

CHAPTER 5

**Individuals with Disabilities
Education Improvement
Act of 2004**

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The Individuals with Disabilities Education Act of 2004

Part A – General Provisions

WRIGHTSLAW OVERVIEW: Part A of the Individuals with Disabilities Education Act, General Provisions, includes Sections 1400 through Section 1409 of Title 20 of the United States Code (U. S. C.):

- 20 U. S. C. § 1400. Congressional Findings and Purposes
- 20 U. S. C. § 1401. Definitions
- 20 U. S. C. § 1402. Office of Special Education Programs
- 20 U. S. C. § 1403. Abrogation of State Sovereign Immunity
- 20 U. S. C. § 1404. Acquisition of Equipment; Construction or Alteration of Facilities
- 20 U. S. C. § 1405. Employment of Individuals with Disabilities
- 20 U. S. C. § 1406. Requirements for Prescribing Regulations
- 20 U. S. C. § 1407. State Administration
- 20 U. S. C. § 1408. Paperwork Reduction
- 20 U. S. C. § 1409. Freely Associated States

The most important section in IDEA 2004 is Section 1400(d) that describes the purposes of the law. Section 1401 includes the legal definitions in alphabetical order. Section 1403 advises that states are not immune from suit if they violate IDEA. Section 1406 describes the requirements and timelines for the federal special education regulations. Sections 1407, Section 1408, and Section 1409 are new in IDEA 2004.

20 U. S. C. § 1400. Short Title; Table of Contents; Findings; Purposes

WRIGHTSLAW OVERVIEW: Section 1400 is Findings and Purposes. Section 1400(c) describes the history and findings that led Congress to pass the Education for All Handicapped Children Act of 1975 (Public Law 94-142) which is now the Individuals with Disabilities Education Act of 2004. The most important statute is Purposes in Section 1400(d): “to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living” and “to ensure that the rights of children with disabilities and parents of such children are protected . . .” When you have questions about a confusing term or section in the law, re-read Section 1400, especially Purposes in Section 1400(d). This will help you understand how the confusing portion fits into the overall purpose of the law.

(a) Short Title. This title may be cited as the ‘Individuals with Disabilities Education Act’.

(b) Table of Contents.^{1,2}

(c) Findings. Congress finds the following:

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

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

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

¹ The Overviews and footnotes in this book are by the authors and are not a part of the statute.

² Section 1400(b) lists the sections and subsections of Parts A, B, C, D, and E of the Individuals with Disabilities Education Act in a table of contents format.

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

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

(D) a **lack of adequate resources** within the public school system forced families to find services outside the public school system.³

(3) Since the enactment and implementation of the Education for All Handicapped Children Act of 1975, this title has been successful in ensuring children with disabilities and the families of such children access to a free appropriate public education and in improving educational results for children with disabilities.

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

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

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

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

(ii) **be prepared to lead productive and independent adult lives**, to the **maximum extent possible**;⁵

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

(C) **coordinating this title** with other local, educational service agency, State, and Federal school improvement efforts, including improvement efforts under the **Elementary and Secondary Education Act of 1965**,⁶ in order to ensure that such children benefit from such efforts and that **special education can become a service for such children rather than a place where such children are sent**;⁷

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

(E) supporting **high-quality, intensive preservice preparation and professional development** for all

3 Before Congress passed the Education for All Handicapped Children Act (Public Law 94-142) in 1975, more than one million handicapped children were excluded from school. Initially, the law focused on ensuring that children had access to an education and due process of law. When Congress reauthorized the law in 1997, they emphasized accountability and improved outcomes while maintaining the goals of access and due process. IDEA 2004 increased the focus on accountability and improved outcomes by bringing IDEA into conformity with the No Child Left Behind Act, and adding requirements for early intervening services, research-based instruction, and highly qualified special education teachers.

4 IDEA 2004 addresses poor educational outcomes for children with disabilities by requiring “proven methods of teaching and learning” based on “replicable research.” These terms are important. “Research based methods” are also referred to as “evidence-based.” Pressure from litigation, legal rulings requiring schools to use research based methods, and No Child Left Behind are forcing school districts to adopt research based or evidence-based methods.

