria of subsection (b)(1) for the fourth year of participation that have submitted an application by a date that the Secretary may establish in an amount which bears the same ratio to such amount as the amount of such State's allotment under section 684 as modified by this subsection in such fiscal year bears to the amount of all such States' allotment under section 684 as modified by this subsection in such fiscal year.

[(B) FISCAL YEAR 1991 OR 1992.—The amount by which a State's allotment computed under section 684 for any State for fiscal years 1991 or 1992 exceeds the amount that such State may be allotted for such fiscal year under paragraph (4)(B) of this subsection shall be reallotted, notwithstanding the percentage limitations set forth in section 684 (a) and (b)—

[(i) first, among those States satisfying the eligibility criteria of subsection (c) for the fifth year of participation that have submitted applications by a date that the Secretary may establish for each such year in an amount which bears the same ratio to such amount as the amount of such State's allotment under section 684 as modified by this subsection in such fiscal year bears to the amount of all such States' allotment under section 684 as modified by this subsection in such fiscal year, except that no such State, by operation of this clause, shall receive an increase of more than 100 percent over the amount such State would have otherwise received under section 684 for the previous fiscal year;

[(ii) second, if funds remain, among those States that have—

[(I) satisfied the eligibility criteria of subsection (b)(1) for the fourth year of participation;

[(II) qualified for extended participation under this subsection; and

[(III) not received a reallotment payment under clause (i),

in an amount which bears the same ratio to such amount as the amount of such State's allotment under section 684 as modified by this subsection in such fiscal year bears to the amount of all such States' allotment under section 684 as modified by this subsection in such fiscal year, except that no State, by operation of this clause, shall receive a reallotment payment that is larger than the payment such State would otherwise have received under section 684 for such year; and

[(iii) third, if funds remain, among those States satisfying the eligibility criteria of subsection (c) for the fifth year of participation that did not receive a reallotment payment under clause (ii) in an amount which bears the same ratio to such amount as the amount of such State's allotment under section 684 as modified by this subsection in such fiscal year bears to the amount of all such States' allotment under section 684 as modified by this subsection in such fiscal year.

[(6) DEFINITIONS.—For the purpose of this subsection, the term "State", except as provided in paragraph (4)(C), means—

[(A) each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico;

[(B) each of the jurisdictions listed in section 684(a); and

[(C) the Department of the Interior.

[REQUIREMENTS FOR STATEWIDE SYSTEM

[SEC. 676. (a) IN GENERAL.—A statewide system of coordinated, comprehensive, multidisciplinary, interagency programs providing appropriate early intervention services to all infants and toddlers with disabilities and their families, including Indian infants and toddlers with disabilities on reservations, shall include the minimum components under subsection (b).

[(b) MINIMUM COMPONENTS.—The statewide system required by subsection (a) shall include, at a minimum—

[(1) a definition of the term "developmentally delayed" that will be used by the State in carrying out programs under this part,

[(2) timetables for ensuring that appropriate early intervention services will be available to all infants and toddlers with disabilities in the State, including Indian infants and toddlers with disabilities on reservations, before the beginning of the fifth year of a State's participation under this part,

[(3) a timely, comprehensive, multidisciplinary evaluation of the functioning of each infant and toddler with a disability in the State and the needs of the families to appropriately assist in the development of the infant or toddler with a disability,

[(4) for each infant and toddler with a disability in the State, an individualized family service plan in accordance with section 677, including service coordination services in accordance with such service plan,

[(5) a comprehensive child find system, consistent with part B of this Act, including a system for making referrals to service providers that includes timelines and provides for participation by primary referral sources,

[(6) a public awareness program focusing on early identification of infants and toddlers with disabilities, including the preparation and dissemination by the lead agency to all primary referral sources of information materials for parents on the availability of early intervention services, and procedures for determining the extent to which primary referral sources, especially hospitals and physicians, disseminate information on the availability of early intervention services to parents of infants with disabilities,

[(7) a central directory which includes early intervention services, resources, and experts available in the State and research and demonstration projects being conducted in the State,

[(8) a comprehensive system of personnel development, including the training of paraprofessionals and the training of primary referral sources respecting the basic components of early intervention services available in the State, that is consistent with the comprehensive system of personnel development described in section 613(a)(3) and that may include—

[(A) implementing innovative strategies and activities for the recruitment and retention of early intervention service providers,

[(B) promoting the preparation of early intervention providers who are fully and appropriately qualified to provide early intervention services under this part,

[(C) training personnel to work in rural areas, and

[(D) training personnel to coordinate transition services for infants and toddlers with disabilities from an early intervention program under this part to a preschool program under section 619 of part B.

[(9) a single line of responsibility in a lead agency designated or established by the Governor for carrying out—

[(A) the general administration and supervision of programs and activities receiving assistance under section 673, and the monitoring of programs and activities used by the State to carry out this part, whether or not such programs or activities are receiving assistance made available under section 673, to ensure that the State complies with this part,

[(B) the identification and coordination of all available resources within the State from Federal, State, local and private sources,

[(C) the assignment of financial responsibility in accordance with section 678(a)(2) to the appropriate agencies,

[(D) the development of procedures to ensure that services are provided to infants and toddlers with disabilities

and their families in a timely manner pending the resolution of any disputes among public agencies or service providers,

[(E) the resolution of intra- and interagency disputes, and

[(F) the entry into formal interagency agreements that define the financial responsibility of each agency for paying for early intervention services (consistent with State law) and procedures for resolving disputes and that include all additional components necessary to ensure meaningful cooperation and coordination,

[(10) a policy pertaining to the contracting or making of other arrangements with service providers to provide early intervention services in the State, consistent with the provisions of this part, including the contents of the application used and the conditions of the contract or other arrangements,

[(11) a procedure for securing timely reimbursement of funds used under this part in accordance with section 681(a),

[(12) procedural safeguards with respect to programs under this part as required by section 680,

[(13) policies and procedures relating to the establishment and maintenance of standards to ensure that personnel necessary to carry out this part are appropriately and adequately prepared and trained, including—

[(A) the establishment and maintenance of standards which are consistent with any State approved or recognized certification, licensing, registration, or other comparable requirements which apply to the area in which such personnel are providing early intervention services, and

[(B) to the extent such standards are not based on the highest requirements in the State applicable to a specific profession or discipline, the steps the State is taking to require the retraining or hiring of personnel that meet appropriate professional requirements in the State, and

[(14) a system for compiling data on the numbers of infants and toddlers with disabilities and their families in the State in need of appropriate early intervention services (which may be based on a sampling of data), the numbers of such infants and toddlers and their families served, the types of services provided (which may be based on a sampling of data), and other information required by the Secretary.

[INDIVIDUALIZED FAMILY SERVICE PLAN

[SEC. 677. (a) ASSESSMENT AND PROGRAM DEVELOPMENT.—Each infant or toddler with a disability and the infant's or toddler's family shall receive—

[(1) a multidisciplinary assessment of the unique strengths and needs of the infant or toddler and the identification of services appropriate to meet such needs,

[(2) a family-directed assessment of the resources, priorities, and concerns of the family and the identification of the supports and services necessary to enhance the family's capacity

to meet the developmental needs of their infant or toddler with a disability, and

[(3) a written individualized family service plan developed by a multidisciplinary team, including the parent or guardian, as required by subsection (d).

[(b) PERIODIC REVIEW.—The individualized family service plan shall be evaluated once a year and the family shall be provided a review of the plan at 6-month intervals (or more often where appropriate based on infant or toddler and family needs).

[(c) PROMPTNESS AFTER ASSESSMENT.—The individualized family service plan shall be developed within a reasonable time after the assessment required by subsection (a)(1) is completed. With the parent's consent, early intervention services may commence prior to the completion of such assessment.

[(d) CONTENT OF PLAN.—The individualized family service plan shall be in writing and contain—

[(1) a statement of the infant's or toddler's present levels of physical development, cognitive development, communication development, social or emotional development, and adaptive development, based on acceptable objective criteria,

[(2) a statement of the family's resources, priorities, and concerns relating to enhancing the development of the family's infant or toddler with a disability,

[(3) a statement of the major outcomes expected to be achieved for the infant or toddler and the family, and the criteria, procedures, and timelines used to determine the degree to which progress toward achieving the outcomes is being made and whether modifications or revisions of the outcomes or services are necessary,

[(4) a statement of specific early intervention services necessary to meet the unique needs of the infant or toddler and the family, including the frequency, intensity, and the method of delivering services,

[(5) a statement of the natural environments in which early intervention services shall appropriately be provided,

[(6) the projected dates for initiation of services and the anticipated duration of such services,

[(7) the name of the case manager (hereafter in this part referred to as the "service coordinator") from the profession most immediately relevant to the infant's or toddler's or family's needs (or who is otherwise qualified to carry out all applicable responsibilities under this part) who will be responsible for the implementation of the plan and coordination with other agencies and persons, and

[(8) the steps to be taken supporting the transition of the toddler with a disability to services provided under part B of this Act to the extent such services are considered appropriate.

[(e) PARENTAL CONSENT.—The contents of the individualized family service plan shall be fully explained to the parents or guardian and informed written consent from such parents or guardian shall be obtained prior to the provision of early intervention services described in such plan. If such parents or guardian do not provide such consent with respect to a particular early intervention

service, then the early intervention services to which such consent is obtained shall be provided.

[STATE APPLICATION AND ASSURANCES

[SEC. 678. (a) APPLICATION.—Any State desiring to receive a grant under section 673 for any year shall submit an application to the Secretary at such time and in such manner as the Secretary may reasonably require by regulation. Such an application shall contain—

[(1) a designation of the lead agency in the State that will be responsible for the administration of funds provided under section 673,

[(2) a designation by the State of an individual or entity responsible for assigning financial responsibility among appropriate agencies,

[(3) information demonstrating eligibility of the State under section 674,

[(4) the information or assurances required to demonstrate eligibility of the State for the particular year of participation under section 675,

[(5)(A) information demonstrating that the State has provided (i) public hearings, (ii) adequate notice of such hearings, and (iii) an opportunity for comment to the general public before the submission of such application and before the adoption by the State of the policies described in such application, and (B) a summary of the public comments and the State's responses,

[(6) a description of the uses for which funds will be expended in accordance with this part and, for the fifth and succeeding fiscal years, a description of the services to be provided,

[(7) a description of the procedure used to ensure an equitable distribution of resources made available under this part among all geographic areas within the State,

[(8) a description of the policies and procedures used to ensure a smooth transition for individuals participating in the early intervention program under this part who are eligible for participation in preschool programs under part B, including a description of how the families will be included in the transitional plans and how the lead agency under this part will notify the appropriate local educational agency or intermediate educational unit in which the child resides and convene, with the approval of the family, a conference between the lead agency, the family, and such agency or unit at least 90 days before such child is eligible for the preschool program under part B in accordance with State law, and to review the child's program options, for the period commencing on the day a child turns 3 running through the remainder of the school year, and to establish a transition plan, and

[(9) such other information and assurances as the Secretary may reasonably require by regulation.

[(b) STATEMENT OF ASSURANCES.—Any State desiring to receive a grant under section 673 shall file with the Secretary a statement

at such time and in such manner as the Secretary may reasonably require by regulation. Such statement shall—

[(1) assure that funds paid to the State under section 673 will be expended in accordance with this part,

[(2) contain assurances that the State will comply with the requirements of section 681,

[(3) provide satisfactory assurance that the control of funds provided under section 673, and title to property derived therefrom, shall be in a public agency for the uses and purposes provided in this part and that a public agency will administer such funds and property,

[(4) provide for (A) making such reports in such form and containing such information as the Secretary may require to carry out the Secretary's functions under this part, and (B) keeping such records and affording such access thereto as the Secretary may find necessary to assure the correctness and verification of such reports and proper disbursement of Federal funds under this part,

[(5) provide satisfactory assurance that Federal funds made available under section 673 (A) will not be commingled with State funds, and (B) will be so used as to supplement and increase the level of State and local funds expended for infants and toddlers with disabilities and their families and in no case to supplant such State and local funds,

[(6) provide satisfactory assurance that such fiscal control and fund accounting procedures will be adopted as may be necessary to assure proper disbursement of, and accounting for, Federal funds paid under section 673 to the State,

[(7) beginning in fiscal year 1992, provide satisfactory assurance that policies and practices have been adopted to ensure meaningful involvement of traditionally underserved groups, including minority, low-income, and rural families, in the planning and implementation of all the requirements of this part and to ensure that such families have access to culturally competent services within their local areas, and

[(8) such other information and assurances as the Secretary may reasonably require by regulation.

[(c) APPROVAL OF APPLICATION AND ASSURANCES REQUIRED.—No State may receive a grant under section 673 unless the Secretary has approved the application and statement of assurances of that State. The Secretary shall not disapprove such an application or statement of assurances unless the Secretary determines, after notice and opportunity for a hearing, that the application or statement of assurances fails to comply with the requirements of this section.

[USES OF FUNDS

[SEC. 679. In addition to using funds provided under section 673 to plan, develop, and implement the statewide system required by section 676, a State may use such funds—

[(1) for direct services for infants and toddlers with disabilities and their families that are not otherwise provided from other public or private sources,

[(2) to expand and improve on services for infants and toddlers with disabilities and their families that are otherwise available, and

[(3) to provide a free appropriate public education, in accordance with part B, to children with disabilities from their third birthday to the beginning of the following school year.

[PROCEDURAL SAFEGUARDS

[SEC. 680. The procedural safeguards required to be included in a statewide system under section 676(b)(12) shall provide, at a minimum, the following:

[(1) The timely administrative resolution of complaints by parents. Any party aggrieved by the findings and decision regarding an administrative complaint shall have the right to bring a civil action with respect to the complaint, which action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy. In any action brought under this paragraph, the court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and, basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.

[(2) The right to confidentiality of personally identifiable information, including the right of parents or guardians to written notice of and written consent to the exchange of such information among agencies consistent with Federal and State law.

[(3) The right of the parents or guardian to determine whether they, their infant or toddler, or other family members will accept or decline any early intervention service under this part in accordance with State law without jeopardizing other early intervention services under this part.

[(4) The opportunity for parents or a guardian to examine records relating to assessment, screening, eligibility determinations, and the development and implementation of the individualized family service plan.

[(5) Procedures to protect the rights of the infant or toddler with a disability whenever the parents or guardian of the child are not known or unavailable or the child is a ward of the State, including the assignment of an individual (who shall not be an employee of the State agency providing services) to act as a surrogate for the parents or guardian.

[(6) Written prior notice to the parents or guardian of the infant or toddler with a disability whenever the State agency or service provider proposes to initiate or change or refuses to initiate or change the identification, evaluation, placement, or the provision of appropriate early intervention services to the infant or toddler with a disability.

[(7) Procedures designed to assure that the notice required by paragraph (6) fully informs the parents or guardian, in the parents' or guardian's native language, unless it clearly is not feasible to do so, of all procedures available pursuant to this section.

[(8) During the pendency of any proceeding or action involving a complaint, unless the State agency and the parents or guardian otherwise agree, the child shall continue to receive the appropriate early intervention services currently being provided or, if applying for initial services, shall receive the services not in dispute.

[PAYOR OF LAST RESORT

[SEC. 681. (a) NONSUBSTITUTION.—Funds provided under section 673 may not be used to satisfy a financial commitment for services which would have been paid for from another public or private source but for the enactment of this part, except that whenever considered necessary to prevent a delay in the receipt of appropriate early intervention services by the infant or toddler or family in a timely fashion, funds provided under section 673 may be used to pay the provider of services pending reimbursement from the agency which has ultimate responsibility for the payment.

[(b) REDUCTION OF OTHER BENEFITS.—Nothing in this part shall be construed to permit the State to reduce medical or other assistance available or to alter eligibility under title V of the Social Security Act (relating to maternal and child health) or title XIX of the Social Security Act (relating to medicaid for infants or toddlers with disabilities) within the State.

[STATE INTERAGENCY COORDINATING COUNCIL

[SEC. 682. (a) ESTABLISHMENT.—(1) Any State which desires to receive financial assistance under section 673 shall establish a State Interagency Coordinating Council composed of at least 15 members but not more than 25 members, unless the State provides sufficient justification for a greater number of members in the application submitted pursuant to section 678.

[(2) The Council shall be appointed by the Governor. In making appointments to the Council, the Governor shall ensure that the membership of the Council reasonably represents the population of the State.

[(3) The Governor shall designate a member of the Council to serve as the chairperson of the Council, or shall require the Council to so designate such a member. Any member of the Council who is a representative of the lead agency designated under section 676(b)(9) may not serve as the chairperson of the Council.

[(b) COMPOSITION.—(1) The Council shall be composed as follows:

[(A) At least 20 percent of the members shall be parents, including minority parents, of infants or toddlers with disabilities or children with disabilities aged 12 or younger, with knowledge of, or experience with, programs for infants and toddlers with disabilities. At least one such member shall be a parent of an infant or toddler with a disability or a child with a disability aged 6 or younger.

[(B) At least 20 percent of the members shall be public or private providers of early intervention services.

[(C) At least one member shall be from the State legislature.

[(D) At least one member shall be involved in personnel preparation.

[(E) At least one member shall be from each of the State agencies involved in the provision of, or payment for, early intervention services to infants and toddlers with disabilities and their families and shall have sufficient authority to engage in policy planning and implementation on behalf of such agencies.

[(F) At least one member shall be from the State educational agency responsible for preschool services to children with disabilities and shall have sufficient authority to engage in policy planning and implementation on behalf of such agency.

[(G) At least one member shall be from the agency responsible for the State governance of insurance, especially in the area of health insurance.

[(2) The Council may include other members selected by the Governor, including a representative from the Bureau of Indian Affairs, or where there is no BIA operated or funded school, from the Indian Health Service or the tribe/tribal council.

[(c) MEETINGS.—The Council shall meet at least quarterly and in such places as it deems necessary. The meetings shall be publicly announced, and, to the extent appropriate, open and accessible to the general public.

[(d) MANAGEMENT AUTHORITY.—Subject to the approval of the Governor, the Council may prepare and approve a budget using funds under this part to conduct hearings and forums, to reimburse members of the Council for reasonable and necessary expenses for attending Council meetings and performing Council duties (including child care for parent representatives), to pay compensation to a member of the Council if such member is not employed or must forfeit wages from other employment when performing official Council business, to hire staff, and to obtain the services of such professional, technical, and clerical personnel as may be necessary to carry out its functions under this part.

[(e) FUNCTIONS OF COUNCIL.—(1) The Council shall—

[(A) advise and assist the lead agency designated or established under section 676(b)(9) in the performance of the responsibilities set out in such section, particularly the identification of the sources of fiscal and other support for services for early intervention programs, assignment of financial responsibility to the appropriate agency, and the promotion of the interagency agreements,

[(B) advise and assist the lead agency in the preparation of applications and amendments thereto,

[(C) advise and assist the State educational agency regarding the transition of toddlers with disabilities to services provided under part B, to the extent such services are appropriate, and

[(D) prepare and submit an annual report to the Governor and to the Secretary on the status of early intervention programs for infants and toddlers with disabilities and their families operated within the State.

[(2) The Council may advise and assist the lead agency and the State educational agency regarding the provision of appropriate services for children aged birth to 5, inclusive.

[(f) CONFLICT OF INTEREST.—No member of the Council shall cast a vote on any matter which would provide direct financial benefit to that member or otherwise give the appearance of a conflict of interest under State law.

[(g) USE OF EXISTING COUNCILS.—To the extent that a State has established a Council before September 1, 1986, that is comparable to the Council described in this section, such Council shall be considered to be in compliance with this section. Within 4 years after the date the State accepts funds under section 673, such State shall establish a council that complies in full with this section.

[FEDERAL ADMINISTRATION

[SEC. 683. Sections 616, 617, and 620 shall, to the extent not inconsistent with this part, apply to the program authorized by this part, except that—

[(1) any reference to a State educational agency shall be deemed to be a reference to the State agency established or designated under section 676(b)(9),

[(2) any reference to the education of children with disabilities and the education of all children with disabilities and the provision of free public education to all children with disabilities shall be deemed to be a reference to the provision of services to infants and toddlers with disabilities in accordance with this part, and

[(3) any reference to local educational agencies and intermediate educational agencies shall be deemed to be a reference to local service providers under this part.

[ALLOCATION OF FUNDS

[SEC. 684. (a) From the sums appropriated to carry out this part for any fiscal year, the Secretary may reserve 1 percent for payments to Guam, American Samoa, the Virgin Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, the Republic of Palau, and the Commonwealth of the Northern Mariana Islands in accordance with their respective needs.

[(b)(1) The Secretary shall, subject to this subsection, make payments to the Secretary of the Interior to be distributed to tribes or tribal organizations (as defined under section 4 of the Indian Self-Determination and Education Assistance Act) or consortium of the above entities for the coordination of assistance in the provision of early intervention services by the States to infants and toddlers with disabilities and their families on reservations served by elementary and secondary schools for Indian children operated or funded by the Department of the Interior. The amount of such payment for any fiscal year shall be 1.25 percent of the aggregate of the amount available to all States under this part for that fiscal year.

[(2) The Secretary of the Interior shall distribute the total amount of the 1.25 percent under paragraph (1) in the following manner:

[(A) For the first fiscal year, each tribe or tribal organization shall receive an amount proportionate to the amount of weighted student units for special education programs for BIA operated or funded schools serving such reservation generated

under the formula established under section 1128 of the Education Amendments of 1978, divided by the total number of such students in all BIA operated or funded schools.

[(B) For each fiscal year thereafter, each tribe or tribal organization shall receive an amount based on the number of infants and toddlers residing on the reservation as determined annually divided by the total of such children served by all tribes or tribal organizations.

[(3) To receive a payment under this paragraph, the tribe or tribal organization shall submit such figures to the Secretary of the Interior as are needed to determine the amounts to be allocated under paragraph (2).

[(4) The funds received by a tribe or tribal organization shall be used to assist States in child find, screening, and other procedures for the early identification of Indian children aged 0-2, inclusive, and for parent training. Such funds may also be used to provide early intervention services in accordance with this part. These activities may be carried out directly or through contracts or cooperative agreements with the BIA, local educational agencies, and other public or private nonprofit organizations. The tribe and tribal organization is encouraged to involve Indian parents in the development and implementation of these activities. The above entities shall, as appropriate, make referrals to local, State, or Federal entities for the provision of services or further diagnosis.

[(5) To be eligible to receive a grant pursuant to paragraph (2), the tribe or tribal organization shall make a biennial report to the Secretary of the Interior of activities undertaken under this subsection, including the number of contracts and cooperative agreements entered into, the number of children contacted and receiving services for each year, and the estimated number of children needing services during the 2 years following the one in which the report is made. The Secretary of the Interior shall include a summary of this information on a biennial basis to the Secretary of Education along with such other information as required under section 611(f)(3)(D) of this Act. The Secretary of Education may require any additional information from the Secretary of the Interior.

[(6) None of the funds under this subsection can be used by the Secretary of the Interior for administrative purposes, including child count, and the provision of technical assistance.

[(c)(1) Except as provided in paragraphs (3), (4), and (5) from the funds remaining for each fiscal year after the reservation and payments under subsections (a) and (b), the Secretary shall first allot to each State an amount that bears the same ratio to the amount of such remainder as the number of infants and toddlers in the State bears to the number of infants and toddlers in all States.

[(2) For fiscal year 1995 only, the Secretary shall allot $34,000,000 of the remaining funds described in paragraph (1) among the States in proportion to their relative numbers of infants and toddlers with disabilities who—

[(A) are counted on December 1, 1994; and

[(B) would have been eligible to be counted under section 1221(c)(1) of the Elementary and Secondary Education Act of 1965 (as such section was in effect on the day preceding the

date of the enactment of the Improving America's Schools Act of 1994).

[(3) Except as provided in paragraphs (4) and (5), no State shall receive an amount under this section for any fiscal year that is less than the greater of—

[(A) one-half of one percent of the remaining amount described in paragraph (1), excluding any amounts allotted under paragraph (2); or

[(B) $500,000.

[(4)(A) Except as provided in paragraph (5), no State shall receive an amount under this section for any of the fiscal years 1995 through 1999 that is less than the sum of the amount such State received for fiscal year 1994 under—

[(i) this part; and

[(ii) subpart 2 of part D of chapter 1 of title I of the Elementary and Secondary Education Act of 1965 (as such subpart was in existence on the day preceding the date of enactment of the Improving America's Schools Act of 1994) for children with disabilities from birth through age 2.

[(B) If, for fiscal year 1998 or 1999, the number of infants and toddlers in any State, as determined under paragraph (1), is less than the number of infants and toddlers so determined for fiscal year 1994, the amount determined under subparagraph (A) for that State shall be reduced by the same percentage by which the number of those infants and toddlers so declined.

[(5)(A) If the sums made available under this part for any fiscal year are insufficient to pay the full amounts that all States are eligible to receive under this subsection for such year, the Secretary shall ratably reduce the allocations to such States for such year.

[(B) If additional funds become available for making payments under this subsection for such fiscal year, allocations that were reduced under subparagraph (A) shall be increased on the same basis as such allocations were reduced.

[(6) For the purpose of paragraph (1)—

[(A) the terms "infants" and "toddlers" mean children from birth to age 2, inclusive, and

[(B) the term "State" does not include the jurisdictions described in subsection (a).

[(d) If any State elects not to receive its allotment under subsection (c)(1), the Secretary shall reallot, among the remaining States, amounts from such State in accordance with such subsection.

[FEDERAL INTERAGENCY COORDINATING COUNCIL

[SEC. 685. (a) ESTABLISHMENT AND PURPOSE.—

[(1) IN GENERAL.—The Secretary shall establish a Federal Interagency Coordinating Council in order to—

[(A) minimize duplication of programs and activities relating to early intervention services for infants and toddlers with disabilities and their families, and preschool services for children with disabilities, across Federal, State, and local agencies;

[(B) ensure the effective coordination of Federal early intervention and preschool programs and policies across Federal agencies;

[(C) coordinate the provision of Federal technical assistance and support activities to States;

[(D) identify gaps in Federal agency programs and services; and

[(E) identify barriers to Federal interagency cooperation.

[(2) APPOINTMENTS.—The council established under paragraph (1) (hereafter in this section referred to as the "Council") and the chairperson of the Council shall be appointed by the Secretary in consultation with other appropriate Federal agencies. In making the appointments, the Secretary shall ensure that each member has sufficient authority to engage in policy planning and implementation on behalf of the department, agency, or program that such member represents.

[(b) COMPOSITION.—The Council shall be composed of—

[(1) a representative of the Office of Special Education Programs;

[(2) a representative of the National Institute on Disability and Rehabilitation Research;

[(3) a representative of the Maternal and Child Health Services Block Grant Program;

[(4) a representative of programs assisted under the Developmental Disabilities Assistance and Bill of Rights Act;

[(5) a representative of the Health Care Financing Administration;

[(6) a representative of the Division of Birth Defects and Developmental Disabilities of the Centers for Disease Control;

[(7) a representative of the Social Security Administration;

[(8) a representative of the special supplemental nutrition program for women, infants, and children of the Department of Agriculture;

[(9) a representative of the National Institute of Mental Health;

[(10) a representative of the National Institute of Child Health and Human Development;

[(11) a representative of the Bureau of Indian Affairs of the Department of the Interior;

[(12) a representative of the Indian Health Service;

[(13) a representative of the Surgeon General;

[(14) a representative of the Department of Defense;

[(15) a representative of the Administration for Children and Families;

[(16) a representative of the Alcohol, Drug Abuse and Mental Health Administration;

[(17) a representative of the Pediatric Aids Health Care Demonstration Program in the Public Health Service;

[(18) at least 3 parents of children with disabilities age 12 or under, of whom at least one must have a child with a disability under the age of 6;

[(19) at least 2 representatives of State lead agencies for early intervention services to infants and toddlers, one of

which must be a representative of a State educational agency and the other a representative of a noneducational agency;

[(20) other members representing appropriate agencies involved in the provision of, or payment for, early intervention services and special education and related services to infants and toddlers with disabilities and their families and preschool children with disabilities; and

[(21) other persons appointed by the Secretary.

[(c) MEETINGS.—The Council shall meet at least quarterly and in such places as the Council deems necessary. The meetings shall be publicly announced, and, to the extent appropriate, open and accessible to the general public.

[(d) FUNCTIONS OF THE COUNCIL.—The Council shall—

[(1) advise and assist the Secretary in the performance of the Secretary's responsibilities described in this part;

[(2) conduct policy analyses of Federal programs related to the provision of early intervention services and special educational and related services to infants and toddlers with disabilities and their families, and preschool children with disabilities, in order to determine areas of conflict, overlap, duplication, or inappropriate omission;

[(3) identify strategies to address issues described in paragraph (2);

[(4) develop and recommend joint policy memoranda concerning effective interagency collaboration, including modifications to regulations, and the elimination of barriers to interagency programs and activities;

[(5) coordinate technical assistance and disseminate information on best practices, effective program coordination strategies, and recommendations for improved early intervention programming for infants and toddlers with disabilities and their families and preschool children with disabilities; and

[(6) facilitate activities in support of States' interagency coordination efforts.

[(e) CONFLICT OF INTEREST.—No member of the Council shall cast a vote on any matter that would provide direct financial benefit to that member or otherwise give the appearance of a conflict of interest under Federal law.

[AUTHORIZATION OF APPROPRIATIONS

[SEC. 686. There are authorized to be appropriated to carry out this part $220,000,000 for fiscal year 1992, and such sums as may be necessary for each of the fiscal years 1993 and 1994.

[PART I—FAMILY SUPPORT

[SEC. 701. SHORT TITLE.

[This part may be cited as the "Families of Children With Disabilities Support Act of 1994".

[SEC. 702. FINDINGS, PURPOSES, AND POLICY.

[(a) FINDINGS.—The Congress makes the following findings:

[(1) It is in the best interest of our Nation to preserve, strengthen, and maintain the family.

[(2) Families are the greatest natural resource available to their children and are the major providers of support, care, and training of their children.

[(3) Families of children with disabilities enrich the lives of all citizens through the contributions of such families to the economic, health, and social fabric of their community, State, and Nation.

[(4) A growing number of families are searching for ways to empower themselves to raise their children with disabilities at home and in their communities. Supporting such families to enable them to care for their children with disabilities at home is efficient and can be cost-effective.

[(5) Children, including children with disabilities, benefit from enduring family relationships in a nurturing home environment.

[(6) Many families experience exceptionally high financial outlays and significant physical and emotional challenges in meeting the special needs of their children with disabilities.

[(7) There are financial disincentives for families to care for their children with disabilities at home.

[(8) Most families of children with disabilities do not have access to family-centered and family-directed services to support such families in their efforts to care for their children with disabilities at home.

[(9) There is a need in each State for a comprehensive, coordinated, interagency system of family support for families of children with disabilities that is family-centered and family-directed, is easily accessible, avoids duplication, uses existing resources more efficiently, and prevents gaps in services to families in all areas of the State.

[(10) The goals of the Nation properly include the goal of providing families of children with disabilities the family support necessary to accomplish the following:

[(A) To support the family.

[(B) To enable families of children with disabilities to nurture and enjoy their children at home.

[(C) To enable families of children with disabilities to make informed choices and decisions regarding the nature of services, supports, and resources made available to such families.

[(b) PURPOSES.—The purposes of this part are as follows:

[(1) To provide financial assistance to the States to support systems change activities designed to assist each State to develop and implement, or expand and enhance, a family-centered and family-directed, culturally competent, community-centered, comprehensive, statewide system of family support for families of children with disabilities that is designed to—

[(A) ensure the full participation, choice and control of families of children with disabilities in decisions related to the provision of such family support for their family;

[(B) ensure the active involvement of families of children with disabilities in the planning, development, implementation, and evaluation of such a statewide system;

[(C) increase the availability of, funding for, access to, and provision of family support for families of children with disabilities;

[(D) promote training activities that are family-centered and family-directed and that enhance the ability of family members of children with disabilities to increase participation, choice, and control in the provision of family support for families of children with disabilities;

[(E) increase and promote interagency coordination among State agencies, and between State agencies and private entities that are involved in carrying out activities under section 708; and

[(F) increase the awareness of laws, regulations, policies, practices, procedures, and organizational structures, which facilitate or impede the availability or provision of family support for families of children with disabilities.

[(2) To enhance the ability of the Federal Government to—

[(A) identify Federal policies that facilitate or impede family support for families of children with disabilities, and that are consistent with the principles in subsection (c);

[(B) provide States with technical assistance and information relating to the provision of family support for families of children with disabilities;

[(C) conduct an evaluation of the program of grants to States; and

[(D) provide funding for model demonstration and innovation projects.

[(c) POLICY.—It is the policy of the United States that all programs, projects, and activities receiving assistance under this part shall be family-centered and family-directed and shall be carried out in a manner consistent with the following principles:

[(1) Family support for families of children with disabilities must focus on the needs of the entire family.

[(2) Families of children with disabilities should be supported in determining their needs and in making decisions concerning necessary, desirable, and appropriate services.

[(3) Families should play decisionmaking roles in policies and programs that affect the lives of such families.

[(4) Family needs change over time and family support for families of children with disabilities must offer options that are flexible and responsive to the unique needs and strengths and cultural values of individual families.

[(5) Family support for families of children with disabilities is proactive and not solely in response to a crisis.

[(6) Families must be supported in their efforts to promote the integration and inclusion of their children with disabilities into all aspects of community life.

[(7) Family support for families of children with disabilities should promote the use of existing social networks, strengthen natural sources of support, and help build connections to existing community resources and services.

[(8) Youth with disabilities should be involved in decisionmaking about their own lives, consistent with the unique

strengths, resources, priorities, concerns, abilities, and capabilities of each such youth.

[(9) Services and supports must be provided in a manner that demonstrates respect for individual dignity, personal responsibility, self-determination, personal preferences, and cultural differences of families.

[(d) RULE OF CONSTRUCTION.—Nothing in this part shall be construed to prevent families from choosing an out-of-home placement for their children with disabilities, including institutional placement for such children.

[SEC. 703. DEFINITIONS.

[For the purposes of this part, only the following definitions shall apply:

[(1) CHILD WITH A DISABILITY.—The term "child with a disability" means an individual who from birth through 21 years of age meets the definition of disability under paragraph (4).

[(2) COUNCIL.—The term "Council" means an existing Council, or a new Council, which is considered as a State Policy Council for Families of Children with Disabilities under section 707.

[(3) CULTURALLY COMPETENT.—The term "culturally competent" means services, supports, or other assistance that is conducted or provided in a manner that—

[(A) is responsive to the beliefs, interpersonal styles, attitudes, language, and behaviors of those individuals receiving services; and

[(B) has the greatest likelihood of ensuring maximum participation of such individuals.

[(4) DISABILITY.—The term "disability" means—

[(A) in the case of an individual 6 years of age or older, a significant physical or mental impairment as defined pursuant to State policy to the extent that such policy is established without regard to type of disability; and

[(B) in the case of infants and young children, birth to age 5, inclusive, a substantial developmental delay or specific congenital or acquired conditions with a high probability of resulting in a disability if services are not provided.

[(5) EXISTING COUNCIL.—The term "existing Council" means an entity or a committee of an entity that—

[(A) is established by a State prior to the date on which the State submits an application for funding under this part;

[(B) has authority to advise the State with respect to family support for families of children with disabilities; and

[(C) may have the authority to carry out other responsibilities and duties.

[(6) FAMILY.—The term "family" means a group of interdependent persons residing in the same household that consists of a child with a disability and one or more of the following:

[(A) A mother, father, brother, sister or any combination.

[(B) Extended blood relatives, such as a grandparent, aunt, or uncle.

[(C) An adoptive parent.

[(D) One or more persons to whom legal custody of a child with a disability has been given by a court.

[(E) A person providing short-term foster care that includes a family reunification plan with the biological family.

[(F) A person providing long-term foster care for a child with a disability.

The term does not include employees who, acting in their paid employment capacity, provide services to children with disabilities in out-of-home settings such as hospitals, nursing homes, personal care homes, board and care homes, group homes, or other facilities.

[(7) FAMILY-CENTERED AND FAMILY-DIRECTED.—The term "family-centered and family-directed" means, with respect to a service or program, that the service or program—

[(A) facilitates the full participation, choice, and control by families of children with disabilities in—

[(i) decisions relating to the supports that will meet the priorities of the family; and

[(ii) the planning, development, implementation, and evaluation of the statewide system of family support for families of children with disabilities;

[(B) responds to the needs of the entire family of a child with a disability in a timely and appropriate manner; and

[(C) is easily accessible to and usable by families of children with disabilities.

[(8) FAMILY SATISFACTION.—The term "family satisfaction" means the extent to which a service or support meets a need, solves a problem, or adds value for a family, as determined by the individual family.

[(9) FAMILY SUPPORT FOR FAMILIES OF CHILDREN WITH DISABILITIES.—The term "family support for families of children with disabilities"—

[(A) means supports, resources, services, and other assistance provided to families of children with disabilities that are designed to—

[(i) support families in the efforts of such families to raise their children with disabilities in the family home;

[(ii) strengthen the role of the family as primary caregiver;

[(iii) prevent inappropriate and unwanted out-of-the-home placement and maintain family unity; and

[(iv) reunite families with children with disabilities who have been placed out of the home, whenever possible; and

[(B) includes—

[(i) service coordination that includes individualized planning and brokering for services with families in control of decisionmaking;

[(ii) goods and services, which may include specialized diagnosis and evaluation, adaptive equipment, respite care (in and out of the home), personal assistance services, homemaker or chore services, behavioral supports, assistive technology services and devices, permanency or future planning, home and vehicle modifications and repairs, equipment and consumable supplies, transportation, specialized nutrition and clothing, counseling services and mental health services for family members, family education or training services, communication services, crisis intervention, day care and child care for a child with a disability, supports and services for integrated and inclusive community activities, parent or family member support groups, peer support, sitter service or companion service, and education aids; and

[(iii) financial assistance, which may include discretionary cash subsidies, allowances, voucher or reimbursement systems, low-interest loans, or lines of credit.

[(10) INTEGRATION AND INCLUSION.—The term "integration and inclusion" with respect to children with disabilities and their families means—

[(A) the use of the same community resources that are used by and available to other individuals and families;

[(B) the full and active participation in the same community activities and utilization of the same community resources as individuals without disabilities, living, learning, working, and enjoying life in regular contact with individuals without disabilities; and

[(C) having friendships and relationships with individuals and families of their own choosing.

[(11) LEAD ENTITY.—The term "lead entity" means an office or entity described in section 706.

[(12) NEW COUNCIL.—The term "new Council" means a council that is established by a State, and considered as the State Policy Council for Families of Children with Disabilities, under section 707(a).

[(13) SECRETARY.—The term "Secretary" means the Secretary of Health and Human Services.

[(14) SERVICE COORDINATION.—The term "service coordination"—

[(A) means those family-centered and family-directed activities that assist and enable families to receive rights and procedural safeguards and to gain access to social, medical, legal, educational, and other supports and services; and

[(B) includes—

[(i) follow-along services that assure, through a continuing relationship between a family of a child with a disability and an individual or entity, that the changing needs of the child and family are recognized and appropriately met;

[(ii) the coordination and monitoring of services provided to children with disabilities and their families;

[(iii) the provision of information to children with disabilities and their families about the availability of services and assistance to such children and their families in obtaining appropriate services; and

[(iv) the facilitation and organization of existing social networks, and natural sources of support, and community resources and services.

[(15) STATEWIDE SYSTEM OF FAMILY SUPPORT.—The term "statewide system of family support for families of children with disabilities" means a family-centered and family-directed, culturally competent, community-centered, comprehensive, statewide system of family support for families of children with disabilities developed and implemented by a State under this part that—

[(A) addresses the needs of all families of children with disabilities, including unserved and underserved populations; and

[(B) addresses such needs without regard to the age, type of disability, race, ethnicity, or gender of such children or the particular major life activity for which such children need the assistance.

[(16) SYSTEMS CHANGE ACTIVITIES.—The term "systems change activities" means efforts that result in laws, regulations, policies, practices, or organizational structures—

[(A) that are family-centered and family-directed;

[(B) that facilitate and increase access to, provision of, and funding for, family support services for families of children with disabilities; and

[(C) that otherwise accomplish the purposes of this part.

[(17) UNSERVED AND UNDERSERVED POPULATIONS.—The term "unserved and underserved populations" includes populations such as individuals from racial and ethnic minority backgrounds, economically disadvantaged individuals, individuals with limited-English proficiency, individuals from underserved geographic areas (rural or urban), and specific groups of individuals within the population of individuals with disabilities, including individuals with disabilities attributable to physical impairment, mental impairment, or a combination of physical and mental impairments.

[SEC. 704. GRANTS TO STATES.

[(a) IN GENERAL.—The Secretary shall make grants to States on a competitive basis, in accordance with the provisions of this part, to support systems change activities designed to assist States to develop and implement, or expand and enhance, a statewide system of family support for families of children with disabilities that accomplishes the purposes described in section 702.

[(b) AWARD PERIOD AND GRANT LIMITATION.—No grant shall be awarded for a period greater than 3 years. A State shall be eligible for not more than one grant.

[(c) AMOUNT OF GRANTS.—

[(1) GRANTS TO STATES.—

[(A) FEDERAL MATCHING SHARE.—From amounts appropriated under section 716(a), the Secretary shall pay to each State that has an application approved under section 705, for each year of the grant period, an amount that is—

[(i) equal to 75 percent of the cost of the systems change activities to be carried out by the State; and

[(ii) not less than $200,000 and not more than $500,000.

[(B) NON-FEDERAL SHARE.—The non-Federal share of payments under this paragraph may be in cash or in kind fairly evaluated, including planned equipment or services.

[(2) GRANTS TO TERRITORIES.—From amounts appropriated under section 716(a) for any fiscal year, the Secretary shall pay to each territory that has an application approved under section 705 not more than $100,000.

[(3) CALCULATION OF AMOUNTS.—The Secretary shall calculate a grant amount described in paragraph (1) or (2) on the basis of the following:

[(A) The amounts available for making grants under this section.

[(B) The child population of the State or territory concerned.

[(4) DEFINITIONS.—As used in this subsection:

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

[(B) TERRITORY.—The term "territory" means the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Republic of Palau (upon the entry into force and effect of the Compact of Free Association between the United States and the Republic of Palau).

[(d) PRIORITY FOR PREVIOUSLY PARTICIPATING STATES.—Amounts appropriated for purposes of carrying out the provisions of this section in each of the 2 fiscal years succeeding the fiscal year in which amounts are first appropriated for such purposes shall first be made available to a State that—

[(1) received a grant under this section during the fiscal year preceding the fiscal year concerned; and

[(2) is making significant progress in accordance with section 710.

[(e) PRIORITIES FOR DISTRIBUTION.—To the extent practicable, the Secretary shall award grants to States under this section in a manner that—

[(1) is geographically equitable; and

[(2) distributes the grants among States that have differing levels of development of statewide systems of family support for families of children with disabilities.

[SEC. 705. APPLICATION.

[A State that desires to receive a grant under this part shall submit an application to the Secretary that contains the following information and assurances:

[(1) FAMILY-CENTERED AND FAMILY-DIRECTED APPROACH.—An assurance that the State will use funds made available under

this part to accomplish the purposes described in section 702 and the goals, objectives, and family-centered outcomes described in section 709(b) by carrying out systems change activities in partnership with families and in a manner that is family-centered and family-directed.

[(2) DESIGNATION OF THE LEAD ENTITY.—Information identifying the lead entity, and evidence documenting the abilities of such entity.

[(3) STATE POLICY COUNCIL FOR FAMILIES OF CHILDREN WITH DISABILITIES.—An assurance of the following:

[(A) The State has designated or established Council that meets the criteria set forth in section 707.

[(B) The lead entity will seek and consider on a regular and ongoing basis advice from the Council regarding the development and implementation of the strategic plan under section 709, and other policies and procedures of general applicability pertaining to the provision of family support for families of children with disabilities in the State.

[(C) The lead entity will include, in its annual progress reports, a summary of advice provided by the Council, including recommendations from the annual report of the Council and the response of the lead entity to such advice and recommendations.

[(D) The lead entity will transmit to the Council any other plans, reports, and other information required under this part.

[(4) FAMILY INVOLVEMENT.—A description of the following:

[(A) The nature and extent of the involvement of families of children with disabilities and individuals with disabilities in the development of the application.

[(B) Strategies for actively involving families of children with disabilities and individuals with disabilities in the development, implementation, and evaluation of the statewide system of family support for families of children with disabilities.

[(C) Strategies and special outreach activities that will be undertaken to ensure the active involvement of families of children with disabilities who are members of unserved and underserved populations.

[(D) Strategies for actively involving families of children with disabilities who use family support services in decisions relating to such services.

[(5) AGENCY INVOLVEMENT.—A description of the nature and extent of involvement of various State agencies or units within State agencies in the preparation of the application and the continuing role of each agency in the statewide system of family support for families of children with disabilities.

[(6) STATE RESOURCES.—A description of the State resources and other resources that are available to commit to the statewide system of family support for families of children with disabilities.

[(7) UNMET NEEDS.—A description of unmet needs for family support for families of children with disabilities within the State.

[(8) PRELIMINARY PLAN.—A preliminary plan that contains information on the program to be carried out under the grant with respect to the goals and objectives of the State for the program and the activities that the State plans to carry out under the program (including the process for appointing individuals to the Council) and that is consistent with the purposes of this part.

[(9) ACTIVITIES.—An assurance that, except for the first year of the grant, the State shall expend not less than 65 percent of the funds made available to a State under this part for grants and contracts to conduct the activities described in section 708.

[(10) LIMIT ON ADMINISTRATIVE COSTS.—An assurance that the lead entity that receives funding under this part in any fiscal year shall use not more than 5 percent of such funds in such year for administrative expenses. Such administrative expenses shall not include expenses related to the activities of the Council.

[(11) STRATEGIC PLAN.—A description of the measures that will be taken by the State to develop a strategic plan in accordance with section 709.

[(12) EVALUATION.—An assurance that the State will conduct an annual evaluation of the statewide system of family support for families of children with disabilities in accordance with section 710.

[(13) COORDINATION WITH STATE AND LOCAL COUNCILS.—An assurance that the lead entity will coordinate the activities funded through a grant made under this part with the activities carried out by other relevant councils within the State.

[(14) SUPPLEMENT OTHER FUNDS.—An assurance, with respect to amounts received under a grant, of the following:

[(A) Such grant will be used to supplement and not supplant amounts available from other sources that are expended for programs of family support for families of children with disabilities, including the provision of family support.

[(B) Such grant will not be used to pay a financial obligation for family support for families of children with disabilities that would have been paid with amounts available from other sources if amounts under such grant had not been available.

[(15) OTHER INFORMATION AND ASSURANCES.—Such other information and assurances as the Secretary may reasonably require.

[SEC. 706. DESIGNATION OF THE LEAD ENTITY.

[(a) DESIGNATION.—The Chief Executive Officer of a State that desires to receive a grant under section 704, shall designate the office or entity (referred to in this part as the "lead entity") responsible for—

[(1) submitting the application under section 705 on behalf of the State;

[(2) administering and supervising the use of the amounts made available under the grant;

[(3) coordinating efforts related to and supervising the preparation of the application;

[(4) coordinating the planning, development, implementation (or expansion and enhancement), and evaluation of a statewide system of family support services for families of children with disabilities among public agencies and between public agencies and private agencies, including coordinating efforts related to entering into interagency agreements; and

[(5) coordinating efforts related to the meaningful participation by families in activities carried out under a grant awarded under this part.

[(b) QUALIFICATIONS.—In designating the lead entity, the Chief Executive Officer may designate—

[(1) an office of the Chief Executive Officer;

[(2) a commission appointed by the Chief Executive Officer;

[(3) a public agency;

[(4) a council established under Federal or State law; or

[(5) another appropriate office, agency, or entity.

[(c) CAPABILITIES OF THE LEAD ENTITY.—The State shall provide, in accordance with the requirements of section 705, evidence that the lead entity has the capacity—

[(1) to promote a statewide system of family support for families of children with disabilities throughout the State;

[(2) to promote and implement systems change activities;

[(3) to maximize access to public and private funds for family support services for families of children with disabilities;

[(4) to implement effective strategies for capacity building, family and professional training, and access to and funding for family support services for families of children with disabilities across agencies;

[(5) to promote and facilitate the implementation of family support services for families of children with disabilities that are family-centered and family-directed, and flexible, and that provide families with the greatest possible decisionmaking authority and control regarding the nature and use of services and supports;

[(6) to promote leadership by families in planning, policy development, implementation, and evaluation of family support services for families of children with disabilities, and parent-professional partnerships; and

[(7) to promote and develop interagency coordination and collaboration.

[SEC. 707. STATE POLICY COUNCIL FOR FAMILY SUPPORT FOR FAMILIES OF CHILDREN WITH DISABILITIES.

[(a) DESIGNATION OR ESTABLISHMENT.—A State that desires to receive financial assistance under this part shall, prior to the receipt of funds under this part, designate an existing Council, or establish a new Council, to be considered as a State Policy Council for Families of Children with Disabilities.

[(b) USE OF EXISTING COUNCIL.—

[(1) IN GENERAL.—To the extent that a State has an existing Council, the existing Council shall be considered in compliance

with this section if the existing Council meets the requirements under paragraph (2).

[(2) REQUIREMENTS.—An existing Council shall—

[(A) include a majority of members who are family members of children with disabilities and who are children with disabilities (from age 18 to 21);

[(B) in the case in which the existing Council does not represent the full range of families and individuals described in subsection (d)(1), adopt strategies that will ensure the full participation of such families and individuals in all activities carried out by the Council; and

[(C) carry out functions and authorities that are comparable to the functions and authorities described in subsections (e) through (h).

[(3) DOCUMENTATION OF COMPLIANCE.—Any State that has an existing Council shall include in a grant application submitted under section 705 and in subsequent annual progress reports submitted to the Secretary under section 710, a description of the measures that are being taken or that are planned, to ensure that the existing Council of the State complies with this section.

[(c) APPOINTMENTS TO NEW COUNCIL.—

[(1) MEMBERS.—To the extent that a State establishes a new Council, members of the new Council shall be appointed by the Chief Executive Officer of the State or the appropriate official within the State responsible for making appointments in accordance with subsection (d). The appointing authority shall select members after soliciting recommendations from the State Developmental Disabilities Council, parent or family organizations, and other organizations representing the full range of disabilities covered under this part. The appointing authority shall ensure that the membership of the new Council reasonably represents the population of the State and shall establish guidelines for the terms of the members of the new Council.

[(2) CHAIRPERSON.—The new Council shall elect a member of the new Council to serve as the Chairperson of the new Council. The Chairperson shall be a family member, as described in subsection (d)(1).

[(d) COMPOSITION.—The new Council shall be composed of—

[(1) a majority of members who are—

[(A) individuals who are family members of children with disabilities, are eligible for family support, and represent the diversity of families within the State, including those families from unserved and underserved populations; and

[(B) children with disabilities, from age 18 to 21, and are representative of the demographics of the State;

[(2) members—

[(A) who are from State agencies with significant responsibility for the provision of, or payment for, family support services to families of children with disabilities, and who have sufficient authority to engage in policy planning and implementation on behalf of such agencies; and

[(B) who are from the office of the Chief Executive Officer of the State with responsibility with respect to budget and finance; and

[(3) such additional members as the appointing authority considers appropriate.

[(e) FUNCTIONS.—The new Council shall—

[(1) establish formal policies regarding the operation of the new Council;

[(2) advise and assist the lead entity in the performance of responsibilities described in section 706(a), particularly the promotion of interagency agreements and the promotion of meaningful participation by families in all aspects of the statewide system of family support for families of children with disabilities;

[(3) advise and assist State agencies in the development of policies and procedures relating to the provision of family support for families of children with disabilities in the State;

[(4) advise and assist the lead entity in the development of all aspects of a strategic plan under section 709, including—

[(A) the mission, purpose, and principles of the statewide system of family support for families of children with disabilities;

[(B) the statement of family-centered outcomes;

[(C) the goals, objectives, and activities;

[(D) the quality improvement or quality enhancement system;

[(E) the appeals process;

[(F) the eligibility criteria to be used for all programs, projects, and activities carried out under this part;

[(G) the analysis of the extent to which family support for families of children with disabilities is defined as a benefit and not as income; and

[(H) the approach to the evaluation of the statewide system of family support for families of children with disabilities;

[(5) advise and assist the lead entity in the implementation of systems change activities;

[(6) advise and assist the lead entity in assessing family satisfaction with the statewide system of family support for families of children with disabilities;

[(7) review, analyze, and comment on the strategic plan and updates to the plan, progress reports, and annual budgets;

[(8) advise and assist the lead entity in the identification of Federal and State barriers that impede the development of a statewide system of family support for families of children with disabilities; and

[(9) prepare and submit to the Chief Executive Officer of the State, the State legislature, and to the Secretary an annual report on the status of family support services for families of children with disabilities, and make such report available to the public.

[(f) HEARINGS AND FORUMS.—The new Council is authorized to hold such hearings and forums as the new Council may determine to be necessary to carry out the duties of the new Council.

[(g) CONFLICT OF INTEREST.—No member of the new Council shall cast a vote on any matter that would provide direct financial benefit to such member or otherwise give the appearance of a conflict of interest under applicable State law.

[(h) COMPENSATION AND EXPENSES.—The new Council may, consistent with State law, use such resources to reimburse members of the new Council for reasonable and necessary expenses of attending the new Council meetings and performing Council duties (including child care and personal assistance services), and to pay compensation to a member of the new Council, if such member is not employed or must forfeit wages from other employment, for each day the member is engaged in performing Council duties.

[SEC. 708. AUTHORIZED ACTIVITIES.

[(a) IN GENERAL.—A State that receives a grant under section 704 may use the funds made available through the grant to carry out systems change activities, which accomplish the purposes described in section 702, such as the following activities:

[(1) TRAINING AND TECHNICAL ASSISTANCE.—The State may support training and technical assistance activities for family members, service providers, community members, professionals, members of the Council, students and others that will do the following:

[(A) Increase family participation, choice, and control in the provision of family support for families of children with disabilities.

[(B) Promote partnerships with families of children with disabilities at all levels of the service system.

[(C) Develop or strengthen family-centered and family-directed approaches to services, including service coordination services, service planning services, and respite care services.

[(D) Assist families of children with disabilities in accessing natural and community supports and in obtaining benefits and services.

[(2) INTERAGENCY COORDINATION.—The State may support activities that conduct the following:

[(A) Identification and coordination of Federal and State policies, resources, and services, relating to the provision of family support services for families of children with disabilities, including entering into interagency agreements.

[(B) Interagency work groups to enhance public funding options and coordinate access to funding for family support services for families of children with disabilities, with special attention to the issues of family involvement in the identification, planning, use, delivery, and evaluation of such services.

[(C) Documentation and dissemination of information about interagency activities that promote coordination with respect to family support services for families of children with disabilities, including evidence of increased participation of State and local health, maternal and child health, social service, mental health, mental retardation and developmental disabilities, child protection, education,

early intervention, developmental disabilities councils, agencies, and departments.

[(3) LOCAL OR REGIONAL COUNCILS.—The State may support the development or enhancement of local or regional councils to review the status of family support for families of children with disabilities in the local or regional area, to advise and assist with the planning, development, implementation, and evaluation of family support for families of children with disabilities in such local or regional area, and to provide recommendations to the State regarding improvements and plans.

[(4) OUTREACH.—The State may conduct outreach activities to locate families who are eligible for family support for families of children with disabilities and to identify groups who are unserved or underserved. Such activities may involve the creation or maintenance of, support of, or provision of, assistance to statewide and community parent organizations, and organizations that provide family support to families of children with disabilities.

[(5) POLICY STUDIES.—The State may support policy studies that relate to the development and implementation, or expansion and enhancement, of a statewide system of family support for families of children with disabilities. Such studies may address issues regarding eligibility and access to services.

[(6) HEARINGS AND FORUMS.—The State may conduct hearings and forums to solicit input from families of children with disabilities regarding family support programs, policies, and plans for such families. Such hearings and forums may be conducted in collaboration with other statewide councils.

[(7) PUBLIC AWARENESS AND EDUCATION.—The State may develop and disseminate information relating to family support for families of children with disabilities designed to provide information to such families, parent groups and organizations, public and private agencies that are in contact with children with disabilities and families of such children, students, policymakers, and the public. Such information may relate to the nature, cost, and availability of, and accessibility to, family support for families of children with disabilities, the impact of family support for families of children with disabilities on other benefits, and the efficacy of family support for families of children with disabilities with respect to enhancing the quality of family life.

[(8) NEEDS ASSESSMENT.—The State may conduct a needs assessment, which may, in part, be based on existing State data.

[(9) PROGRAM DATA.—The State may support the compilation and evaluation of appropriate data related to the statewide system of family support for families of children with disabilities.

[(10) PILOT DEMONSTRATION PROJECTS.—The State may support pilot demonstration projects to demonstrate new approaches to the provision of family support for families of children with disabilities. Such projects may include the demonstration of family-centered and family-directed service coordination, approaches to improve access to services, including

independent service coordination, peer support networks, and voucher programs.

[(11) OTHER ACTIVITIES.—The State may support other systems change activities that accomplish the purposes described in section 702.

[(b) SPECIAL RULE.—In carrying out activities authorized under this part, a State shall ensure that such programs and activities address the needs of families who are economically disadvantaged.

[SEC. 709. STRATEGIC PLAN.

[(a) IN GENERAL.—Not later than 6 months after the date on which assistance is received by a State under this part, the lead entity of the State, in conjunction with the Council, shall prepare and submit to the Secretary a strategic plan designed to achieve the purposes and policy of this part.

[(b) CONTENTS.—The strategic plan shall include—

[(1) a statement of the mission, purpose, and principles of the statewide system of family support for families of children with disabilities in the State;

[(2) a statement of family-centered outcomes to be achieved by the statewide system of family support for families of children with disabilities;

[(3) specific goals and objectives for developing and implementing, or expanding and improving, the system for providing family support services for families of children with disabilities, and for achieving the family-centered outcomes;

[(4) systemic approaches for accomplishing the objectives and achieving the family-centered outcomes, including interagency coordination and cooperation, that builds upon state-of-the-art practices and research findings;

[(5) a description of the specific programs, projects, and activities funded under this part and the manner in which the programs, projects, and activities accomplish the objectives and achieve the family-centered outcomes;

[(6) a description of an ongoing quality improvement or quality enhancement system, which utilizes information from ongoing measurements of the extent to which family-centered outcomes are achieved, to improve the system;

[(7) a description of an appeals process that will be used in resolving any disputes families of children with disabilities may have regarding the determination of eligibility or the provision of family support services to the family or to the child with a disability;

[(8) a description of the eligibility criteria to be used to carry out programs, projects, and activities under this part that includes all eligible families;

[(9) an analysis of the extent to which family support for a family of a child with a disability is defined as a benefit and not as income; and

[(10) a description of the plan to conduct an annual evaluation of the statewide system of family support for families of children with disabilities, in conjunction with the Council, to improve such statewide system and to document progress as required by section 710.

[(c) PERIOD AND UPDATES.—The strategic plan shall cover the period of the grant and shall be reviewed and updated on an annual basis to reflect actual experience and family satisfaction information over the preceding year and input from the Council, families of children with disabilities, and other interested parties.

[(d) RECOMMENDATIONS.—Prior to developing the strategic plan, the State shall solicit input and recommendations from interested members of the public, either by holding public hearings or through an alternative method or methods determined by the lead entity in consultation with the Council. The lead entity shall also obtain the comments and recommendations of the Council. The lead entity, in conjunction with the Council, shall consider the recommendations and attempt to reach a consensus with respect to such recommendations. If the lead entity and the Council are unable to reach a consensus, the lead entity shall include a written explanation of the reason a consensus was not reached in the strategic plan.

[(e) COMMENT.—The State shall develop a procedure for ensuring ongoing comment from the Council.

[(f) DISSEMINATION.—The State shall widely disseminate the strategic plan to families of children with disabilities, parent organizations, and other interested persons.

[(g) CONSTRUCTION.—Nothing in this section shall be construed to prevent a State from using an existing statewide strategic plan or parts thereof to meet the requirements of this section as long as such plan or the applicable parts thereof are comparable to the specifications of this section.

[SEC. 710. PROGRESS CRITERIA AND REPORTS.

[(a) GUIDELINES.—The Secretary shall develop guidelines to be used in assessing the extent to which a State that received a grant under section 704 is making significant progress in developing and implementing, or expanding and enhancing, a statewide system of family support for families of children with disabilities consistent with the purposes of this part.

[(b) PROGRESS REPORTS.—A State that receives a grant under section 704 shall submit annually to the Secretary a report that documents progress in developing and implementing, or expanding and enhancing, a statewide system of family support for families of children with disabilities consistent with this part. Such report shall include—

[(1) the results of the annual evaluation of the statewide system of family support for families of children with disabilities;

[(2) a description of the unanticipated problems with the achievement of the goals, objectives, and family-centered outcomes described in the application or strategic plan and the measures the State has taken to rectify such problems;

[(3) for the annual progress report concerning the first year of the grant period, the strategic plan developed by the State during the first year; and

[(4) for the annual progress report concerning subsequent years of the grant period, the updated strategic plan.

[SEC. 711. ADMINISTRATIVE PROVISIONS.

[(a) EVALUATION OF GRANT APPLICATIONS.—

[(1) PANELS.—The Secretary shall convene panels of experts who are competent, by virtue of their training or experience, to evaluate grant applications under this part.

[(2) COMPOSITION OF PANELS.—Panels shall be composed of a majority of family members of children with disabilities and individuals with disabilities, and may include service providers, State administrative personnel, and professionals. Panels shall include a majority of individuals who are not Federal employees.

[(3) EXPENSES AND FEES OF THE PANEL.—A member of the Panel who is not a Federal employee shall receive travel, per diem and consultant fees not to exceed the rate provided to other consultants used by the Secretary. The Secretary may use funds available under section 716 to pay expenses and fees of a member of a Panel who is not a Federal employee.

[(b) PROVISION OF INFORMATION.—To assist the Secretary in carrying out the responsibilities of the Secretary under this section, the Secretary may require States to provide relevant information, including recommendations and relevant reports of the Council.

[(c) APPEALS.—The Secretary shall establish appeals procedures for States that are found in noncompliance with the provisions of this part as the result of failure to supply information required under section 705 or 710. The Secretary shall take into consideration the comments of the Council.

[(d) EFFECT ON OTHER ASSISTANCE.—This part may not be construed as authorizing a Federal or State agency to reduce medical or other assistance available, or to alter eligibility, under any Federal law.

[(e) UNOBLIGATED FUNDS.—Any amount paid to a State for a fiscal year and remaining unobligated at the end of such year shall remain available to such State for the next fiscal year for the purposes for which such amount was paid.

[SEC. 712. TECHNICAL ASSISTANCE.

[(a) IN GENERAL.—The Secretary shall make grants, or enter into contracts or cooperative agreements, with appropriate public or private agencies and organizations, including institutions of higher education, with documented experience, expertise, and capacity, for the purpose of providing technical assistance and information with respect to the development and implementation, or expansion and enhancement, of a statewide system of family support for families of children with disabilities.

[(b) PURPOSE.—With respect to States receiving assistance under this part, the technical assistance and information described under subsection (a) shall be provided to the State agency designated as the lead entity, the Council, family members of children with disabilities, organizations, service providers, and policymakers involved with children with disabilities and their families. Such technical assistance shall also be available to States that do not receive assistance under this part. Such technical assistance and information shall—

[(1) facilitate effective systems change activities;

[(2) promote effective approaches to the development and implementation, or expansion and enhancement of, the statewide systems of family support for families of children with disabilities that increase access to, funding for, and awareness of family support for families of children with disabilities;

[(3) promote partnerships with families at all levels of the service system;

[(4) foster awareness and understanding of Federal, State, and local laws, regulations, policies, practices, procedures, and organizational structures, that facilitate, and overcome barriers to, funding for, and access to family support for families of children with disabilities;

[(5) foster the development and replication of effective approaches to strategic plan development, interagency coordination, training, outreach to underserved groups, and public awareness activities;

[(6) facilitate service delivery capacity, training, and the improvement of data collection and evaluation systems;

[(7) promote effective approaches to the development of family-centered and family-directed services, including approaches to the development and measurement of family-centered outcomes described in section 709(b)(2), and the assessment of family satisfaction; and

[(8) coordinate and facilitate an annual meeting of the chairpersons of the Councils.

[(c) REQUEST FOR TECHNICAL ASSISTANCE.—A request for technical assistance by a lead entity in a State receiving assistance under this part shall be made in conjunction with the Council.

[(d) REPORTS TO THE SECRETARY.—An entity providing the technical assistance under this section shall submit periodic reports to the Secretary regarding Federal policies and procedures identified within the States that facilitate or impede the delivery of family support to families of children with disabilities. The report shall include recommendations to the Secretary regarding the delivery of services, coordination with other programs, and integration of the policies and principles described in section 702 in other Federal legislation.

[SEC. 713. EVALUATION.

[(a) IN GENERAL.—The Secretary shall make grants, or enter into contracts or cooperative agreements, with appropriate public or private agencies and organizations, including institutions of higher education, with documented experience, expertise, and capacity for the purpose of conducting a national evaluation of the program of grants to States authorized by this part.

[(b) PURPOSE.—The purpose of an evaluation under subsection (a) shall be to assess the status and effects of State efforts to develop and implement, or expand and enhance, statewide systems of family support for families of children with disabilities in a manner consistent with the provisions of this part, particularly in terms of the impact of such efforts on families of children with disabilities, and to recommend amendments to this part that are necessary to assist States to fully accomplish the purposes of this part. The Secretary or recipient of assistance under this section shall work with the States to consider and develop an information system designed

to report and compile, from information provided by the States, including the Council, a qualitative and quantitative description of the impact of the program of grants to States authorized by this part on—

[(1) families of children with disabilities, including families from ethnic and racial minority backgrounds;

[(2) access to and funding for family support for families of children with disabilities; and

[(3) the involvement of families at all levels of the service system.

[(c) REPORT TO CONGRESS.—Not later than 2½ years after the date of enactment of this part, the Secretary shall prepare and submit to the appropriate committees of Congress a report concerning the results of the evaluation conducted under this section.

[(d) CONFLICT OF INTEREST.—The Secretary shall assure that a recipient of a grant, contract, or cooperative agreement under this section is independent from, and free from, any financial or personal relationships with the recipient of a grant, contract, or cooperative agreement selected to provide technical assistance under section 712.

[SEC. 714. PROJECTS OF NATIONAL SIGNIFICANCE.

[(a) STUDY BY THE SECRETARY.—The Secretary shall review Federal programs to determine the extent to which such programs facilitate or impede access to, provision of, and funding for family support for families of children with disabilities, consistent with the policies described in section 702.

[(b) DEMONSTRATION AND INNOVATION PROJECTS.—The Secretary shall make grants or enter into contracts for projects of national significance to support the development of national and State policies and practices related to the development and implementation, or expansion and enhancement, of family-centered and family-directed systems of family support for families of children with disabilities.

[SEC. 715. CONSTRUCTION.

[Notwithstanding any other provision of this title, nothing in parts A through H of this title shall be construed to apply to this part.

[SEC. 716. AUTHORIZATION OF APPROPRIATIONS.

[(a) IN GENERAL.—There are authorized to be appropriated to carry out this part, $10,000,000 for fiscal year 1995, and such sums as may be necessary for each of the fiscal years 1996 and 1997.

[(b) RESERVATION.—

[(1) IN GENERAL.—Except as provided in paragraph (2), the Secretary shall reserve for each fiscal year 10 percent, or $600,000 (whichever is greater), of the amount appropriated pursuant to the authority of subsection (a) to carry out—

[(A) section 712, with respect to the provision of technical assistance and information to States;

[(B) section 713, with respect to the conduct of the evaluations;

[(C) section 711(a), with respect to the evaluation of grant applications; and

[(D) section 714, with respect to the conduct of projects of national significance.

[(2) SPECIAL RULE.—The Secretary shall only use funds reserved under paragraph (1) for a fiscal year to carry out section 714 for such year if the amount of funds reserved under such paragraph for such fiscal year is $700,000 or greater.]

PART A—GENERAL PROVISIONS

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

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

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

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.

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

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

(2) Before the date of the enactment of the Education for All Handicapped Children Act of 1975 (Public Law 94–142)—

(A) the special educational needs of children with disabilities were not being fully met;

(B) more than one-half of the children with disabilities in the United States did not receive appropriate educational services that would enable such children to have full equality of opportunity;

(C) 1,000,000 of the children with disabilities in the United States were excluded entirely from the public school system and did not go through the educational process with their peers;

(D) there were many children with disabilities throughout the United States participating in regular school programs whose disabilities prevented such children from having a successful educational experience because their disabilities were undetected; and

(E) because of the lack of adequate services within the public school system, families were often forced to find services outside the public school system, often at great distance from their residence and at their own expense.

(3) Since the enactment and implementation of the Education for All Handicapped Children Act of 1975, this Act has been

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

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

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

(A) having high expectations for such children and ensuring their access in the general curriculum to the maximum extent possible;

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

(C) coordinating this Act with other local, State, and Federal school improvement efforts in order to ensure that such children benefit from such efforts and that special education can become a service for such children rather than a place where they are sent;

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

(E) supporting high-quality, intensive professional development for all personnel who work with such children in order to ensure that they have the skills and knowledge necessary to enable them—

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

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

(F) providing incentives for whole-school approaches and early intervention to reduce the need to label children as disabled in order to address their learning needs; and

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

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

(7)(A) The Federal Government must be responsive to the growing needs of an increasingly more diverse society. A more equitable allocation of resources is essential for the Federal Government to meet its responsibility to provide an equal educational opportunity for all individuals.

(B) America's racial profile is rapidly changing. While the rate of increase for white Americans is 3.2 percent, the rate of increase for racial and ethnic minorities is much higher: 38.6

percent for Hispanics, 14.6 percent for African-Americans, and 40.1 percent for Asians and other ethnic groups.

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

(D) Taken together as a group, it is a more frequent phenomenon for minorities to comprise the majority of public school students. Large city school populations are overwhelmingly minority, e.g., Miami, 71 percent; Philadelphia, 73 percent; Baltimore, 80 percent.

(E) Recruitment efforts within special education at the level of preservice, continuing education, and practice must focus on bringing larger numbers of minorities into the profession in order to provide appropriate practitioner knowledge, role models, and sufficient manpower to address the clearly changing demography of special education.

(F) The limited English proficient population is the fastest growing in our Nation, and the growth is occurring in many parts of our Nation. In the Nation's 2 largest school districts, limited-English students make up almost half of all students initially entering school at the kindergarten level. Studies have documented apparent discrepancies in the levels of referral and placement of limited-English proficient children in special education. The Department of Education has found that services provided to limited-English proficient students often do not respond primarily to the pupil's academic needs. These trends pose special challenges for special education in the referral, assessment, and services for our Nation's students from non-English language backgrounds.

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

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

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

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

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

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

(9)(A) The opportunity for full participation in awards for grants and contracts; boards of organizations receiving funds under this Act; and peer review panels; and training of professionals in the area of special education by minority individuals, organizations, and historically Black colleges and universities is essential if we are to obtain greater success in the education of minority children with disabilities.

(B) In 1989, of the 661,000 college and university professors, 4.6 percent were African-American and 3.1 percent were His-

panic. Of the 3,600,000 teachers, prekindergarten through high school, 9.4 percent were African-American and 3.9 percent were Hispanic.

(C) Students from minority groups comprise more than 50 percent of K–12 public school enrollment in seven States yet minority enrollment in teacher training programs is less than 15 percent in all but six States.

(D) As the number of African-American and Hispanic students in special education increases, the number of minority teachers and related service personnel produced in our colleges and universities continues to decrease.

(E) Ten years ago, 12.5 percent of the United States teaching force in public elementary and secondary schools were members of a minority group. Minorities comprised 21.3 percent of the national population at that time and were clearly underrepresented then among employed teachers. Today, the elementary and secondary teaching force is 3 to 5 percent minority, while one-third of the students in public schools are minority children.

(F) As recently as 1984–85, Historically Black Colleges and Universities supplied nearly half of the African-American teachers in the Nation. However, in 1988, Historically Black Colleges and Universities received only 2 percent of the discretionary funds for special education and related services personnel training.

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

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

(10) Minorities and underserved persons are socially disadvantaged because of the lack of opportunities in training and educational programs, undergirded by the practices in the private sector that impede their full participation in the mainstream of society.

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

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

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

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

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

SEC. 602. DEFINITIONS.

As used in this title:

(1) ASSISTIVE TECHNOLOGY DEVICE.—The term "assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified,

or customized, that is used to increase, maintain, or improve functional capabilities of a child with a disability.

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

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

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

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

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

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

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

(3) CHILD WITH A DISABILITY.—

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

(i) with mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and

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

(B) CHILD AGED 3 TO 9.—The term "child with a disability" for a child aged 3 to 9, inclusive, may, at the discretion of the State and the local educational agency, include a child—

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

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

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

(A) means a regional public multiservice agency—

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

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

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

(5) ELEMENTARY SCHOOL.—The term "elementary school" means a day or residential school which provides elementary education, as determined under State law, policy, or procedure.

(6) EQUIPMENT.—The term "equipment" includes—

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

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

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

(A) amounts received—

(i) under part B of this title;

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

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

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

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

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

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

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

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

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

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

(11) INDIVIDUALIZED EDUCATION PROGRAM.—The term "individualized education program" or "IEP" means a written statement for each child with a disability that is developed, re-

viewed, and revised in accordance with section 614(d) and that includes—

(A) a statement of the child's present levels of educational performance, including—

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

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

(B) a statement of measurable annual goals, including benchmarks or short-term objectives, related to—

(i) meeting the child's needs that result from the child's disability to enable the child to be involved in and progress in the general curriculum; and

(ii) meeting each of the child's other educational needs that result from the child's disability;

(C) a statement of how the classroom was adapted before the student was referred for identification as a child with a disability;

(D) a justification of the extent, if any, to which the child will not be educated with nondisabled children;

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

(i) to progress toward the attainment of the annual goals described in subparagraph (B); and

(ii) to be involved and progress in the general curriculum in accordance with subparagraph (A) and to participate in extracurricular and other nonacademic activities;

(F)(i) a statement of any individual modifications in the administration of State or districtwide assessments of student achievement that are needed in order for the child to participate in such assessment; and

(ii) if the individualized education program team determines that the child will not participate in a particular State or districtwide assessment of student achievement (or part of such an assessment), a statement of—

(I) why that assessment is not appropriate for the child; and

(II) how the child will be assessed;

(G) the projected date for the beginning of the services and modifications described in subparagraph (E), and the anticipated frequency, location, and duration of those services and modifications;

(H)(i) beginning at age 14, and updated annually, a statement of the transition service needs of the child under the applicable components of the child's IEP that focuses on the child's courses of study (such as participation in advanced-placement courses or a vocational education or school-to-work program);

(ii) beginning at age 16 (or younger, if determined appropriate by the IEP Team), a statement of needed transition services for the child, including, when appropriate, a statement of the interagency responsibilities or any needed linkages; and

(iii) beginning at least one year before the child reaches the age of majority under State law, a statement that the child has been informed of his or her rights under this title, if any, that will transfer to the child on reaching the age of majority under section 615(m); and

(I) a statement of—

(i) how the child's progress toward the annual goals described in subparagraph (B) will be measured; and

(ii) how the child's parents will be regularly informed (by such means as periodic report cards), at least as often as parents are informed of their nondisabled children's progress, of—

(I) their child's progress toward the annual goals described in subparagraph (B); and

(II) the extent to which that progress is sufficient to enable the child to achieve the objectives by the end of the year.

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

(A) the parents of a child with a disability;

(B) at least one regular education teacher of such child (if the child is, or may be, participating in the regular education environment);

(C) at least one special education teacher, or where appropriate, at least one special education provider of such child;

(D) a representative of the local educational agency who—

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

(ii) is knowledgeable about the general curriculum; and

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

(E) whenever appropriate, the child with a disability; and

(F) at the discretion of the parent or the agency, other individuals who have special expertise or knowledge regarding the abilities and disability or disabilities of the child, including, as appropriate, related services personnel who are or who will be working with the child.

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

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

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

(14) LOCAL EDUCATIONAL AGENCY.—The term "local educational agency" means—

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

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

(C) an educational service agency.

(15) NATIVE LANGUAGE.—The term "native language", when used with reference to an individual of limited English proficiency, means the language normally used by the individual, or in the case of a child, the language normally used by the parents of the child, and includes American Sign Language.

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

(17) PARENT.—The term "parent" includes a legal guardian or surrogate parent.

(18) PARENT ORGANIZATION.—The term "parent organization" means a private nonprofit organization (but not including an institution of higher education) that—

(A) has a board of directors—

(i) the majority of whom are parents of children with disabilities;

(ii) that includes—

(I) individuals working in the fields of special education, related services, and early intervention; and

(II) individuals with disabilities; and

(iii) the parent and professional members of which are broadly representative of the population to be served; or

(B)(i) represents the interests of individuals with disabilities and has established a special governing committee which meets the requirements of subparagraph (A); and

(ii) has a memorandum of understanding between the special governing committee and the board of directors of the organization which clearly outlines the relationship between the board and the committee and the decisionmaking responsibilities and authority of each.

(19) PARENT TRAINING AND INFORMATION CENTER.—The term "parent training and information center" means a center that—

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

(B) assists parents—

(i) to better understand the nature of their children's disabilities and their educational and developmental needs;

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

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

(iv) to obtain appropriate information about the range of options, programs, services, and resources available to assist children with disabilities and their families;

(v) to understand the programs under this title for the education of, and the provision of early intervention services to, children with disabilities; and

(vi) to participate in school reform activities.

(20) RELATED SERVICES.—The term "related services" means transportation, and such developmental, corrective, and other supportive services (including speech-language pathology and audiology services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions in children.

(21) SECONDARY SCHOOL.—The term "secondary school" means a day or residential school which provides secondary education, as determined under State law, policy, or procedure, except that it does not include any education provided beyond grade 12.

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

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

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

(B) instruction in physical education.

(24) SPECIFIC LEARNING DISABILITY.—

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

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

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

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

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

(27) SUPPLEMENTARY AIDS AND SERVICES.—The term "supplementary aids and services" means, aids, services, and other supports that are provided in regular education classes or other education-related settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with section 612(a)(4).

(28) TERRITORY.—The term "territory" means American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, and the Virgin Islands.

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

(A) are designed within an outcome-oriented process, which promotes movement from school to post-school activities, including post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

(B) are based upon the individual child's needs, taking into account the child's preferences and interests; and

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

SEC. 603. OFFICE OF SPECIAL EDUCATION PROGRAMS.

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

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

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

SEC. 604. ABROGATION OF STATE SOVEREIGN IMMUNITY.

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

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

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

SEC. 605. REQUIREMENTS FOR PRESCRIBING REGULATIONS.

(a) PUBLIC-COMMENT PERIOD.—The Secretary shall provide a public-comment period of at least 90 days on any regulation proposed under part B or part C of this title on which an opportunity for public comment is otherwise required by law.

(b) PROTECTIONS PROVIDED TO CHILDREN.—The Secretary may not implement, or publish in final form, any regulation prescribed pursuant to this title which would procedurally or substantively lessen the protections provided to children with disabilities under this title, as embodied in regulations in effect on July 20, 1983 (particularly as such protections relate to parental consent to initial evaluation or initial placement in special education, least restrictive environment, related services, timeliness, attendance of evaluation personnel at individualized education program meetings, or qualifications of personnel), except to the extent that such regulation reflects the clear and unequivocal intent of the Congress in legislation.

(c) CORRESPONDENCE FROM DEPARTMENT OF EDUCATION DESCRIBING INTERPRETATIONS OF THIS PART.—

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

(2) ADDITIONAL INFORMATION.—For each item of correspondence published in a list under paragraph (1), the Secretary shall identify the topic addressed by the correspondence and shall include such other summary information as the Secretary determines to be appropriate.

(3) RESTRICTIONS ON USE OF CORRESPONDENCE.—

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

(i) An administrative or due process action commenced under section 615.

(ii) A compliance review or other action relating to a State educational agency conducted by the Department of Education.

(iii) A compliance review or other action relating to a local educational agency or other agency conducted by a State educational agency.

(B) EXCEPTIONS.—A restriction on the use of an item of correspondence under subparagraph (A) shall not apply if the item of correspondence—

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

(ii)(I) was originally directed to one of the parties to the action under subparagraph (A)(i); or

(II) was originally directed to the particular local educational agency or other agency under subparagraph (A)(iii); or

(iii) was originally directed to the particular State educational agency under subparagraph (A)(ii).

SEC. 606. EMPLOYMENT OF INDIVIDUALS WITH DISABILITIES.

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

PART B—ASSISTANCE FOR EDUCATION OF ALL CHILDREN WITH DISABILITIES

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

(a) AUTHORIZATION.—The Secretary of Education shall provide grants to States and provide amounts to the Secretary of the Interior for the purpose of providing special education and related services to children with disabilities in accordance with this part.

(b) ALLOTMENT AMONG STATES.—

(1) RESERVATION FOR THE TERRITORIES.—

(A) IN GENERAL.—Of the amount appropriated pursuant to subsection (e) to carry out this part for a fiscal year, the Secretary shall allot not more than one percent among the territories in accordance with this paragraph.

(B) BASIS FOR ALLOTMENT.—The Secretary shall allot to each territory an amount that bears the same proportion to the amount appropriated pursuant to subsection (e) for a fiscal year as the number of individuals aged 3 to 21, inclusive, residing in such territory bears to the aggregate number of such individuals residing in all such territories.

(C) PROHIBITION ON CONSOLIDATION OF GRANTS.—The provisions of section 501 of Public Law 95–134 (48 U.S.C. 1469a; relating to the consolidation of one or more grants provided to certain territories) shall not apply with respect to amounts provided to a territory under a grant under this part.

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

(3) STATES.—

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

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

(i) The amount equal to—

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

(II) the child population percentage of the State (as determined under subparagraph (C)(i)).

(ii) The amount equal to—

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

(II) the child poverty percentage of the State (as determined under subparagraph (C)(ii)).

(C) DETERMINATION OF CHILD POPULATION PERCENTAGE AND CHILD POVERTY PERCENTAGE.—

(i) CHILD POPULATION PERCENTAGE.—The child population percentage shall be determined by comparing—

(I) the number of children aged 3 to 21, inclusive, in the State who are of the same age as children with disabilities for whom the State ensures the availability of a free appropriate public education; to

(II) the number of such children in all States.

(ii) CHILD POVERTY PERCENTAGE.—The child poverty percentage shall be determined by comparing—

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

(II) the number of such children in all States.

(D) TRANSITION FORMULA.—For each of the fiscal years 1997 through 2005, the Secretary shall allot the remaining amount to the remaining States in accordance with the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(I) 70 percent multiplied by the amount determined for such State under subparagraph (B); and

(II) 30 percent multiplied by the amount determined for such State under subparagraph (E).

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

(I) 80 percent multiplied by the amount determined for such State under subparagraph (B); and

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

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

(I) 90 percent multiplied by the amount determined for such State under subparagraph (B); and

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

(E) BASE AMOUNT FOR 1996.—

(i) IN GENERAL.—Subject to clause (ii), the amount determined under this subparagraph for a State is the amount that bears the same proportion to the remain-

ing amount (described in subparagraph (A)) for the fiscal year under subparagraph (D) as the amount received by the State under this section for fiscal year 1996 bears to the aggregate of the amounts received by the remaining States (described in subparagraph (A)) under this section for fiscal year 1996.

(ii) REDUCTION IN AMOUNT.—If the State received an amount under this section for fiscal year 1996 on the basis of children aged 3 to 5, inclusive, in such State, but the State does not make a free appropriate public education available to all children with disabilities aged 3 to 5, inclusive, in the State at the time a determination is made under subparagraph (C), the Secretary shall reduce, on a proportional basis, the amount under clause (i) for purposes of allotting amounts under such subparagraph.

(F) MINIMUM ALLOTMENT.—For fiscal year 1997 and each subsequent fiscal year, the amount allotted to each remaining State (described in subparagraph (A)) shall not be less than an amount equal to one-third of one percent of the remaining amount (described in subparagraph (A)) for the fiscal year.

(G) MAXIMUM ALLOTMENT.—

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

(I) the sum of—

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

(bb) if the State is eligible for a grant under section 619, the number of such children in the State, aged 3 through 5; multiplied by

(II) 40 percent of the average per-pupil expenditure in public elementary and secondary schools in the United States.

(ii) DETERMINATION OF NUMBER OF CHILDREN.—The number of children with disabilities receiving special education and related services in any fiscal year shall be equal to the number of such children receiving special education and related services on December 1 of the fiscal year preceding the fiscal year for which the determination is made.

(iii) AVERAGE PER PUPIL EXPENDITURE.—For purposes of clause (i)(II), the term "average per pupil expenditure", in the United States, means the aggregate current expenditures, during the second fiscal year preceding the fiscal year for which the computation is made (or, if satisfactory data for such year are not available at the time of computation, then during the most recent preceding fiscal year for which satisfactory data are available) of all local educational agencies in

the United States (which, for purposes of this subparagraph, means the fifty States and the District of Columbia), as the case may be, plus any direct expenditures by the State for operation of such agencies (without regard to the source of funds from which either of such expenditures are made), divided by the aggregate number of children in average daily attendance to whom such agencies provided free public education during such preceding year.

(4) SPECIAL RULE WITH RESPECT TO PUERTO RICO.—

(A) IN GENERAL.—Notwithstanding any other provision of this subsection, the amount allotted to Puerto Rico for a fiscal year shall bear the same or lower proportion to the remaining amount (described in paragraph (3)(A)) as the amount received by Puerto Rico under this section for fiscal year 1996 bears to the aggregate of the amounts received by the remaining States (as described in paragraph (3)(A)) under this section for fiscal year 1996.

(B) ADJUSTMENT IN AMOUNTS TO REMAINING STATES.—If the amount allotted to Puerto Rico for a fiscal year is determined under subparagraph (A), the Secretary shall reallot to the remaining States (as described in paragraph (3)(A)), on a proportional basis, any amount not otherwise allotted to Puerto Rico.

(5) USE OF MOST RECENT POPULATION DATA.—For the purpose of providing grants under this part, the Secretary shall use the most recent population data and data on children aged 3 to 21, inclusive, living in poverty that are available and satisfactory to the Secretary.

(c) USE OF FUNDS BY STATE.—

(1) RESERVATION FOR STATE ACTIVITIES.—

(A) IN GENERAL.—Subject to subparagraph (D), a State may reserve not more than 25 percent of the amount allotted to the State under paragraph (1) or (3) of subsection (b) for a fiscal year for administration and other State-level activities in accordance with subparagraphs (B) and (C).

(B) STATE ADMINISTRATION.—

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

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

(II) each remaining State may use up to 3 percent of the amount allotted to the State for a fiscal year, or $450,000, whichever is greater.

(ii) USE OF AMOUNTS FOR ADMINISTRATION OF PART C.—If the State educational agency is the lead agency for the State under part C, amounts described in clause (i) may also be used for the administration of part C.

(C) OTHER STATE-LEVEL ACTIVITIES.—A State shall use any amounts reserved under subparagraph (A) for a fiscal year that are not used for administration under subparagraph (B) for such fiscal year—

(i) for support and direct services, including technical assistance and personnel development and training;

(ii) for administrative costs of monitoring and complaint investigation, but only to the extent that such costs exceed the costs incurred for those activities during fiscal year 1985;

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

(iv) to assist local educational agencies in meeting personnel shortages;

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

(vi) for activities at the State and local levels to meet the performance goals established by the State under section 612(a)(14) and to support implementation of the State improvement plan under part D if the State receives funds under that part; or

(vii) to supplement other amounts used to develop and implement a Statewide coordinated services system designed to improve results for children and families, including children with disabilities and their families, but not to exceed one percent of the amount received by the State under this section (such system shall be coordinated with and, to the extent appropriate, build on the system of coordinated services developed by the State under part C).

(D) REPORT ON USE OF AMOUNTS.—The State shall, as part of the information required to be submitted under section 612, submit a description of—

(i) how amounts reserved under subparagraph (A) will be used to meet the requirements of this part;

(ii) how such amounts will be allocated among the activities described in subparagraphs (B) and (C) to meet State priorities based on input from local educational agencies; and

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

(2) SUBGRANTS TO LOCAL EDUCATIONAL AGENCIES AND CERTAIN STATE AGENCIES.—

(A) IN GENERAL.—The State shall provide at least 75 percent of the amount received under a grant for a fiscal year to local educational agencies in the State that have established their eligibility under section 613, and to State agencies that received funds under section 614A(a) (as such section was in effect on the day before the date of the enactment of the IDEA Improvement Act of 1996) for fiscal year 1996 and have established their eligibility under section 613, for use in accordance with this part.

(B) METHODS OF DISTRIBUTION.—A State may provide amounts under subparagraph (A) to local educational agencies and State agencies described under such subparagraph on the basis of—

(i) school-age population;

(ii) school enrollment;

(iii) numbers of children with disabilities receiving a free appropriate public education;

(iv) allocations for previous fiscal years;

(v) any two or more of the factors described in clauses (i) through (iv); or

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

(C) FORMER CHAPTER 1 STATE AGENCIES.—

(i) IN GENERAL.—To the extent necessary for each of the fiscal years 1997, 1998, and 1999, the State shall use amounts that are available under paragraph (1)(A) to ensure that each State agency that received amounts in fiscal year 1994 under subpart 2 of part D of chapter 1 of title I of the Elementary and Secondary Education Act of 1965 (as such subpart was in effect on the day before the date of the enactment of the Improving America's Schools Act of 1994) receives, from the combination of funds under paragraph (1)(A) and funds provided under subparagraph (A), an amount equal to—

(I) the number of children with disabilities, aged 6 to 21, inclusive, to whom the agency was providing special education and related services on December 1 of the fiscal year for which the funds were appropriated, subject to the methods of distribution under subparagraph (B); multiplied by

(II) the per-child amount provided under such subpart for fiscal year 1994.

(ii) ADDITIONAL USE OF AMOUNTS.—The State may use amounts described in clause (i) to ensure that each local educational agency that received fiscal year 1994 funds under that subpart for children who had transferred from a State-operated or State-supported school or program assisted under that subpart receives, from the combination of funds available under paragraph (1)(A) and funds provided under subparagraph (A), an amount for each such child, aged 3 to 21, inclusive, to whom the agency was providing special education and related services on December 1 of the fiscal year for which the funds were appropriated, equal to the per-child amount the agency received under that subpart for fiscal year 1994.

(iii) DETERMINATION OF NUMBER OF CHILDREN.—The number of children counted under clause (i)(I) shall not exceed the number of children aged 3 to 21, inclusive, for whom the agency received amounts in fiscal year 1994 under subpart 2 of part D of chapter 1 of title I of the Elementary and Secondary Education Act

of 1965 (as such subpart was in effect on the day before the date of the enactment of the Improving America's Schools Act of 1994).

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

(d) USE OF AMOUNTS BY SECRETARY OF THE INTERIOR.—

(1) PROVISION OF AMOUNTS FOR ASSISTANCE.—

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

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

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

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

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

(B) includes a description of how the Secretary of the Interior will coordinate the provision of services under this

part with local educational agencies, tribes and tribal organizations, and other private and Federal service providers;

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

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

(E) includes an assurance that the Secretary of the Interior and the Secretary of Health and Human Services have entered into a memorandum of agreement, to be provided to the Secretary of Education, for the coordination of services, resources, and personnel between their respective Federal, State, and local offices and with State and local educational agencies and other entities to facilitate the provision of services to Indian children with disabilities residing on or near reservations (such agreement shall provide for the apportionment of responsibilities and costs including, but not limited to, child find, evaluation, diagnosis, remediation or therapeutic measures, and (where appropriate) equipment and medical or personal supplies as needed for a child to remain in school or a program); and

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

Section 616(a) shall apply to the information described in this paragraph.

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

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

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

as reported annually divided by the total of such children served by all tribes or tribal organizations.

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

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

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

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

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

providing services to infants, toddlers, children, and youth with disabilities, to tribes, and to other interested parties.

(5) ESTABLISHMENT OF ADVISORY BOARD.—To meet the requirements of section 612(a)(18), the Secretary of the Interior shall establish, not later than 6 months after the date of the enactment of the IDEA Improvement Act of 1996, under the Bureau of Indian Affairs (BIA), an advisory board composed of individuals involved in or concerned with the education and provision of services to Indian infants, toddlers, children, and youth with disabilities, including Indians with disabilities, Indian parents or guardians of such children, teachers, service providers, State and local educational officials, representatives of tribes or tribal organizations, representatives from State Interagency Coordinating Councils in States having reservations, and other members representing the various divisions and entities of the BIA. The chairperson shall be selected by the Secretary of the Interior. The advisory board shall—

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

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

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

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

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

(6) ANNUAL REPORTS.—

(A) IN GENERAL.—The advisory board established under paragraph (5) shall prepare and submit to the Secretary of the Interior and to the Congress an annual report containing a description of the activities of the advisory board for the preceding year.

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

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

SEC. 612. STATE REQUIREMENTS.

(a) IN GENERAL.—A State shall be eligible to receive a grant under this part for a fiscal year if, except as provided in subsection (c), the State submits to the Secretary information that demonstrates to the satisfaction of the Secretary that the State has in

effect policies and procedures to ensure that it meets each of the following requirements:

(1) FREE APPROPRIATE PUBLIC EDUCATION.—

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

(B) LIMITATION.—Subparagraph (A) shall not apply with respect to children with disabilities aged 3 to 5 and children with disabilities aged 18 to 21 to the extent that such application to those children would be inconsistent with State law or practice, or the order of any court, relating to the provision of public education to children in such age ranges.

(2) CHILD FIND.—All children with disabilities residing in the State, including children with disabilities attending private schools, regardless of the severity of such disabilities, and who are in need of special education and related services, are identified, located, and evaluated and that a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services.

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

(4) LEAST RESTRICTIVE ENVIRONMENT.—

(A) IN GENERAL.—To the maximum extent appropriate—

(i) children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled; and

(ii) special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child means that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(B) ADDITIONAL REQUIREMENT.—

(i) IN GENERAL.—The State's method of distributing funds shall not result in placements that violate the requirements of subparagraph (A).

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

(5) PROCEDURAL SAFEGUARDS.—

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

(B) ADDITIONAL PROCEDURAL SAFEGUARDS.—Procedures to assure that testing and evaluation materials and procedures utilized for the purposes of evaluation and placement

of children with disabilities will be selected and administered so as not to be racially or culturally discriminatory. Such materials or procedures shall be provided and administered in the child's native language or mode of communication, unless it clearly is not feasible to do so, and no single procedure shall be the sole criterion for determining an appropriate educational program for a child.

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

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

(8) TRANSITION FROM PART C TO PRESCHOOL PROGRAMS.—Children participating in early-intervention programs assisted under part C, and who will participate in preschool programs assisted under this part, experience a smooth transition to those preschool programs in a manner consistent with section 637(a)(7). By the third birthday of such a child, an individualized education program or, if consistent with sections 614(d)(1)(B) and 636(d), an individualized family service plan, has been developed and is being implemented for the child. The local educational agency will participate in transition planning conferences by the designated lead agency under section 637(a)(7).

(9) CHILDREN IN PRIVATE SCHOOLS.—

(A) IN GENERAL.—To the extent consistent with the number and location of children with disabilities in the State who are enrolled in private elementary and secondary schools, provision is made for the participation of such children in the program assisted or carried out under this part by providing for such children special education and related services, except if the Secretary has arranged for services to such children under subsection (f).

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

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

(ii) ADDITIONAL REQUIREMENTS.—In all cases described in clause (i)—

(I) children with disabilities are placed in, or referred to, only those private schools and facilities that the State educational agency determines meet standards that apply to State and local educational agencies; and

(II) children served in such private schools or facilities retain access to a free appropriate public education in accordance with this part.

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

(i) IN GENERAL.—If the parents of a child with a disability that had previously received special education and related services under the authority of a public agency have enrolled their child in a private elementary or secondary school without the consent of or referral by the public agency, as a result of mediation described in section 615(d), or as a result of a decision rendered under the procedural safeguards of section 615, the public agency may be required to reimburse the parents for the cost of the enrollment, except that the cost of the reimbursement may be reduced or denied—

(I) if, at least 10 school days prior to the removal of the child from the public school, the parents did not give a written statement of their concerns to the public agency and notice that they intend to place their child in a private school at public expense;

(II) if, prior to the removal of the child from the public school, the parents did not make the child available for an initial assessment and evaluation by the local educational agency prior to enrollment in the private school; or

(III) at the discretion of the judge.

(ii) EXCEPTION.—Notwithstanding the notice requirement in clause (i)(I), the cost of the reimbursement may not be reduced or denied for failure to provide such notice if—

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

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

(III) the school prevented the parent from providing such notice; or

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

(10) STATE EDUCATIONAL AGENCY RESPONSIBLE FOR GENERAL SUPERVISION.—

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

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

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

(I) are under the general supervision of individuals in the State who are responsible for edu-

cational programs for children with disabilities; and

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

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

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

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

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

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

(iii) INTERAGENCY DISPUTES.—Procedures for resolving interagency disputes (including procedures under which local education agencies may initiate proceedings) under the agreement or other mechanism to secure reimbursement from other agencies or otherwise implement the provisions of the agreement or mechanism.

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

(B) OBLIGATION OF PUBLIC AGENCY.—

(i) IN GENERAL.—If any public agency other than an educational agency is otherwise obligated under Fed-

eral or State law, or assigned responsibility under State policy or pursuant to subparagraph (A), to provide or pay for any services that are considered special education or related services (such as, but not limited to, services described in sections 602(1) relating to assistive technology devices, 602(2) relating to assistive technology services, 602(20) relating to related services, 602(27) related to supplementary aids and services, and 602(29) relating to transition services) that are necessary for ensuring a free appropriate public education to children with disabilities within the State, such public agency shall fulfill that obligation or responsibility, either directly or through contract or other arrangement.

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

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

(i) State statute or regulation;

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

(iii) other appropriate methods as determined by the Chief Executive Officer or designee of the officer.

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

(13) COMPREHENSIVE SYSTEM OF PERSONNEL DEVELOPMENT.—The State has established and implemented, consistent with the purposes of this title and section 635(a)(7), a comprehensive system of personnel development that is designed to ensure an adequate supply of qualified special education and related services personnel necessary to carry out this part, including—

(A) a statewide, coordinated personnel-development plan that meets the personnel development requirements of a State improvement plan under section 683; or

(B) a personnel-development plan, developed in consultation with parents of children with disabilities, State and local educational agencies, institutions of higher education, and professional associations that—

(i) addresses current and projected needs for special education and related services personnel throughout the State;

(ii) addresses the need for the pre-service and in-service preparation of personnel throughout the State, including regular education personnel, to provide educational services to children with disabilities;

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

(iv) is integrated, to the maximum extent possible, with other professional development plans and activities.

(14) PERSONNEL STANDARDS.—

(A) IN GENERAL.—The State educational agency has established and maintains standards to ensure that personnel necessary to carry out this part are appropriately and adequately prepared and trained.

(B) STANDARDS DESCRIBED.—Such standards shall—

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

(ii) to the extent the standards described in subparagraph (A) are not based on the highest requirements in the State applicable to a specific profession or discipline, the State is taking steps to require retraining or hiring of personnel that meet appropriate professional requirements in the State; and

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

(C) EXCEPTION.—If the State determines that, within a geographic area of the State there is a shortage of an appropriate number and type of personnel to provide the special education and related services to children with disabilities within such area, and the appropriate public agency has taken steps to recruit and hire such personnel, the State may, subject to public comment and review, temporarily suspend the standards of subparagraph (B)—

(i) consistent with State law, for the purpose of recruiting and hiring for such shortage areas the most qualified available individuals who are making progress in applicable coursework; and

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

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

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

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

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

(B) has established performance indicators the State will use to assess progress toward achieving those goals that, at a minimum, address the performance of children with disabilities on assessments, drop-out rates, and graduation rates;

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

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

(16) PARTICIPATION IN ASSESSMENTS.—

(A) IN GENERAL.—Children with disabilities are included in general State and district-wide assessment programs, with appropriate accommodations, where necessary. As appropriate, the State or local educational agency—

(i) develops guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in State and district-wide assessment programs; and

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

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

(i) The number of children with disabilities participating in regular assessments.

(ii) The number of those children participating in alternate assessments.

(iii) The performance of those children on regular assessments (beginning not later than July 1, 1997) and on alternate assessments (not later than July 1, 1999), if doing so would be statistically sound and would not result in the disclosure of performance results identifiable to individual children.

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

(A) IN GENERAL.—The State ensures that amounts provided under a grant to the State under this part, except as provided in subparagraph (B), will be used to supplement State, local, and other Federal funds (including funds not under the direct control of State or local educational agen-

cies) expended for special education and related services, and not to supplant those funds.

(B) WAIVER.—The Secretary may waive, in whole or in part, the requirements of subparagraph (A) if the Secretary determines that the State has provided clear evidence that all children with disabilities in the State have available a free appropriate public education or that, such a waiver would allow the State to improve the delivery of special education and related services to children with disabilities in the State.

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

(19) STATE ADVISORY PANEL.—

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

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

(i) parents of children with disabilities;

(ii) individuals with disabilities;

(iii) teachers;

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

(v) State and local education officials;

(vi) administrators of programs for children with disabilities;

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

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

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

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

(D) DUTIES.—The advisory panel shall—

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

(ii) comment publicly on any rules or regulations proposed by the State regarding—

(I) the education of children with disabilities; and

(II) the procedures for distribution of amounts received by the State under a grant under this part;

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

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

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

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

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

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

(c) EXCEPTION FOR PRIOR STATE PLANS.—

(1) IN GENERAL.—If a State has on file with the Secretary policies and procedures that demonstrate that such State meets any requirement of subsection (a), including any policies and procedures filed under this part as in effect before the date of the enactment of the IDEA Improvement Act of 1996, the Secretary shall consider such State to have met such requirement for purposes of receiving a grant under this part.

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

(3) MODIFICATIONS REQUIRED BY THE SECRETARY.—The Secretary may require a State to amend its application at any time as a result of the Secretary's compliance reviews under parts B and C. The Secretary shall reduce or shall not provide any further payments to the State educational agency until the Secretary is satisfied that the State educational agency is complying with that requirement.

(d) APPROVAL BY THE SECRETARY.—

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

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

(A) with reasonable notice; and

(B) with an opportunity for a hearing.

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

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

(1) IN GENERAL.—If, on the date of enactment of the Education of the Handicapped Act Amendments of 1983, a State educational agency is prohibited by law from providing for the participation in special programs of children with disabilities enrolled in private elementary and secondary schools as required by subsection (a)(9), the Secretary shall, notwithstanding such provision of law, arrange for the provision of services to such children through arrangements which shall be subject to the requirements of such subsection.

(2) PAYMENTS.—

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

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

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

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

(C) PERIOD OF PAYMENTS.—The period under which payments are made under subparagraph (A) shall continue until the Secretary determines that there will no longer be any failure or inability on the part of the State educational agency to meet the requirements of subsection (a)(9).

(3) NOTICE AND HEARING.—

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

(B) REVIEW OF ACTION.—If a State educational agency is dissatisfied with the Secretary's final action after a pro-

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

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

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

SEC. 613. LOCAL EDUCATIONAL AGENCY REQUIREMENTS.

(a) IN GENERAL.—A local educational agency shall be eligible for assistance under this part for any fiscal year if, except as provided in subsection (b), such agency submits to the State educational agency information that demonstrates to the satisfaction of the State educational agency the following:

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

(2) USE OF AMOUNTS.—

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

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

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

(iii) except as provided in subparagraph (B), may not be used to reduce the level of expenditures for the education of children with disabilities made by the local educational agency from State or local funds below the level of those expenditures for the preceding fiscal year;

(iv) may be used, notwithstanding clause (i) or any other provision of this part, for the costs of special education and related services provided in a regular class or other education related setting to a child with a dis-

ability in accordance with the child's individualized education program, even if one or more nondisabled children benefit from those services; and

(v) may be used, in accordance with subsection (f) and notwithstanding clause (i) or any other provision of this part, to develop and implement a coordinated services system.

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

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

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

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

(I) has left the jurisdiction of the agency;

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

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

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

(3) INFORMATION FOR STATE EDUCATIONAL AGENCY.—The local educational agency shall provide the State educational agency with information necessary to enable the State educational agency to carry out its duties under this part, including, with respect to paragraphs (14) and (15) of section 612(a), information relating to the performance of children with disabilities participating in programs carried out under this part.

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

(b) EXCEPTION FOR PRIOR LOCAL PLANS.—

(1) IN GENERAL.—If a local educational agency or State agency has on file with the State educational agency policies and procedures that demonstrate that such local educational agency, or such State agency, as the case may be, meets any requirement of subsection (a), including any policies and procedures filed under this part as in effect before the date of the enactment of IDEA Improvement Act of 1996, the State educational agency shall consider such local educational agency or State agency, as the case may be, to have met such requirement for purposes of receiving assistance under this part.

(2) MODIFICATION MADE BY LOCAL EDUCATIONAL AGENCY.—Subject to paragraph (3), an application submitted by a local educational agency in accordance with this section shall remain

in effect until the such agency submits to the State educational agency such modifications as the local educational agency deems necessary.

(3) MODIFICATIONS REQUIRED BY STATE EDUCATIONAL AGENCY.—The State educational agency may require a local educational agency to amend its application at anytime as a result of the compliance reviews of the State educational agency under parts B and C. This paragraph shall apply to a modification to an application to the same extent and in the same manner as this section applies to the original plan.

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

(d) LOCAL EDUCATIONAL AGENCY COMPLIANCE.—

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

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

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

(e) JOINT ESTABLISHMENT OF ELIGIBILITY.—

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

(2) AMOUNT OF PAYMENTS.—If a State educational agency requires the joint establishment of eligibility under paragraph (1), the total amount of funds made available to the affected local educational agencies shall be equal to the sum of the payments

that each such local educational agency would have received under section 611(c) if such agencies were eligible for such payments.

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

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

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

(4) REQUIREMENTS FOR EDUCATIONAL SERVICE AGENCIES.—

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

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

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

(B) ADDITIONAL REQUIREMENT.—Notwithstanding any other provision of this subsection, an educational service agency shall provide for the education of children with disabilities in the least restrictive environment, as required by section 612(a)(4).

(f) COORDINATED SERVICES SYSTEM.—

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

(2) ACTIVITIES.—In implementing a coordinated services system under this subsection, a local educational agency may carry out activities which include—

(A) improving the effectiveness and efficiency of service delivery, including developing strategies that promote accountability for results;

(B) service coordination and case management that facilitates the linkage of individualized education programs under this part and individualized family service plans under part C with individualized service plans under multiple Federal and State programs, such as title I of the Rehabilitation Act of 1973 (vocational rehabilitation), title XIX of the Social Security Act (Medicaid), and title XVI of the Social Security Act (supplemental security income);

(C) developing and implementing interagency financing strategies for the provision of education, health, mental health, and social services, including transition services and related services under this title; and

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

(3) COORDINATION WITH CERTAIN PROJECTS UNDER ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965.—If a local educational agency is carrying out a coordinated services project under title XI of the Elementary and Secondary Education Act of 1965 and a coordinated services project under this part in the same schools, such agency shall use amounts under this subsection in accordance with the requirements of that title.

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

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

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

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

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

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

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

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

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

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

SEC. 614. EVALUATIONS, REEVALUATIONS, INDIVIDUALIZED EDUCATION PROGRAMS, AND EDUCATIONAL PLACEMENTS.

(a) EVALUATIONS AND REEVALUATIONS.—

(1) INITIAL EVALUATIONS.—

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

(B) PROCEDURES.—Such initial evaluation shall consist of procedures—

(i) to determine whether a child is a child with a disability (as defined in section 602(3)); and

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

(C) PARENTAL CONSENT.—

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

(ii) REFUSAL.—If the parents of such child refuse consent for the evaluation, the agency may continue to pursue an evaluation by utilizing the mediation and due process procedures under section 615(e).

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

(A) if conditions warrant a reevaluation or if the child's parent or teacher requests a reevaluation, but at least once every 3 years; and

(B) in accordance with subsections (b) and (c).

(b) EVALUATION PROCEDURES.—

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

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

(A) use a variety of assessment tools and strategies to gather relevant functional and developmental information, including information provided by the parent, that may assist in determining whether the child is a child with a disability and the content of the child's individualized education program, including information related to enabling the child to be involved in and progress in the general curriculum or, for preschool children, to participate in appropriate activities;

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

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

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

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

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

(ii) are provided and administered in the child's native language or other mode of communication, unless it is clearly not feasible to do so; and

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

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

(ii) are administered by qualified personnel; and

(iii) are administered in accordance with any instructions provided by the producer of such tests; and

(C) the child is assessed in all areas of suspected disability.

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

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

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

(5) SPECIAL RULE FOR ELIGIBILITY DETERMINATION.—In making a determination of eligibility under paragraph (4)(A), a child shall not be determined to be a child with a disability based on any of the following:

(A) Lack of instruction, including instruction in reading or math.

(B) Limited English proficiency.

(C) Cultural or environmental factors.

(D) Economic disadvantage.

(c) REEVALUATION PROCEDURES.—

(1) IN GENERAL.—As part of any reevaluation to assess a child under this section, the individualized education program team and other qualified professionals, as appropriate, shall—

(A) review existing evaluation data on the child, including current classroom-based assessments and teacher and related services providers observation; and

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

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

(ii) the child's present levels of performance and educational needs; and

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

(II) if so, any additions or modifications to the special education and related services to enable the child to meet the objectives set out in the individualized education program of the child and to participate, as appropriate, in the general curriculum.

(2) TESTS AND OTHER EVALUATION MATERIALS.—The local educational agency shall administer such tests and other eval-

uation materials as may be needed to produce the data identified by the IEP Team under paragraph (1)(B).

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

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

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

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

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

(d) INDIVIDUALIZED EDUCATION PROGRAMS.—

(1) REQUIREMENT THAT PROGRAM BE IN EFFECT.—

(A) IN GENERAL.—At the beginning of each school year, each local educational agency, or State educational agency, as the case may be, shall have in effect, for each child with a disability in its jurisdiction, an individualized education program, as defined in section 602(11).

(B) PROGRAM FOR CHILD AGED 3 TO 5.—In the case of a child with a disability aged 3 to 5, inclusive, an individualized family service plan that contains the material described in section 636, and that is developed in accordance with this section, may serve as the IEP of the child if using that plan as the IEP is—

(i) consistent with State policy; and

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

(2) DEVELOPMENT OF IEP.—

(A) IN GENERAL.—An individualized education program team shall develop the IEP described in paragraph (1). In developing such IEP, the IEP Team, subject to subparagraph (B), shall—

(i) consider the child's strengths and the parents' concerns for enhancing their child's education;

(ii) consider the results of the initial evaluation or most recent reevaluation;

(iii) in the case of a child whose behavior impedes his or her learning or that of others, consider, when appropriate, strategies, including positive behavior management interventions and strategies to help the child behave in an appropriate and responsible manner conducive to learning;

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

(v) in the case of a child who is blind or visually impaired, provide for instruction in braille and the use of braille unless all members of the IEP Team concur that, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in braille or the use of

braille), instruction in braille or the use of braille is not appropriate for the child;

(vi) consider the communication needs of the child, and in the case of a child who is deaf, hard-of-hearing, blind, or communicatively disabled, consider the language and communication needs of the child; and

(vii) consider whether the child requires assistive technology services or devices.

(B) REQUIREMENT WITH RESPECT TO REGULAR EDUCATION TEACHER.—The regular education teacher of the child, as a member of the IEP Team, shall, to the extent appropriate, participate in the development of the IEP of the child, including the determination of appropriate behavior-management techniques consistent with subparagraph (A)(iii) of this paragraph, and the determination of supplementary aids and services, program modifications, and support for school personnel consistent with section 602(11)(E).

(3) REVIEW AND REVISION OF IEP.—

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

(i) reviews each IEP at least once a year to determine whether the annual objectives for the child are being achieved; and

(ii) revises the IEP to address—

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

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

(III) information about the child provided to, or by, the parents, as described in section 602(11)(F)(ii); or

(IV) the child's anticipated needs as otherwise appropriate.

(B) CERTAIN CHILDREN WITH DISABILITIES.—

(i) IN GENERAL.—In the case of a child with a disability who has demonstrated a pattern of behavior that significantly impairs the education of the child, or the education of the classmates of the child, and the ability of the teacher of the child to teach, if such teacher initiates or requests an IEP meeting, then the appropriate authority shall convene an IEP meeting to review the child's educational program, related services, supplementary aids and services, and placement.

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

(I) the appropriateness of the current IEP of the child;

(II) whether or not special education and related services have been appropriately provided to the child;

(III) whether or not other supplementary aids or services, including teacher training, are needed to address the behavior of the child; and

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

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

(I) The cumulative record over a reasonable period of time describing the frequent behaviors exhibited by the child that significantly impairs the education of the child, the education of the classmates of the child, and the ability of the teacher of the child to teach.

(II) Documentation of the efforts made to address the behavior of the child, the use of supplementary services or strategies (including the use of behavior management plans) that have been implemented over a reasonable period of time and have failed to address the behavior of the child in a manner that would enable the child to remain in the current educational placement of the child without significantly impairing the education of the child, the education of the classmates of the child, and the ability of the teacher of the child to teach.

(III) The training made available to the teacher or teachers of the child.

(iv) EXPEDITED DUE PROCESS HEARING.—If the IEP Team determines that a change in placement of the child is appropriate, and the parents of the child disagree with such determination, then either party may request an expedited due process hearing in accordance with section 615(f)(2).

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

(4) FAILURE TO MEET TRANSITION OBJECTIVES.—If a participating agency, other than the local educational agency, fails to provide the transition services described in the IEP in accordance with section 602(11)(F)(ii), the local educational agency shall reconvene the IEP Team to identify alternative strategies to meet the transition objectives for the child set out in that program.

(5) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed—

(A) to decrease the amount of information that a parent receives concerning the progress of the child of such parent; or

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

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

SEC. 615. PROCEDURAL SAFEGUARDS.

(a) ESTABLISHMENT OF PROCEDURES.—Any State educational agency or local educational agency that receives assistance under this part shall establish and maintain procedures in accordance with this section to assure that children with disabilities and their parents are guaranteed procedural safeguards with respect to the provision of free appropriate public education by such agencies.

(b) TYPES OF PROCEDURES.—The procedures required by this section shall include—

(1) an opportunity for the parents of a child with a disability to examine all records relating to such child and to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to such child, and to obtain an independent educational evaluation of the child;

(2) procedures to protect the rights of the child whenever the parents of the child are not known, the agency cannot, after reasonable efforts, locate the parents, or the child is a ward of the State, including the assignment of an individual (who shall not be an employee of the State educational agency, the local educational agency, or any other agency that is involved in the education or care of the child) to act as a surrogate for the parents;

(3) written prior notice to the parents of the child whenever such agency—

(A) proposes to initiate or change; or

(B) refuses to initiate or change;

the identification, evaluation, or educational placement of the child, in accordance with subsection (c), or the provision of a free appropriate public education to the child;

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

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

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

(7) procedures that require the parent of a child with a disability, or the attorney representing the child, to provide notice (which shall remain confidential)—

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

(B) that shall include—

(i) the name of the child, the address of the residence of the child, and the name of the school at which the child is attending;

(ii) a description of the nature of the problem of the child relating to such proposed initiation or change, including facts relating to such problem; and

(iii) the proposed resolution of the problem; and

(8) procedures that require the State educational agency to develop a model form to assist parents in filing a complaint in accordance with paragraph (7).

(c) CONTENT OF PRIOR WRITTEN NOTICE.—The notice required by subsection (b)(3) shall include—

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

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

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

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

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

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

(d) PROCEDURAL SAFEGUARDS NOTICE.—

(1) IN GENERAL.—A copy of the procedural safeguards available to the parents of a child with a disability shall be given to the parents, at a minimum—

(A) upon initial referral for evaluation;

(B) upon each notification of an individualized education program meeting and upon reevaluation of the child; and

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

(2) CONTENTS.—The procedural safeguards notice shall include a full explanation of the procedural safeguards written in the native language of the parents, unless not feasible to do so, and written in an easily understandable manner, available under this section and under regulations promulgated by the Secretary relating to—

(A) independent educational evaluation;

(B) prior written notice;

(C) parental consent;

(D) access to educational records;

(E) opportunity to present complaints;

(F) the child's placement during pendency of due process proceedings;

(G) procedures for students who are subject to placement in an interim alternative educational setting;

(H) requirements for unilateral placement by parents of children in private schools at public expense;

(I) mediation;

(J) due process hearings, including requirements for disclosure of evaluation results and recommendations;

(K) State-level appeals (if applicable in that State);

(L) civil actions; and

(M) attorney's fees.

(e) MEDIATION.—

(1) IN GENERAL.—Any State educational agency or local educational agency that receives assistance under this part shall ensure that procedures are established and implemented to allow parties to disputes involving the provision of free appropriate public education to children with disabilities by any such State educational agency or local educational agency to resolve such disputes through a mediation process.

(2) REQUIREMENTS.—Such procedures shall meet the following requirements:

(A) The procedures shall ensure that the mediation process—

(i) is voluntary on the part of the parents and may be terminated by either party after a good faith effort has been made by the party terminating the mediation process; and

(ii) is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

(B) The State shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.

(C) The State shall bear the cost of the mediation process.

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

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

(F) Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings, and the parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of such process.

(G) The State shall determine whether or not attorneys may attend or otherwise participate in the mediation process after offering the opportunity for parents and representatives of school districts to participate in the mediation process prior to any due process filing without attorneys present.

(f) IMPARTIAL DUE PROCESS HEARING.—

(1) IN GENERAL.—Whenever a complaint has been received under section 614(d)(3)(B), or subsection (b)(6) or (k) of this section, the parents involved in such complaint shall have an opportunity for an impartial due process hearing which shall be conducted by the State educational agency or by the local edu-

cational agency, as determined by State law or by the State educational agency.

(2) DISCLOSURE OF EVALUATIONS AND RECOMMENDATIONS.—

(A) IN GENERAL.—At least 10 school days prior to a hearing conducted pursuant to paragraph (1), each party shall disclose to all other parties all evaluations and recommendations based on the offering party's evaluations which the party intends to use at the hearing.

(B) PROHIBITION.—Any party which fails to meet the requirement of subparagraph (A) shall be barred from introducing such evaluations and recommendations at such hearing.

(3) LIMITATION ON CONDUCT OF HEARING.—A hearing conducted pursuant to paragraph (1) may not be conducted by an employee of the State educational agency or the local educational agency involved in the education or care of the child.

(4) ADDITIONAL REQUIREMENTS WITH RESPECT TO HEARINGS FOR CERTAIN CHILDREN WITH DISABILITIES.—A hearing conducted pursuant to paragraph (1) that is based upon a complaint received under section 614(d)(3)(B) shall, in addition to the requirements contained in this subsection, comply with the following additional requirements:

(A) In determining whether or not the decision by the IEP Team to change the placement of the child is justified and appropriate, the hearing officer shall, at a minimum, review the information under clause (iii) of such section.

(B) The child shall remain in the current educational placement of the child until the hearing officer reaches a final decision under this subsection.

(C) The hearing officer shall make a determination of findings and reach a final decision not later than 20 days after the first day of the hearing, or, at the discretion of the hearing officer, not later than 30 days after such first day of the hearing.

(D) The placement of the child, including the placement of the child during any due process or judicial proceeding, shall be determined in accordance with the final decision of the hearing officer under this subsection, unless the parents and the State or local educational agency agree otherwise.

(g) APPEAL.—If the hearing required by subsection (f) is conducted by a local educational agency, any party aggrieved by the findings and decision rendered in such a hearing may appeal such findings and decision to the State educational agency. Such agency shall conduct an impartial review of such decision. The officer conducting such review shall make an independent decision upon completion of such review.

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

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

(2) the right to present evidence and confront, cross-examine, and compel the attendance of witnesses;

(3) the right to a written, or, at the option of the parents, electronic verbatim record of such hearing; and

(4) the right to written, or, at the option of the parents, electronic findings of fact and decisions (which findings and decisions shall be made available to the public consistent with the requirements of section 617(c) (relating to the confidentiality of data, information, and records) and shall also be transmitted to the advisory panel established pursuant to section 612(a)(18)).

(i) ADMINISTRATIVE PROCEDURES.—

(1) IN GENERAL.—A decision made in a hearing conducted pursuant to subsection (f) shall be final, except that any party involved in such hearing may appeal such decision under the provisions of subsection (g) and paragraph (2) of this subsection.

(2) RIGHT TO BRING CIVIL ACTION.—

(A) IN GENERAL.—Any party aggrieved by the findings and decision made under subsection (f) who does not have the right to an appeal under subsection (g), and any party aggrieved by the findings and decision under this subsection, shall have the right to bring a civil action with respect to the complaint presented pursuant to this section, which action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy.

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

(i) shall receive the records of the administrative proceedings;

(ii) may hear additional evidence at the request of a party; and

(iii) basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.

(3) JURISDICTION OF DISTRICT COURTS; ATTORNEYS' FEES.—

(A) IN GENERAL.—The district courts of the United States shall have jurisdiction of actions brought under this section without regard to the amount in controversy.

(B) AWARD OF ATTORNEYS' FEES.—In any action or proceeding brought under this section, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to the parents of a child or youth with a disability who is the prevailing party.

(C) DETERMINATION OF AMOUNT OF ATTORNEYS' FEES.—Fees awarded under this paragraph shall be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this subsection.

(D) PROHIBITION OF ATTORNEYS' FEES AND RELATED COSTS FOR CERTAIN SERVICES.—(i) Attorneys' fees may not be awarded and related costs may not be reimbursed in any

action or proceeding under this subsection for services performed subsequent to the time of a written offer of settlement to a parent if—

(I) the offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than ten days before the proceeding begins;

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

(III) the court or administrative officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.

(ii) Attorneys' fees may not be awarded relating to any meeting of the IEP Team unless such meeting is convened as a result of a judicial action or proceeding.

(E) EXCEPTION TO PROHIBITION ON ATTORNEYS' FEES AND RELATED COSTS.—Notwithstanding subparagraph (D), an award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.

(F) REDUCTION IN AMOUNT OF ATTORNEYS' FEES.—Except as provided in subparagraph (G), whenever the court finds that—

(i) the parent, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;

(ii) the amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill and experience;

(iii) the time spent and legal services furnished were excessive considering the nature of the action or proceeding;

(iv) the attorney representing the parent did not provide to the school district the appropriate information in the due process complaint in accordance with subsection (b)(7); or

(v) the amount of attorneys' fees requested is not consistent with the extent of the success of the parents;

the court shall reduce, accordingly, the amount of the attorneys' fees awarded under this subsection.

(G) EXCEPTION TO REDUCTION IN AMOUNT OF ATTORNEYS' FEES.—The provisions of subparagraph (F) shall not apply in any action or proceeding if the court finds that the State or local educational agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of this section.

(j) MAINTENANCE OF CURRENT EDUCATIONAL PLACEMENT.—Except as provided in subsection (k), during the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents otherwise agree, the child shall remain in the then current educational placement of such child, or, if applying for initial admission to a public school, shall,

with the consent of the parents, be placed in the public school program until all such proceedings have been completed.

(k) PLACEMENT IN ALTERNATIVE EDUCATIONAL SETTING.—

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

(A) to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 school days (to the extent such alternatives would be applied to children without disabilities); and

(B) to an appropriate interim alternative educational setting for the same amount of time that a child without a disability would be subject to discipline, but for not more than an additional 45 school days if—

(i) the child carries a weapon to school or to a school function under the jurisdiction of a State or a local educational agency;

(ii) the child possesses or uses illegal drugs or sells or solicits the sale of medications or illegal drugs while at school or a school function under the jurisdiction of a State or local educational agency; or

(iii) the child causes serious injury while at school or at a school function under the jurisdiction of a State or a local educational agency.

(2) AUTHORITY OF HEARING OFFICER.—A hearing officer under this section may, to the same extent as a court, order a change in the placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if—

(A) the maintenance of the current placement of such child is substantially likely to result in injury to the child or to others; and

(B) the hearing officer—

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

(ii) considers the appropriateness of the child's current placement; and

(iii) considers whether the public agency has made reasonable efforts to minimize the risk of harm including the use of supplementary aids and services.

(3) DETERMINATION OF SETTING.—The alternative educational setting described in paragraph (1) or paragraph (2) shall be determined by the individualized education program team.

(4) MANIFESTATION DETERMINATION REVIEW.—

(A) IN GENERAL.—If a change in placement or disciplinary proceeding, including expulsion, is contemplated as a result of an action described in paragraph (1) or paragraph (2)—

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

(ii) not later than 15 school days after the date on which such action has been taken a review shall be

conducted of the relationship between the child's disability and the behavior described in paragraph (1).

(B) INDIVIDUALS TO CARRY OUT REVIEW.—A review described in subparagraph (A) shall be conducted by the IEP Team and other qualified personnel.

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

(i) the appropriateness of the child's placement;

(ii) the consistency of the implementation of the child's entire IEP, including the technical soundness of the behavior strategies used;

(iii) evaluation and diagnostic results, which may include any such results supplied by the parents or guardian of the child; and

(iv) observations of the child.

(5) DETERMINATION THAT BEHAVIOR WAS MANIFESTATION OF DISABILITY.—If the result of the review described in paragraph (4) is a determination that the behavior of the child with a disability was a manifestation of such child's disability and the parents of such child agree with such determination, the educational placement of such child may be changed. If the parents do not agree with such determination or with such changed educational placement, an immediate appeal may be made to a hearing officer to determine whether the child's placement should be changed. Any party aggrieved by the determination of the hearing officer may initiate a due process hearing as described in subsection (f).

(6) DETERMINATION THAT BEHAVIOR WAS NOT MANIFESTATION OF DISABILITY.—

(A) IN GENERAL.—

(i) INITIAL DETERMINATION REQUIREMENT.—The IEP Team may determine that the behavior of the child was not a manifestation of such child's disability only if the IEP Team first determines that the disability—

(I) did not impair the ability of the child to understand the impact and consequences of the behavior; and

(II) did not impair the ability of the child to control the behavior.

(ii) OTHER REQUIREMENTS.—If the result of the review described in paragraph (4) is a determination that the behavior of the child with a disability was not a manifestation of such child's disability, the relevant disciplinary procedures applicable to children without disabilities may be applied in the same manner in which they would be applied to children without disabilities. If the parents do not agree with such application, a due process hearing, as described in subsection (f), may be initiated. Any determination under paragraph (4) that a child's behavior was not a manifestation of a disability shall be reviewed by a hearing officer under subsection (f), whether or not the child's par-

ents request a hearing, before educational services to the child may be terminated under this paragraph. During the pendency of such due process procedures, the child shall continue to receive educational services in the alternative educational setting.

(B) SPECIAL RULE.—Where application of the relevant disciplinary procedures in subparagraph (A) would result in the expulsion of the child without the receipt of educational services, the child may be expelled only if—

(i) the child carries a weapon to school or to a school function under the jurisdiction of a State or local educational agency; or

(ii) the child possesses or uses illegal drugs or sells or solicits the sale of medications or illegal drugs while at school or a school function under the jurisdiction of a State or local educational agency.

(7) EXPEDITED HEARING.—The State or local educational agency shall arrange for an expedited hearing in any case described in this subsection when requested by the parent.

(8) ADDITIONAL REQUIREMENTS.—

(A) MAINTENANCE OF ALTERNATIVE EDUCATIONAL SETTING.— If the parent of a child described in this section requests a hearing pursuant to subsection (f), the child shall remain in the alternative educational setting in which such child was placed during the pendency of any proceedings under this section, unless the parents and the State or local educational agency agree otherwise.

(B) PROTECTIONS FOR CHILDREN NOT YET ELIGIBLE FOR SPECIAL EDUCATION AND RELATED SERVICES.—

(i) IN GENERAL.—A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violated any rule or code of conduct of the local educational agency, including any behavior described in paragraph (1), may assert any of the protections provided for in this part if the local educational agency had knowledge (as determined in accordance with this subparagraph) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

(ii) BASIS OF KNOWLEDGE.—A local educational agency shall be deemed to have knowledge that a child is a child with a disability if—

(I) the parent of the child has expressed concern in writing (unless the parent is illiterate or has a disability that prevents compliance with the requirements contained in this subclause) to personnel of the appropriate educational agency that the child is in need of special education and related services;

(II) the behavior of the child demonstrates the need for such services;

(III) the parent of the child has requested an evaluation of the child pursuant to section 614; or

(IV) the teacher of the child, or other personnel of the local educational agency, has expressed concern about the behavior of the child to the director of special education of such agency or to other personnel of the agency.

(iii) CONDITIONS THAT APPLY IF NO BASIS OF KNOWLEDGE.—

(I) IN GENERAL.—If a local educational agency does not have knowledge that a child is a child with a disability (in accordance with clause (ii)) prior to taking disciplinary measures against the child, the child may be subjected to the same disciplinary measures as measures applied to children without disabilities, who engaged in comparable behaviors consistent with paragraph (2).

(II) LIMITATIONS.—If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under paragraph (1), the evaluation shall be conducted in an expedited manner. If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency shall provide special education and related services in accordance with the provisions of this part, except that, pending the results of the evaluation, the child shall remain in the educational placement determined by school authorities.

(C) REFERRAL TO AND ACTION BY LAW ENFORCEMENT AND JUDICIAL AUTHORITIES.—Nothing in this part shall be construed to prohibit an agency from reporting a crime committed by a child with a disability to appropriate authorities or to prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.

(9) DEFINITIONS.—For purposes of this subsection, the following definitions apply:

(A) ILLEGAL DRUG.—The term "illegal drug"—

(i) means a controlled substance within the meaning of any of paragraphs (1) through (5) of section 202 of the Controlled Substances Act (21 U.S.C. 812); but

(ii) does not include a controlled substance within the meaning of paragraphs (1) through (5) of section 202 of such Act if—

(I) such controlled substance is legally possessed or used under the supervision of a licensed health care professional; or

(II) such controlled substance is legally possessed or used under any other authority under such Act or under any other provision of Federal law.

(B) SERIOUS INJURY.—The term "serious injury" means an injury that involves substantial risk of death, extreme

physical pain, obvious or protracted disfigurement, loss of the use of bodily members or organs, broken bones, or significant endangerment to an individual's emotional health or safety that is the result of a physical or verbal assault.

(C) WEAPON.—The term "weapon" has the meaning given the term "dangerous weapon" under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code.

(l) RULE OF CONSTRUCTION.—Nothing in this part shall be construed to restrict or limit the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act, title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under such laws seeking relief that is also available under this part, the procedures under subsections (f) and (g) shall be exhausted to the same extent as would be required had the action been brought under this part.

(m) TRANSFER OF PARENTAL RIGHTS AT AGE OF MAJORITY.—

(1) IN GENERAL.—A State that receives amounts from a grant under this part may provide that, when a child with a disability reaches the age of majority under State law (except for a child with a disability who has been determined to be incompetent under State law)—

(A) the public agency shall provide any notice required by this section to both the individual and the parents;

(B) all other rights accorded to parents under this part transfer to the child;

(C) the agency shall notify the individual and the parents of the transfer of rights; and

(D) all rights accorded to parents under this part transfer to children who are incarcerated in an adult or juvenile Federal, State, or local correctional institution.

(2) SPECIAL RULE.—If, under State law, a child with a disability who has reached the age of majority under State law is determined not to have the ability to provide informed consent with respect to the educational program of the child, the State shall establish procedures for appointing the parent of the child, or another appropriate individual, to represent the educational interests of the child throughout the period of eligibility of the child under this part.

SEC. 616. WITHHOLDING AND JUDICIAL REVIEW.

(a) WITHHOLDING OF PAYMENTS.—

(1) IN GENERAL.—Whenever the Secretary, after reasonable notice and opportunity for hearing to the State educational agency involved (and to any local educational agency or State agency affected by any failure described in subparagraph (B)), finds—

(A) that there has been a failure by the State to comply substantially with any provision of this part; or

(B) that there is a failure to comply with any condition of a local educational agency's or State agency's eligibility under this part;

the Secretary shall, after notifying the State educational agency, withhold any further payments to the State under this part.

(2) NATURE OF WITHHOLDING.—If the Secretary withholds further payments under paragraph (1), the Secretary may determine that such withholding will be limited to programs or projects, or portions thereof, affected by the failure, or that the State educational agency shall not make further payments under this part to specified local educational agencies or State agencies affected by the failure. Until the Secretary is satisfied that there is no longer any failure to comply with the provisions of this part, as specified in subparagraph (A) or (B) of paragraph (1), no further payments shall be made to the State under this part, or payments by the State educational agency under this part shall be limited to local educational agencies and State agencies whose actions did not cause or were not involved in the failure, as the case may be. Any State educational agency, State agency, or local educational agency that has received notice under paragraph (1) shall, by means of a public notice, take such measures as may be necessary to bring the pendency of an action pursuant to this subsection to the attention of the public within the jurisdiction of such agency.

(b) JUDICIAL REVIEW.—

(1) IN GENERAL.—If any State is dissatisfied with the Secretary's final action with respect to the eligibility of the State under section 612, such State may, not later than 60 days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings upon which the Secretary's action was based, as provided in section 2112 of title 28, United States Code.

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

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

SEC. 617. ADMINISTRATION.

(a) RESPONSIBILITIES OF SECRETARY.—In carrying out this part, the Secretary shall—

(1) cooperate with, and (directly or by grant or contract) furnish technical assistance necessary to, the State in matters relating to—

(A) the education of children with disabilities; and

(B) carrying out this part; and

(2) provide short-term training programs and institutes.

(b) RULES AND REGULATIONS.—In carrying out the provisions of this part, the Secretary shall issue regulations under this Act only to the extent that such regulations are necessary to ensure that there is compliance with the specific requirements of this Act.

(c) CONFIDENTIALITY.—The Secretary shall take appropriate action, in accordance with the provisions of section 444 of the General Education Provisions Act (20 U.S.C. 1232g), to assure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by the Secretary and by State and local educational agencies pursuant to the provisions of this part.

(d) PERSONNEL.—The Secretary is authorized to hire qualified personnel necessary to conduct data collection and evaluation activities authorized by subsection (a) and section 618 without regard to the provisions of title 5, United States Code, relating to appointments in the competitive service and without regard to chapter 51 and subchapter III of chapter 53 of such title relating to classification and general schedule pay rates, except that no more than twenty such personnel shall be employed at any time.

SEC. 618. PROGRAM INFORMATION.

(a) IN GENERAL.—Each State that receives assistance under this part, and the Secretary of the Interior, shall provide data, which may be based on a sampling of data, each year to the Secretary on—

(1) the number of children, categorized by race, ethnicity, gender, and disability, who are receiving—

(A) a free appropriate public education; or

(B) early intervention services because—

(i) such children have developmental delays; or

(ii) such children have a diagnosed physical or mental condition that has a high probability of resulting in developmental delay;

(2) the progress of the State, and of the children with disabilities in the State, toward meeting the goals established under section 612(14);

(3) the types of early intervention services provided to such children;

(4) the number of children with disabilities, categorized by race, ethnicity, gender, and disability—

(A) participating in regular education programs;

(B) in separate classes, separate schools or facilities, or public or private residential facilities;

(C) who have been otherwise removed from the regular education environment; and

(D) in various early intervention settings;

(5) for each year of age from age 14 to 21, the number of children with disabilities, categorized by race, ethnicity, gender, and disability, who, because of program completion or for other reasons, stopped receiving special education, and the reasons why such children stopped receiving such special education;

(6)(A) the number of children with disabilities, categorized by race, ethnicity, gender, and disability, who, under section 615(k), are removed to an interim alternative educational setting;

(B) the acts or items precipitating such removals; and

(C) the number of children with disabilities who are expelled from school without receiving services; and

(7) any other information required by the Secretary.

(b) DISPROPORTIONALITY.—

(1) IN GENERAL.—Each State that receives assistance under this part, and the Secretary of the Interior, shall provide for the collection and examination of data to determine if significant disproportionality based on race is occurring in the State with respect to—

(A) the identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment described in section 602(3); and

(B) the placement in particular educational settings of such children.

(2) REVIEW AND REVISION OF POLICIES, PRACTICES, AND PROCEDURES.—In the case of a determination of significant disproportionality with respect to the identification of children as children with disabilities, or the placement in particular educational settings of such children, in accordance with paragraph (1), the State or the Secretary of the Interior, as the case may be, shall provide for the review and, if appropriate, revision of the policies, procedures, and practices used in such identification or placement to ensure that such policies, procedures, and practices comply with the requirements of this Act.

SEC. 619. PRESCHOOL GRANTS.

(a) IN GENERAL.—The Secretary shall provide grants under this section to assist States to provide special education and related services, in accordance with this part—

(1) to children with disabilities aged 3 to 5, inclusive; and

(2) at the State's discretion, to 2-year-old children with disabilities who will turn 3 during the school year.

(b) ELIGIBILITY.—A State shall be eligible for a grant under this section if such State—

(1) is eligible under section 612 to receive a grant under this part; and

(2) makes a free appropriate public education available to all children with disabilities, aged 3 to 5, inclusive, residing in the State.

(c) AMOUNT.—

(1) IN GENERAL.—From the amount appropriated for any fiscal year pursuant to the authorization of appropriations under subsection (m), the Secretary shall allot to each eligible State the amount it received for fiscal year 1996 under this section (as this section was in effect on the day before the date of the enactment of the IDEA Improvement Act of 1996).

(2) INSUFFICIENT FUNDS.—

(A) IN GENERAL.—If the amount appropriated under subsection (m) for a fiscal year is insufficient to make the full allotments described in paragraph (1), the Secretary shall—

(i) first, reduce the allocation to any State whose number of children aged 3 to 5, inclusive, is less than

the number of such children in such State in fiscal year 1995 by the same percentage by which such number of children declined from the number of children in fiscal year 1995; and

(ii) second, if necessary, ratably reduce the allocations of all States, including those allocations reduced under clause (i).

(B) AVAILABILITY OF ADDITIONAL FUNDS.—If additional funds become available to make allocations under this section, the allocations that were reduced under subparagraph (A) shall be increased on the same basis as such allocations were reduced.

(d) ALLOTMENT OF REMAINING FUNDS.—After making allotments under subsection (c), the Secretary shall allot any remaining funds to eligible States on the basis of their relative population of children aged 3 to 5, inclusive.

(e) SPECIAL RULE WITH RESPECT TO PUERTO RICO.—Notwithstanding any other provision of this subsection, the amount allotted to Puerto Rico for a fiscal year shall bear the same or lower proportion to the amount appropriated pursuant to subsection (m) as the amount received by Puerto Rico under this section for fiscal year 1996 bears to the aggregate of the amounts received by all States under this section for fiscal year 1996.

(f) DETERMINATION OF POPULATION FIGURES.—For the purpose of providing grants under this section, the Secretary shall use the most recent population data that are available and satisfactory to the Secretary.

(g) RESERVATION FOR STATE ACTIVITIES.—A State may reserve not more than 25 percent of the amount allotted to the State under this section for a fiscal year for administration and other State-level activities in accordance with subsections (h) and (i).

(h) STATE ADMINISTRATION.—

(1) IN GENERAL.—A State may use up to 3 percent of the amount allotted to the State under this section for a fiscal year for the purpose of administering this section, including the coordination of activities under this part with, and providing technical assistance to, other programs that provide services to children with disabilities.

(2) USE OF AMOUNTS FOR ADMINISTRATION OF PART C.—If the State educational agency is the lead agency for the State under part C, amounts described in paragraph (1) may also be used for the administration of such part C.

(i) OTHER STATE-LEVEL ACTIVITIES.—Each State shall use any funds it retains under subsection (g) and does not use for administration under subsection (h)—

(1) for support services (including establishing and implementing the mediation process required by section 615(d)), which may benefit children with disabilities younger than 3 or older than 5 as long as those services also benefit children with disabilities aged 3 to 5, inclusive;

(2) for direct services for children eligible for services under this section;

(3) to develop a State improvement plan under part D;

(4) for activities at the State and local levels to meet the performance goals established by the State under section 612(a)(14) and to support implementation of the State improvement plan under part D if the State receives funds under that part; or

(5) to supplement other funds used to develop and implement a Statewide coordinated services system designed to improve results for children and families, including children with disabilities and their families, but not to exceed one percent of the amount received by the State under this section for a fiscal year.

(j) SUBGRANTS TO LOCAL EDUCATIONAL AGENCIES.—

(1) REQUIREMENT TO MAKE SUBGRANTS.—Each State that receives a grant under this section for any fiscal year shall distribute at least 75 percent of the grant funds to local educational agencies in the State, and to State agencies that received funds under section 614A(a) (as such section was in effect on the day before the date of the enactment of the IDEA Improvement Act of 1996) for fiscal year 1996, that have established their eligibility under section 613.

(2) METHODS OF DISTRIBUTION.—A State may distribute funds under paragraph (1) on the basis of—

(A) total school age population;

(B) school enrollment;

(C) numbers of children with disabilities aged 3 to 5, inclusive, receiving a free appropriate public education;

(D) allocations for previous fiscal years;

(E) any two or more of the factors described in subparagraphs (A) through (D); or

(F) poverty, in combination with one or more of the factors described in subparagraphs (A) through (D).

(k) PART C INAPPLICABLE.—Part C of this Act does not apply to any child with a disability receiving a free appropriate public education, in accordance with this part, with funds received under this section.

(l) PROHIBITION ON CONSOLIDATION OF GRANTS FOR TERRITORIES.—The provisions of section 501 of Public Law 95–134 (48 U.S.C. 1469a; relating to the consolidation of one or more grants provided to certain territories) shall not apply with respect to amounts provided to a territory under a grant under this section.

(m) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this section, there are authorized to be appropriated to the Secretary such sums as may be necessary.

PART C—INFANTS AND TODDLERS WITH DISABILITIES

SEC. 631. FINDINGS AND POLICY.

(a) FINDINGS.—The Congress finds that there is an urgent and substantial need—

(1) to enhance the development of infants and toddlers with disabilities and to minimize their potential for developmental delay;

(2) to reduce the educational costs to our society, including our Nation's schools, by minimizing the need for special edu-

cation and related services after infants and toddlers with disabilities reach school age;

(3) to minimize the likelihood of institutionalization of individuals with disabilities and maximize the potential for their independently living in society;

(4) to enhance the capacity of families to meet the special needs of their infants and toddlers with disabilities; and

(5) to enhance the capacity of State and local agencies and service providers to identify, evaluate, and meet the needs of historically underrepresented populations, particularly minority, low-income, inner-city, and rural populations.

(b) POLICY.—It is therefore the policy of the United States to provide financial assistance to States—

(1) to develop and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system of early intervention services for infants and toddlers with disabilities and their families;

(2) to facilitate the coordination of payment for early intervention services from Federal, State, local, and private sources (including public and private insurance coverage); and

(3) to enhance their capacity to provide quality early intervention services and expand and improve existing early intervention services being provided to infants and toddlers with disabilities and their families.

SEC. 632. DEFINITIONS.

As used in this part:

(1) AT-RISK INFANT OR TODDLER.—The term "at-risk infant or toddler" means an individual under 3 years of age who would be at risk of experiencing a substantial developmental delay if early intervention services were not provided to the individual.

(2) COUNCIL.—The term "council" means a State interagency coordinating council established under section 641.

(3) DEVELOPMENTAL DELAY.—The term "developmental delay", when used with respect to an individual residing in a State, has the meaning given such term by the State under section 635(a)(1).

(4) EARLY INTERVENTION SERVICES.—The term "early intervention services" means developmental services which—

(A) are provided under public supervision;

(B) are provided at no cost except where Federal or State law provides for a system of payments by families, including a schedule of sliding fees;

(C) are designed to meet the developmental needs of an infant or toddler with a disability in any one or more of the following areas—

(i) physical development;

(ii) cognitive development;

(iii) communication development;

(iv) social or emotional development; or

(v) adaptive development;

(D) meet the standards of the State in which they are provided, including the requirements of this part;

(E) include—

(i) family training, counseling, and home visits;

(ii) special instruction;

(iii) speech-language pathology and audiology services;

(iv) occupational therapy;

(v) physical therapy;

(vi) psychological services;

(vii) service coordination services;

(viii) medical services only for diagnostic or evaluation purposes;

(ix) early identification, screening, and assessment services;

(x) health services necessary to enable the infant or toddler to benefit from the other early intervention services;

(xi) social work services;

(xii) vision services;

(xiii) assistive technology devices and assistive technology services; and

(xiv) transportation and related costs that are necessary to enable an infant or toddler and the infant's or toddler's family to receive another service described in this paragraph;

(F) are provided by qualified personnel, including—

(i) special educators;

(ii) speech-language pathologists and audiologists;

(iii) occupational therapists;

(iv) physical therapists;

(v) psychologists;

(vi) social workers;

(vii) nurses;

(viii) nutritionists;

(ix) family therapists;

(x) orientation and mobility specialists; and

(xi) pediatricians and other physicians;

(G) to the maximum extent appropriate, are provided in natural environments, including the home, and community settings in which children without disabilities participate; and

(H) are provided in conformity with an individualized family service plan adopted in accordance with section 636.

(5) INFANT OR TODDLER WITH A DISABILITY.—The term "infant or toddler with a disability"—

(A) means an individual under 3 years of age who needs early intervention services because the individual—

(i) is experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures in one or more of the areas of cognitive development, physical development, communication development, social or emotional development, and adaptive development; or

(ii) has a diagnosed physical or mental condition which has a high probability of resulting in developmental delay; and

(B) may also include, at a State's discretion, at-risk infants and toddlers.

SEC. 633. GENERAL AUTHORITY.

The Secretary shall, in accordance with this part, make grants to States (from their allocations under section 643) to assist each State to maintain and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system to provide early intervention services for infants and toddlers with disabilities and their families.

SEC. 634. ELIGIBILITY.

In order to be eligible for a grant under section 633, a State shall demonstrate to the Secretary that the State—

(1) has adopted a policy that appropriate early intervention services are available to all infants and toddlers with disabilities in the State and their families, including Indian infants and toddlers with disabilities and their families residing on a reservation geographically located in the State; and

(2) has in effect a statewide system that meets the requirements of section 635.

SEC. 635. REQUIREMENTS FOR STATEWIDE SYSTEM.

(a) IN GENERAL.—A statewide system described in section 633 shall include, at a minimum, the following components:

(1) A definition of the term "developmental delay" that will be used by the State in carrying out programs under this part.

(2) A timely, comprehensive, multidisciplinary evaluation of the functioning of each infant or toddler with a disability in the State, and a family-directed identification of the needs of each family of such an infant or toddler, to appropriately assist in the development of the infant or toddler.

(3) For each infant or toddler with a disability in the State, an individualized family service plan in accordance with section 636, including service coordination services in accordance with such service plan.

(4) A comprehensive child find system, consistent with part B, including a system for making referrals to service providers that includes timelines and provides for participation by primary referral sources.

(5) A public awareness program focusing on early identification of infants and toddlers with disabilities, including the preparation and dissemination by the lead agency designated or established under paragraph (8) to all primary referral sources, especially hospitals and physicians, of information for parents on the availability of early intervention services, and procedures for determining the extent to which such sources disseminate such information to parents of infants and toddlers.

(6) A central directory which includes information on early intervention services, resources, and experts available in the State and research and demonstration projects being conducted in the State.

(7) A comprehensive system of personnel development, including the training of paraprofessionals and the training of primary referral sources respecting the basic components of early intervention services available in the State, that is consistent

with the comprehensive system of personnel development described in section 612(a)(13) (or with the personnel development requirements for State improvement plans under section 683) and may include—

(A) implementing innovative strategies and activities for the recruitment and retention of early education service providers;

(B) promoting the preparation of early intervention providers who are fully and appropriately qualified to provide early intervention services under this part;

(C) training personnel to work in rural and inner city areas; and

(D) training personnel to coordinate transition services for infants and toddlers served under this part from an early intervention program under this part to preschool or other appropriate services.

(8) Policies and procedures relating to the establishment and maintenance of standards to ensure that personnel necessary to carry out this part are appropriately and adequately prepared and trained, including—

(A) the establishment and maintenance of standards which are consistent with any State approved or recognized certification, licensing, registration, or other comparable requirements which apply to the area in which such personnel are providing early intervention services; and

(B) subject to subsection (b), to the extent such standards are not based on the highest requirements in the State applicable to a specific profession or discipline, the steps the State is taking to require the retraining or hiring of personnel that meet appropriate professional requirements in the State;

except that nothing in this part, including this paragraph, prohibits the use of paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulations, or written policy, to assist in the provision of early intervention services to infants and toddlers with disabilities under this part.

(9) A single line of responsibility in a lead agency designated or established by the Governor for carrying out—

(A) the general administration and supervision of programs and activities receiving assistance under section 633, and the monitoring of programs and activities used by the State to carry out this part, whether or not such programs or activities are receiving assistance made available under section 633, to ensure that the State complies with this part;

(B) the identification and coordination of all available resources within the State from Federal, State, local and private sources;

(C) the assignment of financial responsibility in accordance with section 637(a)(1) to the appropriate agencies;

(D) the development of procedures to ensure that services are provided to infants and toddlers and their families

under this part in a timely manner pending the resolution of any disputes among public agencies or service providers;

(E) the resolution of intra- and interagency disputes; and

(F) the entry into formal interagency agreements that define the financial responsibility of each agency for paying for early intervention services (consistent with State law) and procedures for resolving disputes and that include all additional components necessary to ensure meaningful cooperation and coordination.

(10) A policy pertaining to the contracting or making of other arrangements with service providers to provide early intervention services in the State, consistent with the provisions of this part, including the contents of the application used and the conditions of the contract or other arrangements.

(11) A procedure for securing timely reimbursement of funds used under this part in accordance with section 640(a).

(12) Procedural safeguards with respect to programs under this part, as required by section 639.

(13) A system for compiling data requested by the Secretary under section 618 that relates to this part.

(14) A State interagency coordinating council that meets the requirements of section 641.

(b) MODIFICATION OF PERSONNEL REQUIREMENT.—If a State determines that the requirement of subsection (a)(7)(B) would significantly inhibit the ability of the State to contract with, or employ, an appropriate number and types of personnel to provide early intervention services to infants and toddlers with disabilities in a geographic region, the State may, subject to public notice and comment, temporarily suspend the requirement for the region, in a manner consistent with State law and for a period not exceeding 3 years, with respect to the most qualified available individuals in shortage areas who are making annual progress in applicable coursework.

SEC. 636. INDIVIDUALIZED FAMILY SERVICE PLAN.

(a) ASSESSMENT AND PROGRAM DEVELOPMENT.—A statewide system described in section 633 shall provide, at a minimum, for each infant or toddler with a disability, and the infant's or toddler's family, to receive—

(1) a multidisciplinary assessment of the unique strengths and needs of the infant or toddler and the identification of services appropriate to meet such needs;

(2) a family-directed assessment of the resources, priorities, and concerns of the family and the identification of the supports and services necessary to enhance the family's capacity to meet the developmental needs of the infant or toddler; and

(3) a written individualized family service plan developed by a multidisciplinary team, including the parents, as required by subsection (e).

(b) PERIODIC REVIEW.—The individualized family service plan shall be evaluated once a year and the family shall be provided a review of the plan at 6-month intervals (or more often where appropriate based on infant or toddler and family needs).

(c) PROMPTNESS AFTER ASSESSMENT.—The individualized family service plan shall be developed within a reasonable time after the assessment required by subsection (a)(1) is completed. With the par-

ents' consent, early intervention services may commence prior to the completion of such assessment.

(d) CONTENT OF PLAN.—The individualized family service plan shall be in writing and contain—

(1) a statement of the infant's or toddler's present levels of physical development, cognitive development, communication development, social or emotional development, and adaptive development, based on objective criteria;

(2) a statement of the family's resources, priorities, and concerns relating to enhancing the development of the family's infant or toddler with a disability;

(3) a statement of the major outcomes expected to be achieved for the infant or toddler and the family, and the criteria, procedures, and timelines used to determine the degree to which progress toward achieving the outcomes is being made and whether modifications or revisions of the outcomes or services are necessary;

(4) a statement of specific early intervention services necessary to meet the unique needs of the infant or toddler and the family, including the frequency, intensity, and method of delivering services;

(5) a statement of the natural environments in which early intervention services shall appropriately be provided;

(6) the projected dates for initiation of services and the anticipated duration of such services;

(7) the identification of the service coordinator from the profession most immediately relevant to the infant's or toddler's or family's needs (or who is otherwise qualified to carry out all applicable responsibilities under this part) who will be responsible for the implementation of the plan and coordination with other agencies and persons; and

(8) the steps to be taken to support the transition of the toddler with a disability to preschool or other appropriate services.

(e) PARENTAL CONSENT.—The contents of the individualized family service plan shall be fully explained to the parents and informed written consent from such parents shall be obtained prior to the provision of early intervention services described in such plan. If such parents do not provide such consent with respect to a particular early intervention service, then the early intervention services to which such consent is obtained shall be provided.

SEC. 637. STATE APPLICATION AND ASSURANCES.

(a) APPLICATION.—A State desiring to receive a grant under section 633 shall submit an application to the Secretary at such time and in such manner as the Secretary may reasonably require. Such application shall contain—

(1) a designation of the lead agency in the State that will be responsible for the administration of funds provided under section 633;

(2) a designation of a person responsible for assigning financial responsibility among appropriate agencies;

(3) information demonstrating eligibility of the State under section 634, including—

(A) information demonstrating to the Secretary's satisfaction that the State has in effect the statewide system required by section 633; and

(B) a description of services to be provided to infants and toddlers with disabilities and their families through the system;

(4) a description of the uses for which funds will be expended in accordance with this part;

(5) a description of the procedure used to ensure that resources are made available under this part for all geographic areas within the State;

(6) a description of State policies and procedures that ensure that, prior to the adoption by the State of any other policy or procedure necessary to meet the requirements of this part, there are public hearings, adequate notice of the hearings, and an opportunity for comment available to the general public, including individuals with disabilities and parents of infants and toddlers with disabilities;

(7) a description of the policies and procedures to be used—

(A) to ensure a smooth transition for toddlers receiving early intervention services under this part to preschool or other appropriate services, including a description of how—

(i) the families of such toddlers will be included in the transition plans required by subparagraph (C); and

(ii) the lead agency designated or established under section 635(a) will—

(I) notify the local educational agency for the area in which such a child resides that the child will shortly reach the age of eligibility for preschool services under part B, as determined in accordance with State law;

(II) in the case of such a child who may be eligible for such preschool services, with the approval of the family of the child, convene a conference among the lead agency, the family, and the local educational agency at least 90 days (and at the discretion of all such parties, up to 6 months) before the child is eligible for the preschool services, to discuss any such services that the child may receive; and

(III) in the case of such a child who may not be eligible for such preschool services, with the approval of the family, make reasonable efforts to convene a conference among the lead agency, the family, and providers of other appropriate services for children who are not eligible for preschool services under part B, to discuss the appropriate services that the child may receive;

(B) to review the child's program options for the period from the child's third birthday through the remainder of the school year; and

(C) to establish a transition plan; and

(8) such other information and assurances as the Secretary may reasonably require.

(b) ASSURANCES.—The application described in subsection (a) shall contain the following:

(1) A satisfactory assurance that the State will—

(A) make such reports in such form and containing such information as the Secretary may require to carry out the Secretary's functions under this part; and

(B) keep such records and afford such access thereto as the Secretary may find necessary to assure the correctness and verification of such reports and proper disbursement of Federal funds under this part.

(2) A satisfactory assurance that Federal funds made available under section 633 will be used to supplement and increase the level of State and local funds expended for infants and toddlers with disabilities and their families under this part and in no case to supplant such State and local funds.

(3) Such other information and assurances as the Secretary may reasonably require by regulation.

(c) STANDARD FOR DISAPPROVAL OF APPLICATION.—The Secretary may not disapprove such an application unless the Secretary determines, after notice and opportunity for a hearing, that the application fails to comply with the requirements of this section.

(d) SUBSEQUENT STATE APPLICATION.—If a State has on file with the Secretary a policy, procedure, or assurance that demonstrates that the State meets a requirement of this section, including any policy or procedure filed under part H (as in effect before the date of the enactment of the IDEA Improvement Act of 1996), the Secretary shall consider the State to have met the requirement for purposes of receiving a grant under this part.

(e) MODIFICATION OF APPLICATION.—An application submitted by a State in accordance with this section shall remain in effect until the State submits to the Secretary such modifications as the State determines necessary. This section shall apply to a modification of an application to the same extent and in the same manner as this section applies to the original application.

SEC. 638. USES OF FUNDS.

In addition to using funds provided under section 633 to maintain and implement the statewide system required by such section, a State may use such funds—

(1) for direct early intervention services for infants and toddlers with disabilities, and their families, under this part that are not otherwise funded through other public or private sources;

(2) to expand and improve on services for infants and toddlers and their families under this part that are otherwise available; and

(3) to provide a free appropriate public education, in accordance with part B, to children with disabilities from their third birthday to the beginning of the following school year.

SEC. 639. PROCEDURAL SAFEGUARDS.

(a) MINIMUM PROCEDURES.—The procedural safeguards required to be included in a statewide system under section 635(a)(10) shall provide, at a minimum, the following:

(1) The timely administrative resolution of complaints by parents. Any party aggrieved by the findings and decision regarding an administrative complaint shall have the right to bring a civil action with respect to the complaint in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy. In any action brought under this paragraph, the court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and, basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.

(2) The right to confidentiality of personally identifiable information, including the right of parents to written notice of and written consent to the exchange of such information among agencies consistent with Federal and State law.

(3) The right of the parents to determine whether they, their infant or toddler, or other family members will accept or decline any early intervention service under this part in accordance with State law without jeopardizing other early intervention services under this part.

(4) The opportunity for parents to examine records relating to assessment, screening, eligibility determinations, and the development and implementation of the individualized family service plan.

(5) Procedures to protect the rights of the infant or toddler whenever the parents of the child are not known or cannot be found or the child is a ward of the State, including the assignment of an individual (who shall not be an employee of the State or any person, or any employee of a person, providing early intervention services to the infant or toddler or any family member of the infant or toddler) to act as a surrogate for the parents.

(6) Written prior notice to the parents of the infant or toddler with a disability whenever the State agency or service provider proposes to initiate or change or refuses to initiate or change the identification, evaluation, placement, or the provision of appropriate early intervention services to the infant or toddler with a disability.

(7) Procedures designed to assure that the notice required by paragraph (6) fully informs the parents, in the parents' native language, unless it clearly is not feasible to do so, of all procedures available pursuant to this section.

(8) The right of parents to use mediation in accordance with section 615(e), except that—

(A) any reference in such section to a State educational agency shall be considered to be a reference to a State's lead agency established or designated under section 635(a)(8);

(B) any reference in such section to a local educational agency shall be considered to be a reference to a local service provider or the State's lead agency under this part, as the case may be; and

(C) any reference in such section to the provision of free appropriate public education to children with disabilities

shall be considered to be a reference to the provision of appropriate early intervention services to infants and toddlers with disabilities.

(b) SERVICES DURING PENDENCY OF PROCEEDINGS.—During the pendency of any proceeding or action involving a complaint by the parents of an infant or toddler with a disability, unless the State agency and the parents otherwise agree, the infant or toddler shall continue to receive the appropriate early intervention services currently being provided or, if applying for initial services, shall receive the services not in dispute.

SEC. 640. PAYOR OF LAST RESORT.

(a) NONSUBSTITUTION.—Funds provided under section 643 may not be used to satisfy a financial commitment for services which would have been paid for from another public or private source but for the enactment of this part, except that whenever considered necessary to prevent a delay in the receipt of appropriate early intervention services by an infant, toddler, or family in a timely fashion, funds provided under section 643 may be used to pay the provider of services pending reimbursement from the agency which has ultimate responsibility for the payment.

(b) REDUCTION OF OTHER BENEFITS.—Nothing in this part shall be construed to permit the State to reduce medical or other assistance available or to alter eligibility under title V of the Social Security Act (relating to maternal and child health) or title XIX of the Social Security Act (relating to medicaid for infants or toddlers with disabilities) within the State.

SEC. 641. STATE INTERAGENCY COORDINATING COUNCIL.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—A State that desires to receive financial assistance under this part shall establish a State interagency coordinating council.

(2) APPOINTMENT.—The council shall be appointed by the Governor. In making appointments to the council, the Governor shall ensure that the membership of the council reasonably represents the population of the State.

(3) CHAIRPERSON.—The Governor shall designate a member of the council to serve as the chairperson of the Council, or shall require the council to so designate such a member. Any member of the council who is a representative of the lead agency designated under section 635(b)(8) may not serve as the chairperson of the council.

(b) COMPOSITION.—

(1) IN GENERAL.—The council shall be composed as follows:

(A) PARENTS.—At least 20 percent of the members shall be parents of infants or toddlers with disabilities or children with disabilities aged 12 or younger, with knowledge of, or experience with, programs for infants and toddlers with disabilities. At least one such member shall be a parent of an infant or toddler with a disability or a child with a disability aged 6 or younger.

(B) SERVICE PROVIDERS.—At least 20 percent of the members shall be public or private providers of early intervention services.

(C) STATE LEGISLATURE.—At least one member shall be from the State legislature.

(D) PERSONNEL PREPARATION.—At least one member shall be involved in personnel preparation.

(E) AGENCY FOR EARLY INTERVENTION SERVICES.—At least one member shall be from each of the State agencies involved in the provision of, or payment for, early intervention services to infants and toddlers with disabilities and their families and shall have sufficient authority to engage in policy planning and implementation on behalf of such agencies.

(F) AGENCY FOR PRESCHOOL SERVICES.—At least one member shall be from the State educational agency responsible for preschool services to children with disabilities and shall have sufficient authority to engage in policy planning and implementation on behalf of such agency.

(G) AGENCY FOR INSURANCE.—At least one member shall be from the agency responsible for the State governance of insurance, especially in the area of health insurance.

(H) HEAD START AGENCY.—A representative from a Head Start agency or program in the State.

(I) A representative from a State agency responsible for child care.

(2) OTHER MEMBERS.—The council may include other members selected by the Governor, including a representative from the Bureau of Indian Affairs, or where there is no BIA operated or funded school, from the Indian Health Service or the tribe/tribal council.

(c) MEETINGS.—The council shall meet at least quarterly and in such places as it deems necessary. The meetings shall be publicly announced, and, to the extent appropriate, open and accessible to the general public.

(d) MANAGEMENT AUTHORITY.—Subject to the approval of the Governor, the council may prepare and approve a budget using funds under this part to conduct hearings and forums, to reimburse members of the council for reasonable and necessary expenses for attending council meetings and performing council duties (including child care for parent representatives), to pay compensation to a member of the council if such member is not employed or must forfeit wages from other employment when performing official council business, to hire staff, and to obtain the services of such professional, technical, and clerical personnel as may be necessary to carry out its functions under this part.

(e) FUNCTIONS OF COUNCIL.—

(1) DUTIES.—The council shall—

(A) advise and assist the lead agency designated or established under section 635(b)(8) in the performance of the responsibilities set out in such section, particularly the identification of the sources of fiscal and other support for services for early intervention programs, assignment of financial responsibility to the appropriate agency, and the promotion of the interagency agreements;

(B) advise and assist the lead agency in the preparation of applications and amendments thereto;

(C) advise and assist the State educational agency regarding the transition of toddlers with disabilities to preschool and other appropriate services; and

(D) prepare and submit an annual report to the Governor and to the Secretary on the status of early intervention programs for infants and toddlers with disabilities and their families operated within the State.

(2) AUTHORIZED ACTIVITY.—The council may advise and assist the lead agency and the State educational agency regarding the provision of appropriate services for children aged birth to 5, inclusive.

(f) CONFLICT OF INTEREST.—No member of the council shall cast a vote on any matter which would provide direct financial benefit to that member or otherwise give the appearance of a conflict of interest under State law.

SEC. 642. FEDERAL ADMINISTRATION.

Sections 616, 617, 618, and 620 shall, to the extent not inconsistent with this part, apply to the program authorized by this part, except that—

(1) any reference in such sections to a State educational agency shall be considered to be a reference to a State's lead agency established or designated under section 635(a)(8);

(2) any reference in such sections to a local educational agency, educational service agency, or a State agency shall be considered to be a reference to an early intervention service provider under this part; and

(3) any reference to the education of children with disabilities or the education of all children with disabilities shall be considered to be a reference to the provision of appropriate early intervention services to infants and toddlers with disabilities.

SEC. 643. ALLOCATION OF FUNDS.

(a) RESERVATION OF FUNDS FOR TERRITORIES.—

(1) IN GENERAL.—From the sums appropriated to carry out this part for any fiscal year, the Secretary may reserve up to one percent for payments to Guam, American Samoa, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands in accordance with their respective needs.

(2) CONSOLIDATION OF FUNDS.—The provisions of Public Law 95–134, permitting the consolidation of grants to the territories, shall not apply to funds those areas receive under this part.

(b) PAYMENTS TO INDIANS.—

(1) IN GENERAL.—The Secretary shall, subject to this subsection, make payments to the Secretary of the Interior to be distributed to tribes, tribal organizations (as defined under section 4 of the Indian Self-Determination and Education Assistance Act), or consortia of the above entities for the coordination of assistance in the provision of early intervention services by the States to infants and toddlers with disabilities and their families on reservations served by elementary and secondary schools for Indian children operated or funded by the Department of the Interior. The amount of such payment for any fiscal year shall be 1.25 percent of the aggregate of the amount available to all States under this part for such fiscal year.

(2) ALLOCATION.—For each fiscal year, the Secretary of the Interior shall distribute the entire payment received under paragraph (1) by providing to each tribe, tribal organization, or consortium an amount based on the number of infants and toddlers residing on the reservation as determined annually divided by the total of such children served by all tribes, tribal organizations, or consortia.

(3) INFORMATION.—To receive a payment under this paragraph, the tribe, tribal organization, or consortia shall submit such information to the Secretary of the Interior as is needed to determine the amounts to be allocated under paragraph (2).

(4) USE OF FUNDS.—The funds received by a tribe, tribal organization, or consortia shall be used to assist States in child find, screening, and other procedures for the early identification of Indian children under 3 years of age and for parent training. Such funds may also be used to provide early intervention services in accordance with this part. Such activities may be carried out directly or through contracts or cooperative agreements with the BIA, local educational agencies, and other public or private nonprofit organizations. The tribe, tribal organization, or consortia is encouraged to involve Indian parents in the development and implementation of these activities. The above entities shall, as appropriate, make referrals to local, State, or Federal entities for the provision of services or further diagnosis.

(5) REPORTS.—To be eligible to receive a grant under paragraph (2), a tribe, tribal organization, or consortia shall make a biennial report to the Secretary of the Interior of activities undertaken under this subsection, including the number of contracts and cooperative agreements entered into, the number of children contacted and receiving services for each year, and the estimated number of children needing services during the 2 years following the year in which the report is made. The Secretary of the Interior shall include a summary of this information on a biennial basis to the Secretary of Education along with such other information as required under section 611(f)(3)(D). The Secretary of Education may require any additional information from the Secretary of the Interior.

(6) PROHIBITED USES OF FUNDS.—None of the funds under this subsection may be used by the Secretary of the Interior for administrative purposes, including child count, and the provision of technical assistance.

(c) STATE ALLOTMENTS.—

(1) IN GENERAL.—Except as provided in paragraphs (2), (3), and (4), from the funds remaining for each fiscal year after the reservation and payments under subsections (a) and (b), the Secretary shall first allot to each State an amount that bears the same ratio to the amount of such remainder as the number of infants and toddlers in the State bears to the number of infants and toddlers in all States.

(2) MINIMUM ALLOTMENTS.—Except as provided in paragraphs (3) and (4), no State shall receive an amount under this section for any fiscal year that is less than the greatest of—

(A) one-half of one percent of the remaining amount described in paragraph (1); or

(B) $500,000.

(3) SPECIAL RULE FOR 1997 THROUGH 1999.—

(A) IN GENERAL.—Except as provided in paragraph (4), no State may receive an amount under this section for any of the fiscal years 1997 through 1999 that is less than the sum of the amount such State received for fiscal year 1994 under—

(i) part H (as in effect on the day before the date of the enactment of the IDEA Improvement Act of 1996); and

(ii) subpart 2 of part D of chapter 1 of title I of the Elementary and Secondary Education Act of 1965 (as in effect on the day before the date of the enactment of the Improving America's Schools Act of 1994) for children with disabilities under 3 years of age.

(B) EXCEPTION.—If, for fiscal year 1998 or 1999, the number of infants and toddlers in a State, as determined under paragraph (1), is less than the number of infants and toddlers so determined for fiscal year 1994, the amount determined under subparagraph (A) for the State shall be reduced by the same percentage by which the number of such infants and toddlers so declined.

(4) RATABLE REDUCTION.—

(A) IN GENERAL.—If the sums made available under this part for any fiscal year are insufficient to pay the full amounts that all States are eligible to receive under this subsection for such year, the Secretary shall ratably reduce the allocations to such States for such year.

(B) ADDITIONAL FUNDS.—If additional funds become available for making payments under this subsection for a fiscal year, allocations that were reduced under subparagraph (A) shall be increased on the same basis as such allocations were reduced.

(5) DEFINITIONS.—For the purpose of this subsection—

(A) the terms "infants" and "toddlers" mean children under 3 years of age; and

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

(d) REALLOTMENT OF FUNDS.—If a State elects not to receive its allotment under subsection (c), the Secretary shall reallot, among the remaining States, amounts from such State in accordance with such subsection.

SEC. 644. AUTHORIZATION OF APPROPRIATIONS.

For the purpose of carrying out this part, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1997 through 2001.

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

SEC. 651. PURPOSE OF PART.

The purpose of this part is to support national, State, and local activities aimed at improving educational, early intervention, and transitional services and opportunities for children with disabilities.

SEC. 652. ELIGIBILITY FOR FINANCIAL ASSISTANCE.

No State, State educational agency, local educational agency, educational service agency, or other public institution or agency may receive a grant, contract, or cooperative agreement under this part which relates exclusively to programs, projects, and activities for children aged 3 to 5, inclusive, unless the State, or, in the case of an agency or institution, the State in which the agency or institution is located, is eligible to receive a grant under section 619.

Subpart 1—General Provisions and National Research and Improvement Activities

SEC. 661. COMPREHENSIVE PLAN.

(a) IN GENERAL.—The Secretary shall develop and implement a comprehensive plan for ongoing activities conducted by the Secretary under this part.

(b) USE OF KNOWLEDGE IN DEVELOPING PLAN.—To the maximum extent appropriate, the Secretary shall ensure that the plan is based upon the knowledge gained from research on practices that have been proven effective in improving the achievement of children with disabilities.

(c) CONSULTATION.—In developing the plan, the Secretary shall consult the following persons:

(1) Individuals with disabilities.

(2) Parents of children with disabilities.

(3) Representatives of State and local educational agencies and educational service agencies.

(4) Private schools.

(5) Institutions of higher education.

(6) Other Federal agencies.

(7) The National Council on Disability.

(8) National organizations with an interest in, and expertise in, providing services to children with disabilities and their families.

(9) Any other professionals determined appropriate by the Secretary.

(d) DEADLINE.—The plan shall be developed not later than the date that is 12 months after the date of the enactment of the IDEA Improvement Act of 1996.

SEC. 662. PRIORITIES.

(a) IN GENERAL.—In making awards under this part, the Secretary may, without regard to the rule making procedures under section 553 of title 5, United States Code, limit such awards to, or otherwise give priority to—

(1) projects that address the improvement of the academic performance of children with disabilities;

(2) projects that address one or more—

(A) age ranges;

(B) disabilities;

(C) grades in school;

(D) types of educational placements or early intervention environments;

(E) types of services; or

(F) content areas such as reading;

(3) projects that address the needs of children based on the severity of their disability;

(4) projects that address the needs of—

(A) low-achieving students;

(B) underserved populations;

(C) children from low-income families;

(D) children with limited English proficiency;

(E) unserved and underserved areas;

(F) particular types of geographic areas, such as inner-city or rural areas; or

(G) institutionalized children in juvenile and adult correctional institutions;

(5) any activity that is expressly authorized in this title;

(6) a large-scale longitudinal study designed to provide information on the long-term impact of education agency disciplinary procedures on children with disabilities;

(7) research and development projects including—

(A) projects that advance knowledge about—

(i) teaching and learning practices, and assessment techniques, instruments, and strategies, including behavioral strategies, that lead to improved results for children with disabilities;

(ii) the developmental and learning characteristics of children with disabilities in a manner that will improve the design and effectiveness of interventions and instruction; or

(iii) the coordination of education with health and social services;

(B) large-scale longitudinal studies designed to produce information on the long-term impact of early intervention and education on results for individuals with disabilities;

(C) model demonstration projects to apply and test research findings in typical service settings to determine the usability, effectiveness, and general applicability of such research findings in such areas as improving instructional methods, curricula, and tools such as textbooks, media, and other materials; and

(D) projects which apply research and other knowledge to improve educational results for children with disabilities by—

(i) synthesizing useful research and educational products;

(ii) ensuring that such research and products are in appropriate formats for distribution to administrators, teachers, parents, and individuals with disabilities; or

(iii) making such research and products available through libraries, electronic networks, parent training projects, and other information sources, including the National Information Dissemination System under part D of title IX of Public Law 103–227;

(8) projects which provide technical assistance to—

(A) States—

(i) to link States to other technical assistance resources, including special and general education resources; or

(ii) in gaining access to information, including information on research and best practices; or

(B) State educational agencies, State lead agencies serving infants and toddlers with disabilities under part C, and other organizations and agencies that play a critical role in providing for the participation of children with disabilities in State and local assessments;

(9) activities to produce, and promote the use of, knowledge to address the special needs of children who have a high likelihood of needing special education and related services in order to reduce, through early intervention, the need for special education services later in life;

(10) educational media activities including—

(A) through September 30, 1998, video description, open captioning, or closed captioning;

(B) video description, open captioning, or closed captioning of educational, news, and informational materials;

(C) through September 30, 1998, distribution of captioned and described materials and videos;

(D) distribution of captioned and described educational, news, and informational materials and videos; and

(E) recording free educational materials, including textbooks, for visually impaired and print-disabled students in elementary, secondary, post-secondary, and graduate schools; and

(11) projects to assist institutions of higher education in appropriately serving students with disabilities, including deaf students.

(b) DEFINITION.—As used in this section, the term "low-incidence disability" means—

(1) a visual impairment, a hearing impairment, or simultaneous visual and hearing impairments;

(2) a significant cognitive impairment; or

(3) any impairment for which a small number of personnel, with highly specialized skills and knowledge, are needed nationwide in order for all children with disabilities who have the impairment to receive early intervention services or a free appropriate public education.

(c) REPORT.—If the Secretary awards a grant, contract, or cooperative agreement under this part prior to February 1, 1998 with respect to an educational media activity described in subparagraph

(A) or (C) of subsection (a)(10), the Secretary, after consulting with the chairman of the Federal Communications Commission, shall submit to the Committee on Economic and Educational Opportunities of the House of Representatives and the Committee on Labor and Human Resources of the Senate, not later than April 15, 1998, a report on the progress that the Federal Communications Commission is making towards meeting the requirements imposed on the Commission under section 713 of the Communications Act of 1934 (47 U.S.C. 613).

SEC. 663. PEER REVIEW.

(a) IN GENERAL.—The Secretary shall use a panel of experts who are competent, by virtue of their training, expertise, or experience, to evaluate an application under this part that requests more than $75,000 in Federal financial assistance.

(b) COMPOSITION OF PANEL.—A majority of a panel described in subsection (a) shall be composed of individuals who are not employees of the Federal Government.

(c) PAYMENT OF FEES AND EXPENSES OF CERTAIN MEMBERS.—The Secretary may use available funds appropriated to carry out this part to pay the expenses and fees of panel members who are not employees of the Federal Government.

SEC. 664. ELIGIBLE APPLICANTS.

Except as otherwise provided in this part, the persons who, and the agencies that, may apply for receipt of grants, contracts, or cooperative agreements under this part are the following:

(1) Institutions of higher education.

(2) State educational agencies.

(3) Local educational agencies.

(4) Educational service agencies.

(5) Other public agencies.

(6) Private nonprofit organizations.

(7) Indian tribes and tribal organizations (as defined under section 4 of the Indian Self-Determination and Education Assistance Act).

(8) For-profit organizations.

SEC. 665. APPLICANT AND RECIPIENT RESPONSIBILITIES.

(a) GENERAL REQUIREMENTS ON APPLICANTS AND RECIPIENTS.—The Secretary may not make a grant to, or enter into a contract or cooperative agreement with, a person or agency under this part unless—

(1) the person or agency involves individuals with disabilities, and parents of children with disabilities, in planning, implementing, and evaluating activities conducted under the grant, contract, or agreement;

(2) the person or agency, where appropriate, evaluates the potential for replication and widespread adoption of such activities; and

(3) the person or agency prepares their findings and work product in a format useful for a specific audience specified by the Secretary, such as parents, administrators, teachers, early intervention personnel, related services personnel, or individuals with disabilities.

(b) ADDITIONAL REQUIREMENTS IMPOSED AT DISCRETION OF SECRETARY.—The Secretary may require that a person who, or agency that, is awarded a grant, contract, or cooperative agreement under this part—

(1) assume a portion of the cost of carrying out the grant, contract, or agreement;

(2) disseminate the findings and work product of the person or agency; and

(3) collaborate with other such persons and agencies.

SEC. 666. INDIRECT COSTS.

The Secretary—

(1) may not permit any recipient of Federal funds under this part to use more than 25 percent of such funds for indirect costs; and

(2) may further limit the extent to which any such recipient may use such funds for such costs.

SEC. 667. PROGRAM EVALUATION.

The Secretary may use funds appropriated to carry out this part to evaluate any activity carried out under this part.

SEC. 668. NATIONAL ASSESSMENT.

(a) PURPOSE OF ASSESSMENT.—The Secretary shall carry out a national assessment of activities carried out with Federal funds under this title in order—

(1) to determine the effectiveness of the title in achieving the purposes of the title;

(2) to provide information to the President, the Congress, the States, local educational agencies, and the public on how to implement the title more effectively; and

(3) to provide the President and the Congress with information that will be useful in developing legislation to achieve the purposes of this title more effectively.

(b) CONSULTATION.—The Secretary shall plan, review, and conduct the national assessment under this section in consultation with researchers, State practitioners, local practitioners, parents of children with disabilities, individuals with disabilities, and other appropriate individuals.

(c) SCOPE OF ASSESSMENT.—The national assessment shall examine how well schools, local educational agencies, States, other recipients of assistance under this title, and the Secretary are achieving the purposes of this title, including—

(1) the performance of children with disabilities in general scholastic activities and assessments as compared to non-disabled children;

(2) providing for the participation of children with disabilities in the general education curriculum;

(3) helping children with disabilities make successful transitions from—

(A) early intervention services to preschool education;

(B) preschool education to elementary school; and

(C) secondary school to adult life;

(4) placing and serving children with disabilities, including children from underserved populations, in the least restrictive environment appropriate;

(5) preventing children with disabilities, especially children with emotional disturbances and specific learning disabilities, from dropping out of school;

(6) assessing the use of disciplinary measures, and the effect of such use, with children with disabilities as compared to non-disabled children;

(7) coordinating services provided under this title with each other, with other educational and pupil services (including preschool services), and with health and social services funded from other sources;

(8) addressing the participation of parents of children with disabilities in the education of their children; and

(9) resolving disagreements between education personnel and parents through activities such as mediation.

(d) INTERIM AND FINAL REPORTS.—The Secretary shall submit to the President and the Congress—

(1) an interim report that summarizes the preliminary findings of the assessment not later than October 1, 1998; and

(2) a final report of the findings of the assessment not later than October 1, 2000.

SEC. 669. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated to carry out this subpart such sums as may be necessary for each of the fiscal years 1997 through 2001.

(b) MINIMUM AMOUNTS.—Subject to subsection (c), the Secretary shall ensure that, for each fiscal year, at least the following amounts are provided under this part to address the following needs:

(1) $12,832,000 to address the educational, related services, transitional, and early intervention needs of children with deaf-blindness.

(2) $4,000,000 to address the postsecondary, vocational, technical, continuing, and adult education needs of individuals with deafness.

(c) RATABLE REDUCTION.—If the total amount appropriated to carry out this part for any fiscal year is less than $135,600,000, the amounts listed in subsection (b) shall be ratably reduced.

Subpart 2—Professional Development

SEC. 671. PURPOSE.

The purpose of this subpart is to help ensure that—

(1) personnel responsible for serving children with disabilities, including general and special education personnel, related services personnel, and early intervention personnel, have the knowledge and skills necessary to help such children—

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

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

(2) there are adequate numbers of such personnel to meet the needs of children with disabilities; and

(3) the skills and knowledge of personnel responsible for serving children with disabilities reflect the best practices, as determined through research and experience, particularly with respect to the inclusion of children with disabilities in the regular education environment.

SEC. 672. FINDING.

The Congress finds that the conditions noted in paragraphs (7) through (10) of section 601(c) can be greatly improved by providing opportunities for the full participation of minorities through the implementation of the following recommendations:

(1) Implementation of a policy to mobilize the Nation's resources to prepare minorities for careers in special education and related services.

(2) Focusing such policy on—

(A) the recruitment of minorities into teaching; and

(B) financially assisting Historically Black Colleges and Universities and other institutions of higher education (whose minority student enrollment is at least 25 percent) to prepare students for special education and related service careers.

SEC. 673. NATIONAL ACTIVITIES.

(a) PROGRAM AUTHORIZED.—The Secretary may make grants to, and enter into contracts and cooperative agreements with, eligible entities to support activities of national significance that—

(1) have broad applicability; and

(2) will help ensure that the purpose of this subpart is met.

(b) AUTHORIZED ACTIVITIES.—In carrying out this section, the Secretary may support any activity that is consistent with subsection (a), including—

(1) the development, evaluation, demonstration, or dissemination of effective personnel preparation practices for personnel to work with children with disabilities;

(2) promoting the transferability of licensure and certification of teachers and administrators among State and local jurisdictions;

(3) developing and disseminating models that prepare teachers with strategies, including behavioral management techniques, for addressing the conduct of children with disabilities that impedes their learning and that of others in the classroom; and

(4) supporting Historically Black Colleges and Universities and institutions of higher education with minority enrollments of at least 25 percent for the purpose of preparing personnel.

SEC. 674. PROFESSIONAL DEVELOPMENT FOR PERSONNEL SERVING LOW-INCIDENCE POPULATIONS.

(a) PROGRAM AUTHORIZED.—The Secretary may make grants to, and enter into contracts and cooperative agreements with, eligible entities to meet the purpose of this subpart by supporting preparation for personnel who will provide educational and related services to children with low-incidence disabilities and personnel who will provide early intervention services to infants and toddlers with disabilities.

(b) AUTHORIZED ACTIVITIES.—

(1) IN GENERAL.—Individuals who may be prepared pursuant to this section include personnel who—

(A) are currently prepared in the fields of educational, related, or early intervention services; and

(B) are studying—

(i) to obtain degrees, certification, licensure, or endorsements in one or more of such fields; or

(ii) to meet competency requirements in one or more of such fields.

(2) SCHOLARSHIPS.—The Secretary may include funds for scholarships, with necessary stipends and allowances, in awards under this section.

(c) APPLICATIONS.—Any application for assistance under this section shall propose to provide preparation that addresses a significant need, as shown by letters from one or more States stating that the State—

(1) intends to accept successful completion of the proposed personnel preparation as meeting State personnel standards for serving children with low-incidence disabilities, or for serving infants and toddlers with disabilities; and

(2) needs personnel in the area or areas in which the applicant proposes to provide preparation, as identified in the State's comprehensive system of personnel development under part B or C, or in the State's State improvement plan under subpart 3.

(d) DEFINITION.—For purposes of this section, the term "low-incidence disability" has the meaning given such term in section 662(b).

SEC. 675. LEADERSHIP PERSONNEL.

(a) PROGRAM AUTHORIZED.—The Secretary may make grants to, and enter into contracts and cooperative agreements with, eligible entities to meet the purpose of this subpart by preparing educational, related service, and early intervention leadership personnel (including teacher-preparation faculty, administrators, researchers, supervisors, and principals) so that they are prepared to help children with disabilities—

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

(2) be prepared to lead productive, independent adult lives to the maximum extent possible.

(b) AUTHORIZED ACTIVITIES.—

(1) IN GENERAL.—In carrying out this section, the Secretary may support any activity that is consistent with subsection (a), including—

(A) preparation of personnel at the advanced graduate, doctoral, or post-doctoral levels; and

(B) professional development of leadership personnel.

(2) SCHOLARSHIPS.—The Secretary may include funds for scholarships, with necessary stipends and allowances, in awards under this section.

(c) PREFERENCES.—In making awards under this section, the Secretary shall give preference to projects at institutions of higher education that have successfully integrated the professional development of general and special education personnel.

SEC. 676. SERVICE OBLIGATION.

Each application for funds under section 674 or 675 shall include an assurance that the applicant will ensure that individuals who are prepared under the proposed project will subsequently perform work related to their preparation or repay all or part of the cost of such preparation.

SEC. 677. OUTREACH.

(a) PLAN FOR OUTREACH SERVICES.—The Secretary shall develop a plan for providing outreach services to the entities and populations described in subsection (b) in order to increase the participation of such entities and populations in competitions for grants, contracts, and cooperative agreements under this subpart.

(b) ENTITIES AND POPULATIONS DESCRIBED.—The entities and populations referred to in subsection (a) are—

(1) Historically Black Colleges and Universities and other institutions of higher education whose minority student enrollment is at least 25 percent;

(2) eligible institutions, as defined in section 312 of the Higher Education Act of 1965;

(3) nonprofit and for-profit agencies at least 51 percent owned or controlled by one or more minority individuals; and

(4) underrepresented populations.

(c) FUNDING.—For the purpose of implementing the plan required under subsection (a), the Secretary shall, for each of the fiscal years 1997 through 2002, expend 1 percent of the funds appropriated for the fiscal year involved for carrying out this subpart.

(d) DILIGENCE.—The Secretary shall exercise the utmost authority, resourcefulness, and diligence of the Secretary to meet the requirements of this section.

(e) REPORT.—Not later than January 31 of each year, beginning with fiscal year 1997 and ending with fiscal year 2002, the Secretary shall submit to the Congress a final report on the progress toward meeting the goals of this section during the preceding fiscal year. The report shall include—

(1) a full explanation of any progress toward meeting the goals of this section; and

(2) a plan to meet the goals, if necessary.

(f) UNDERREPRESENTED POPULATIONS DEFINED.—For purposes of this section, the term "underrepresented populations" means populations such as minorities, the poor, individuals with limited English proficiency, and individuals with disabilities.

Subpart 3—State Program Improvement Grants for Children With Disabilities

SEC. 681. PURPOSE.

The purpose of this subpart is to assist States in reforming and improving their systems for providing educational and early intervention services, particularly their systems for professional development, to improve the achievement of children with disabilities.

SEC. 682. ELIGIBILITY AND COLLABORATIVE PROCESS.

(a) ELIGIBLE APPLICANTS.—A State may apply for a grant under this subpart for a grant period that is not less than one year, but is not greater than 4 years.

(b) CERTIFICATION THAT COLLABORATIVE PROCESS HAS BEEN USED.—A State that desires to receive a grant under this subpart shall certify to the Secretary that a collaborative process with persons described in subsection (c) has been used in developing the State improvement plan described in section 683.

(c) COLLABORATIVE PROCESS PARTICIPANTS.—

(1) REQUIRED PARTICIPANTS.—The collaborative process referred to in subsection (b) is a State process for making decisions which includes as participants, at a minimum, the Governor of the State and representatives, appointed by such Governor, of—

(A) parents of children with disabilities;

(B) parents of nondisabled children;

(C) individuals with disabilities;

(D) organizations representing individuals with disabilities and their parents;

(E) community-based and other nonprofit organizations related to the education and employment of individuals with disabilities;

(F) the lead State agency official or officials for part C;

(G) local educational agencies;

(H) general and special education teachers;

(I) the State educational agency;

(J) the State advisory panel established under part B; and

(K) the State interagency coordinating council established under part C.

(2) OPTIONAL PARTICIPANTS.—The collaborative process may include, at the Governor's discretion, representatives, appointed by the Governor, of—

(A) individuals knowledgeable about vocational education;

(B) the State agency for higher education;

(C) institutions of higher education;

(D) schools of education;

(E) the State vocational rehabilitation agency;

(F) public agencies with jurisdiction in the areas of health, mental health, social services, and juvenile justice; and

(G) any other individuals designated by the Governor.

SEC. 683. STATE IMPROVEMENT PLANS.

(a) IN GENERAL.—A State that desires to receive a grant under this subpart shall submit to the Secretary a State improvement plan that is integrated, to the maximum extent possible, with State plans under the Elementary and Secondary Education Act of 1965 and the Rehabilitation Act of 1973, as appropriate.

(b) DETERMINING CHILD AND PROGRAM NEEDS.—

(1) IN GENERAL.—Each State improvement plan shall identify those critical aspects of early intervention, general education, and special education programs (including professional devel-

opment, based on an assessment of State and local needs) that must be improved to enable children with disabilities to meet the goals established by the State under section 612(a)(14).

(2) REQUIRED ANALYSES.—To meet the requirement of paragraph (1), the State improvement plan shall include at least—

(A) an analysis of all information, reasonably available to the State, on the performance of children with disabilities in the State, including—

(i) their performance on State assessments and other performance indicators established for all children, including drop-out rates and graduation rates;

(ii) their participation in postsecondary education and employment; and

(iii) how their performance on the assessments and indicators described in clause (i) compares to that of non-disabled children;

(B) an analysis of State and local needs for professional development for personnel to serve children with disabilities that includes, at a minimum, relevant information on current and anticipated personnel shortages, and on the extent of certification or retraining necessary to eliminate such shortages, that is based, to the maximum extent possible, on existing assessments of personnel needs; and

(C) a summary of the information and analysis provided by the State to the Secretary under parts B and C on the effectiveness of the State's systems of early intervention, special education, and general education in meeting the needs of children with disabilities.

(c) IMPROVEMENT STRATEGIES.—Each State improvement plan shall—

(1) describe the strategies the State will use to address the needs identified under subsection (b)(1), including—

(A) how it will hold school districts and schools accountable for educational progress of children with disabilities;

(B) how it will provide technical assistance to school districts and schools to improve results for children with disabilities;

(C) how it will address the identified needs for in-service and pre-service preparation to ensure that all personnel who work with children with disabilities (including both professional and paraprofessional personnel who provide early intervention services, special education, general education, or related services) have the skills and knowledge necessary to meet the needs of children with disabilities, including a description of how—

(i) the State will prepare general education and special education personnel with the content knowledge and collaborative skills needed to meet the needs of children with disabilities, including how the State will work with other States on common certification criteria;

(ii) the State will prepare professionals and paraprofessionals in the area of early intervention with the

content knowledge and collaborative skills needed to meet the needs of infants and toddlers with disabilities;

(iii) the State will work with institutions of higher education and other entities that prepare (on both a pre-service and an in-service basis) personnel who work with children with disabilities to ensure that such institutions and entities develop the capacity to support professional development programs which reflect actual education practices and techniques;

(iv) the State's requirements for licensure of teachers and administrators, including certification and recertification, will be modified to support an adequate supply of personnel with the necessary skills and knowledge (including, where appropriate, strategies for developing reciprocal certification agreements and common certification requirements with other States); and

(v) the State will work to develop collaborative agreements with other States for the joint support and development of programs to prepare personnel for which there is not sufficient demand within a single State to justify support or development of such a program of preparation;

(D) how it will work in collaboration with other States, particularly neighboring States, to address the lack of uniformity and reciprocity in the credentialing of teachers and other personnel;

(E) strategies that will address systemic problems identified in Federal compliance reviews, including shortages of qualified personnel; and

(F) how the State will assess, on a regular basis, the extent to which the strategies implemented under this subpart have been effective; and

(2) describe how the improvement strategies under paragraph (1) will be coordinated with public and private sector resources.

(d) REPORTING PROCEDURES.—Each State that receives a grant under this subpart shall submit performance reports to the Secretary pursuant to a schedule to be determined by the Secretary, but not more frequently that annually.

(e) PLAN APPROVAL.—The Secretary shall approve a State improvement plan under this section if it—

(1) meets the requirements of this part;

(2) has been developed in accordance with the requirements of section 682; and

(3) in the opinion of the Secretary, has a reasonable chance of achieving the purposes of the grant.

(f) PLAN AMENDMENTS.—

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

(2) MODIFICATIONS REQUIRED BY SECRETARY.—The Secretary may require a State to amend its State improvement plan at any time as a result of the Secretary's compliance reviews under parts B and C. The Secretary may not provide further funding under this subpart to the State until such amendments are made.

SEC. 684. USE OF FUNDS.

(a) IN GENERAL.—A State that receives a grant under this subpart may use the grant to carry out any activities that are described in the State improvement plan and that are consistent with the purpose of this subpart. Such activities may include the awarding of subgrants, but only if the subgrants are made to local educational agencies. Any such local educational agency may award subgrants to any person. Such activities may also include the awarding of contracts to appropriate entities.

(b) USE OF FUNDS FOR PROFESSIONAL DEVELOPMENT.—A State that receives a grant under this subpart shall use not less than 75 percent of the funds it receives under the grant for any fiscal year to ensure that there is a sufficient supply of personnel who have the skills and knowledge necessary to enable children with disabilities to meet developmental goals and to meet the needs of such children, including working with other States on common certification criteria.

(c) GRANTS TO TERRITORIES.—The provisions of Public Law 95–134, permitting the consolidation of grants to the territories, shall not apply to funds received under this subpart.

SEC. 685. MINIMUM STATE ALLOTMENTS.

A State that receives a grant under this subpart shall receive an amount that is—

(1) not less than $200,000, in the case of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico; and

(2) not less than $40,000, in the case of a territory.

SEC. 686. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to carry out this subpart such sums as may be necessary for each of the fiscal years 1997 through 2001.

Subpart 4—Parent Training

SEC. 691. GRANTS FOR PARENT TRAINING AND INFORMATION CENTERS.

(a) PROGRAM AUTHORIZED.—The Secretary may make grants to, and enter into contracts and cooperative agreements with, parent organizations to support parent training and information centers to carry out activities under this subpart.

(b) REQUIRED ACTIVITIES.—A parent training and information center that receives assistance under this section shall—

(1) assist parents to understand the availability of, and how effectively to use, procedural safeguards under this title, including the use of alternative methods of dispute resolution, such as mediation;

(2) serve the parents of children with the full range of disabilities; and

(3) annually report to the Secretary on—

(A) the number of parents to whom it provided information and training in the most recently concluded fiscal year; and

(B) the effectiveness of strategies used to reach and serve parents of children with disabilities, including underserved parents of children with disabilities.

(c) OPTIONAL ACTIVITIES.—A parent training and information center that receives assistance under this section may—

(1) provide information to teachers and other professionals who provide special education and related services to children with disabilities;

(2) assist students with disabilities to understand their rights and responsibilities under section 615(j) on reaching the age of majority; and

(3) establish cooperative partnerships with parent organizations, and other organizations assisting families of children with disabilities, in the community.

(d) APPLICATION REQUIREMENTS.—Each application for assistance under this section shall identify with specificity the special efforts that the applicant will undertake to—

(1) ensure that the needs for training and information of parents of underserved children with disabilities in the area to be served are effectively met; and

(2) work with community-based organizations.

(e) DISTRIBUTION OF FUNDS.—

(1) INITIAL AWARDS.—

(A) IN GENERAL.—The Secretary shall make at least one award to a parent organization in each State, unless the Secretary does not receive an application from such an organization in each State of sufficient quality to warrant approval.

(B) SELECTION REQUIREMENT.—The Secretary shall select among applications submitted by parent organizations in a State in a manner that ensures the most effective assistance to parents, including parents in urban and rural areas, in the State.

(2) ADDITIONAL AWARDS.—

(A) IN GENERAL.—The Secretary may make additional awards to community-based parent organizations in each State.

(B) SELECTION REQUIREMENT.—The Secretary may make additional awards in a manner that ensures that parents of children with disabilities in low-income, high-density, and rural areas have access to parent training and information centers that provide appropriate training and information.

SEC. 692. TECHNICAL ASSISTANCE FOR PARENT TRAINING AND INFORMATION CENTERS.

(a) PROGRAM AUTHORIZED.—The Secretary may provide technical assistance for developing, assisting, and coordinating parent train-

ing and information programs carried out by parent training and information centers receiving assistance under section 691.

(b) AUTHORIZED ACTIVITIES.—The Secretary may provide technical assistance to a parent training and information center under this section in areas such as—

(1) effective coordination of parent training efforts;

(2) dissemination of information;

(3) evaluation by the center of itself;

(4) promotion of the use of technology, including assistive technology devices and assistive technology services;

(5) reaching underserved populations;

(6) including children with disabilities in general education programs;

(7) facilitation of transitions from—

(A) early intervention services to preschool;

(B) preschool to school; and

(C) secondary school to postsecondary environments; and

(8) promotion of alternative methods of dispute resolution.

SEC. 693. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to carry out this subpart such sums as may be necessary for each of the fiscal years 1997 through 2001.

SECTION 1114 OF THE ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965

SEC. 1114. SCHOOLWIDE PROGRAMS.

(a) USE OF FUNDS FOR SCHOOLWIDE PROGRAMS.—

(1) * * *

* * * * * * *

(4) SPECIAL RULE.—(A) Except as provided in subsection (b), the Secretary may, through publication of a notice in the Federal Register, exempt schoolwide programs under this section from statutory or regulatory provisions of any other noncompetitive formula grant program administered by the Secretary, or any discretionary grant program administered by the ❚Secretary (other than formula or discretionary grant programs under the Individuals with Disabilities Education Act),❚ *Secretary,* to support schoolwide programs, if the intent and purposes of such other programs are met.

(B) A school that chooses to use funds from such other programs shall not be relieved of the requirements relating to health, safety, civil rights, *special education and related services under an individualized education program, procedural safeguards,* gender equity, student and parental participation and involvement, services to private school children, maintenance of effort, comparability of services, uses of Federal funds to supplement, not supplant non-Federal funds, or the distribution of funds to State or local educational agencies that apply to the receipt of funds from such programs.

* * * * * * *

ADDITIONAL VIEWS

CESSATION OF EDUCATIONAL SERVICES

We have grave concerns about the provisions of the bill which will permit states to "cease" educational services to children under certain circumstances. We believe that the creation of a federal education policy that sanctions the cessation of educational services for any child is wrong and will set a dangerous precedent.

Under current law, a child with a disability who is expelled from the regular classroom for any reason is still entitled to a free appropriate education. No public benefit will be realized from a policy that results in additional idle children roaming the streets. We already know what happens to kids who drop out of school. We know that the link between school dropouts and crime is very strong. Demographers report that 82% of State and local prisoners are high school dropouts. We also know that there is a strong correlation between welfare dependency and school dropout rates.

For children with disabilities, these correlations are even stronger. Research shows that children with disabilities who are expelled from school without educational services are much less likely than other children to ever catch up, are more likely to drop out, are less likely to ever graduate from high school or to get a G.E.D., are less likely to be employed, and are substantially more likely to be involved in crime. One recent study points out that as many as 73% of children with mental disabilities who do not complete high school end up with arrest records after leaving school.

There are costs associated with the continued provision of educational services to students with disabilities who have been expelled. However, we believe the costs of not providing services to these students are far greater. The short-term savings achieved by ceasing educational services to children with disabilities will be more than offset by the long-term costs of children who fall behind or fall through the cracks educationally as a result of expulsion without services.

Those on the other side of this issue assert that children with disabilities who engage in serious misbehavior should be treated just like other children and their needs are unique. IDEA is premised on the recognition that children with disabilities need more support than other students in order to attain an education. There is nothing to suggest that less support is needed when they have disciplinary problems.

The cessation debate is not about school safety. We all believe that classrooms should be free of violence and conducive to learning. For children with disabilities, safe classrooms are even more critical. These children are the most vulnerable to unsafe and chaotic school environments. Children who commit serious infractions that interfere with the ability of teachers to teach and other stu-

dents to learn should be expelled, suspended, or moved to another educational placement. But cessation of educational services does not further the goals of order and safety in the classroom. We strongly believe that children should continue to learn, whether in an alternative school or juvenile facility. Failure to do that will nourish a spiral of failure.

We are deeply concerned about the message we send in this bill. We believe strongly that a Federal policy of cessation of educational services, however limited its application, is the wrong policy. This view has been affirmed by the 55 groups (representing the full array of organizations who help serve and protect this nation's children) who in a letter to the Committee to stated their opposition to cessation of services. In addition, Secretary of Education Richard Riley has gone on record to express his strong opposition to the policy of cessation. We regret the Committee's decision to ignore the persuasive arguments of these many individuals.

FEDERAL RESEARCH AND DEVELOPMENT INVESTMENTS IN TECHNOLOGY FOR CHILDREN WITH DISABILITIES

We strongly oppose the exclusion of a specific authority, such as exists in current law, to support the research and development of advanced technology to enhance educational and early intervention services to children with disabilities. Technology research and development is critical for children with disabilities and their families who are served under IDEA.

House Speaker Newt Gingrich recognized the importance of technology to the lives of individuals with disabilities in a recent interview with the Atlanta Journal-Constitution, noting the potential of technology "to dramatically expand the potential for people, who historically have been totally outside the mainstream, to lead remarkably full lives."

Technology research and development activities supported under IDEA have led to the development of innovative tools and strategies that help children with disabilities become active, independent learners at schools and a home. Without these tools and strategies, many children with disabilities would remain dependent on their families or the government, rather than acquiring the knowledge, skills, and self-confidence they need to lead personally fulfilling and productive lives. These tools and strategies can permit children with disabilities to overcome their disabilities and learn in an infinite variety of ways. Technological devices can permit infants to explore and interact with their environments, school-aged children to learn in regular classes, and adults to function independently in work and society.

The types and uses of technology devices for individuals with disabilities are vast. Instructional technology used in the classroom can enhance higher order thinking and problem solving skills of children with learning disabilities, allowing them to improve their performance in academic subjects as well as reading comprehension. Technology helps individuals with cerebral palsy gain access to a range of environments and function with a level of independence that might otherwise be impossible. Technology helps students who are blind or visually impaired gain access to and use information to function more effectively in their physical and social envi-

ronments. Technology enables students who are deaf or hard-of-hearing to learn to read with the aid of CD-ROM visual capabilities, take notes without an interpreter, and improve their reading and writing. Teachers, administrators, and families have been provided access to information on effectively serving children with disabilities at home and at school through expert information systems and a center to improve use of technology. Continued advances in technology research hold promise for further improving educational opportunities for children and youth with disabilities.

Many research and development projects supported under IDEA have successfully marketed and distributed their products through collaboration with the Nation's leading commercial vendors. These activities yield considerable benefits by providing useful products not only for individuals with disabilities but also for use within the general population. For example, in order to compete successfully with their peers in the job market, young people with disabilities need not only the work competencies specific to each job, but also basic social skills. Under a contract with the Department of Education, MACRO International produced electronic and print materials to teach individuals with disabilities workplace social skills.

We are very concerned that the bill eliminates the discrete authority for technology research and development under IDEA. The Federal Government must continue to take an active role in investing in technology. Individuals with disabilities have a wide range of special needs and require different tools and adaptations to become active, independent learners. Unfortunately, the market for many of these technologies is small and fragmented.

Developing and testing assistive and instructional technologies for children with disabilities is not likely to be done by the private sector. Assistive devices and instructional technology for people with disabilities often must be targeted to very specific and small populations, and hence have very limited market potential. There is little financial incentive for the private sector to pursue these markets. Federal research and development investments in technology help fill this gap and complement private sector investments to provide teachers and families with the tools and strategies that individuals with disabilities need to lead independent and productive lives.

Moreover, there is no other Federal authority that focuses on the research and development of technology to improve educational and early intervention services to children with disabilities. Similar Federal programs complement, but do not duplicate, the activities supported under IDEA. For example, the Technology-Related Assistance for Individuals With Disabilities Act of 1988 was intended to build the capacity in each state to pull together the resources needed by individuals with disabilities to access the technology tools needed for independence and productivity in our society. The purpose of that Act is to promote systems-change—changes in laws, regulations, and policies—to facilitate access to technology, not to support the research and development that is so critical in ensuring that the available technology addresses the needs of individuals with disabilities. Technology research and development activities, such as those currently supported under IDEA, effectively address

the technology-related needs of children with disabilities that would not otherwise be met.

In the same interview cited above, Speaker Gingrich opined that "if you have [the] potential for liberating people and enabling them to lead full lives and you don't do everything you can to make it real, then it is an enormous, enormous mistake." We strongly agree.

WAIVER OF PERSONNEL STANDARDS

We believe that the Committee took the wrong approach to the issue of personnel shortages for service providers of special education and related services by creating a mechanism for States to establish regional waivers to their own personnel standards. This would sanction the provision of services by less than fully qualified personnel.

We acknowledge the serious problem of education personnel shortages in this country. A study recently published by the Council of Great City Schools showed a large demand for teachers in several areas, particularly in the area of special education.

In our view, States already have, and would continue to have, even without such waivers, sufficient flexibility to design their personnel standards to address these shortages. A far better approach, and one that would not obstruct the right of disabled children to receive services of the same quality as other individuals, would be to further develop the States' capacities to recruit and train highly qualified service providers.

DEPARTMENT OF EDUCATION POLICY LETTERS

The Department of Education's "policy letters" have served an important role in ensuring appropriate implementation of the IDEA. By letting States, school districts, teachers, parents, and even members of Congress know what the Department's thinking is about what the law requires, the issuance of these letters and other documents that interpret the statute and regulations have helped to ensure consistency in the implementation of the law and to resolve disagreements about how the law and regulations should be applied in particular circumstances.

Because of the importance of these letters, it is critical that they be shared with everyone who needs the information they contain. Therefore, we support language in the bill that would require the Department to publish quarterly in the Federal Register and "widely disseminate" by other means a summary of correspondence from the Department in the prior quarter that describes the interpretations of the IDEA and its regulations by the Department.

The reported bill, however, also includes language we strongly oppose that would prohibit the use of correspondence from the Department expressing the Department's interpretation of the IDEA and its regulations except by the exact party who receive the letter and only in relation to the exact situation at issue in the letter. The Office of Special Education and Rehabilitative Services (OSERS) receives questions on a variety of issues. Parents typically ask questions about the types of services that their children are entitled to receive and other rights under the law. For example, one parent asked OSERS to describe the circumstances under which a

child with a disability must be provided with an interpreter under Part B of IDEA. Another parent asked OSERS what obligation a local school district has to conduct an evaluation of a child when the parent makes the request rather than the teacher.

The language in the Republican bill would limit the use of policy letters so that other parents who had written OSERS on these same two issues could not use the OSERS response to these parents. It would mean that any parent involved in a due process hearing would not be able to point to an interpretation that the Department expressed in a letter to some other person on exactly the same issue and ask a hearing officer to adopt that interpretation. Thus, even though the Department had already expressed its views on a particular topic, and, as the proposal also requires, had "widely disseminated" information about its letters on that topic and published quarterly lists of them in the Federal Register, parents would have to pretend the Department had never expressed a view about that issue. A parent who wanted to use this information would have to individually write to the Department and await its response.

The results of this bill language will be inconsistent application of the IDEA across the country, increased burden and needless bureaucratic rigmarole for those parents who seek the advice of the Department on what the law requires, and increased litigation due to increased uncertainty about what the law actually requires. This language could also result in increased rulemaking by the Department in areas where it currently relies on interpretations of the statute and regulations.

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DALE E. KILDEE.
MATTHEW G. MARTINEZ.
TOM SAWYER.
PATSY T. MINK.
JACK REED.
XAVIER BECERRA.
GENE GREEN.
EARL BLUMENAUER.
GEORGE MILLER.
PAT WILLIAMS.
MAJOR R. OWENS.
DONALD M. PAYNE.
ROBERT E. ANDREWS.
ROBERT C. SCOTT.
CHAKA FATTAH.

ADDITIONAL VIEWS

INTERSTATE FUNDING FORMULA PROPOSED UNDER H.R. 3268

The interstate funding formula contained in the bill proposes to allocate funds to the States based on total student population and will include a poverty factor. This formula proposes to replace current law in which allocations are based on actual numbers of disabled students served.

We disagree with the premise that the current formula provides an incentive to over-identify students with disabilities and that the more students that are identified as disabled, the more money states get from the Federal Government. We disagree.

Federal funds make up only about 7% of the cost of special education. States and local school districts pick up 93% of the cost. It is hard to understand how schools would be motivated to over-identify disabled students so they can spend thousands of dollars per student in order to receive a little over $400 for each student.

Supporters of the new formula argue that the formula is necessary to change the way the States and districts allocate their own dollars. There is nothing in the current law or bill that precludes States from determining how to allocate such funds. In fact, some States have already done that.

We don't believe that the new formula will address the problem of over-identification. We highly doubt that the change in the funding formula on the Federal level will influence the number of students who are identified as disabled because there are other factors which influence the identification process. All the formula would do is punish States who have a higher incidence of disabled students by allocating less money per child.

The rationale behind this newly proposed formula is open to question when one considers the statement in the Department of Education's 1995 report on IDEA where they state that, "In some cases, children with disabilities are not identified and served. In other cases, particular with African-American children, students are over-identified and placed in overly restrictive settings." While the proposed formula purportedly addresses the over-identification problem, it does nothing to address the under-identification problem. While the poverty factor in the formula is expected to address the correlation between poverty and disabilities, one can argue that given the spirit of the formula, it also reinforces the over-identification issue raised by the Department of Education. In short, it perpetuates a bias towards placing African-American children in overly restrictive settings.

Moreover, the rationale set forth to support the new funding formula is inconsistent with the special rule in the formula which would cap the level of funding to Puerto Rico, discriminating against children with disabilities who reside in Puerto Rico. Where

the new formula purports to take into account the effect of poverty on the incidence of disability, it then caps the level of funding to Puerto Rico precisely because many children in Puerto Rico are poor. Where the new formula purports to address the problem of over-representation of minorities in special education, the formula then discounts an entire population of minority children.

By refusing to recognize each child with a disability, the proposed formula ignores the overall philosophy of IDEA, i.e., that the right of individuals with disabilities to a free and appropriate education is derived from the equal protection clause of the Fourteenth Amendment of the United States Constitution. That's why each disabled student gets an Individualized Education Program. Since the amount of money granted to individual students will vary on a state by state basis, it is questionable whether each child is granted equal opportunities guaranteed under the Constitution.

We agree that there are some issues pertaining to the identification process. The Department of Education has identified under- and over-identification as well as a bias towards African-American children. These issues are much too complex to be resolved through a new proposed formula which will do nothing to address the issue, it could even perpetuate it. We believe that the proposed formula is ineffective, unnecessary, and unfair.

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JACK REED.
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GEORGE MILLER.
PAT WILLIAMS.
MAJOR R. OWENS.
DONALD M. PAYNE.
ROBERT E. ANDREWS.
TIM ROEMER.

DISSENTING VIEWS OFFERED BY MR. OWENS

Twenty-one years ago Congress opened the door for millions of children with disabilities to complete school and become productive citizens. However, this victory has not been fully manifested for some groups of children and families of children who are traditionally underserved due to their marginalized societal status. H.R. 3268 abandons current law and fails to provide direct funding for full participation of minorities through recruitment of minorities into teaching and financially assisting Historically Black Colleges and Universities in their efforts to prepare students for careers in special education and related services. Additionally, this bill weakens the current Federal provision of Community Parent Resource Centers (CPRCs).

DIRECT FUNDING FOR ACTIVITIES ASSISTING MINORITIES

As a group, minority children represent a large percentage of public school students. In large urban school systems such as Miami, Chicago, Baltimore and Los Angeles, minority students comprise over 80 percent of the school population. Moreover, the number of children with limited English proficiency is the fastest growing in the country. While the number of minority children receiving special education in public schools continues to grow, recruitment, training, and retention of personnel continue to be problems in the provision of special education and related services to children with disabilities.

In 1990–1991, 38 percent of all schools had teaching vacancies in special education. Schools that were 20 percent or more minority were more likely to have teaching vacancies than those with lower percentages of minority enrollments. In the area of personnel recruitment, there is a need for the Department of Education to continue providing technical assistance and funding to Historically Black Colleges and Universities so that they can continue to develop creative new programs in the field of special education, and establish a career development mentoring program using faculty and professional staff members of participating agencies as role models, career sponsors and academic advisors for personnel committed to working in special education and related services. We must ensure that all schools have adequately trained, competent personnel educating children with disabilities.

CPRCS—A VALUABLE COMMUNITY-BASED PROJECT

We strongly support the provision of funding for Parent Training and Information (PTI) Projects around the Nation, and would ask that this area of parent participation be constantly strengthened. However, parents in our Nation's poorest urban and rural communities continue to be severely hampered in their quest for access to training and information. As a result, they are underrepresented

among those who access the established systems of obtaining information and support needed to guide their children in the process of obtaining a free, appropriate education.

In the 1990 amendment to IDEA, a strong bipartisan effort provided a remedy in the form of a measure providing for the development of grassroots, community-based programs to serve chronically unrepresented parents of children with disabilities residing in the Nation's poorest urban and rural areas. During the first two years of the Community Parent Training Program Initiative (formerly the Experimental Project Initiative), the Technical Assistance for Parent Programs Project (TAPP) provided direct technical assistance to more than 25 parent groups or individuals working on special education issues in their communities. Assistance included training in organizational skills, coalition building, grant writing, board development and grassroots leadership development in underserved communities in preparation for the participation of grassroots organizations in the first Experimental Projects competition for funding OSERS.

The first Experimental Projects competition was conducted in the fall of 1992 and only four community projects were approved for funding by the Department of Education. Three years later, a second competition yielded funding for five centers. A recent survey showed that collectively, the community-based programs served over 150,000 parents in over 50 communities. The following list represents fourteen community-based parent projects delivering service throughout the United States on grants ranging from $2,500 to $10,000 per project:

(1) Coalition of Florida Farmworkers Organizations—Homestead, Florida

(2) Island Parents Educational Support and Training Center—Martha's Vineyard and Nantucket

(3) Loving Your Disabled Child—Los Angeles, California

(4) Mentor Parent Program—Seneca, Venango County, Pennsylvania

(5) Parent Empowerment Project—Immokalee, Florida

(6) Parents of Watts—Los Angeles, California

(7) Parent to Parent Power—Tacoma, Washington

(8) Pyramid Parent Training—New Orleans, Louisiana

(9) Reaching Harmony, Native American Family Support, Inc.—Fort Defiance, Arizona

(10) Special Kids, Inc.—Houston, Texas

(11) United We Stand—Brooklyn, New York

(12) Upbeatt—Detroit, Michigan

(13) Vietnamese Parents with Disabled Children Association, Inc.—Carson, California

(14) Virgin Islands Family Information Network on Disabilities—U.S. Virgin Islands

We must seek to strengthen this measure.

Disability is a partisan issue affecting children and families in every Congressional district. These initiatives are of vital impor-

tance in ensuring that the educational needs of all children with disabilities are met.

MAJOR R. OWENS.

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