5 The language about meeting the developmental goals and challenging expectations established for nondisabled children so children are “prepared to lead productive and independent adult lives to the maximum extent possible” is important.

6 IDEA is the federal law that requires schools to provide special education and related services to qualifying children with disabilities. The Elementary and Secondary Education Act of 1965 (ESEA) is the federal law that was enacted to help schools educate disadvantaged children. When the ESEA was reauthorized in 2001, it was renamed “No Child Left Behind.” The “improvement efforts under the ESEA” refers to No Child Left Behind (NCLB). NCLB and IDEA often use the same terms or incorporate identical language, definitions and requirements of the other statute by reference.

7 Special education is a service, not a place. Special education is not the classroom in the trailer or the special school across town. Pursuant to the least restrictive environment requirement in Section 1412(a)(5), special education services should be delivered in general education settings except “when the nature or severity of the disability of the child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.” When school personnel view special education as a “place,” they often fail to evaluate the child’s unique needs and how the school can meet these needs. Coordinating IDEA and NCLB will help to ensure that special education is “a service for such children rather than a place where such children are sent.”

personnel who work with children with disabilities in order to ensure that such personnel have the skills and knowledge necessary to improve the academic achievement and functional performance of children with disabilities, including the use of scientifically based instructional practices, to the maximum extent possible;

(F) providing incentives for whole-school approaches, **scientifically based early reading programs, positive behavioral interventions and supports, and early intervening services**⁸ to **reduce the need to label children as disabled** in order to address the learning and behavioral needs of such children;⁹

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

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

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

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

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

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

(10)

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

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

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

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

(11)

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

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

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

(12)

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

(B) More minority children continue to be served in special education than would be expected from the

⁸ Congress added early intervening services (EIS) to IDEA 2004. Early intervening services are for children who have not been identified as needing special education or related services, but who need additional academic and behavioral support to succeed in a general education environment. See 20 U. S. C. § 1413(f)(1).

⁹ Many school districts refuse to evaluate or provide special education services until after a child fails. This "wait to fail" model has tragic results. The neurological "window of opportunity" for learning to read begins to close during elementary school. Late remediation is more difficult and carries a high price tag, emotionally and economically.

percentage of minority students in the general school population.

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

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

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

(13)

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

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

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

(d) Purposes. The purposes of this title are—

(1)

(A) to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their **unique needs and prepare them for further education,¹⁰ employment, and independent living;¹¹**

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

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

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

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

(4) to **assess, and ensure the effectiveness of, efforts to educate children with disabilities.**¹²

10 The phrase “further education” and the emphasis on effective transition services is new. Section 1400(c)(14) describes “effective transition services to promote successful post-school employment or education.” The definition of “transition services” was changed to a “results-oriented process that is focused on improving the academic and functional achievement of the child” to facilitate “movement from school to post-school activities, including post-secondary education ...”

11 Purposes in Section 1400(d) is the mission statement of IDEA. The purpose of special education is to prepare children with disabilities for **further education, employment, and independent living.**

12 IDEA 2004 requires that all children with disabilities participate in all state and district assessments, with appropriate accommodations as determined by the IEP team. Section 1412(a)(16) includes new requirements about accommodations guidelines and alternate assessments.

20 U. S. C. § 1401. Definitions

WRIGHTSLAW OVERVIEW: Read these definitions carefully, especially the definitions of child with a disability, free appropriate public education, highly qualified teacher, least restrictive environment, IEP, related services, special education, and specific learning disability. The definitions are in alphabetical order. One definition often takes you to another section of the law that provides additional information on the subject. IDEA 2004 added six new definitions: core academic subjects, highly qualified teacher, homeless children, limited English proficient, universal design, and ward of the state. In the regulations, Definitions begin at 300.4 and continue to 300.45.

Except as otherwise provided, in this title:

(1) Assistive Technology Device.

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

(B) Exception. The term does not include a medical device that is surgically implanted, or the replacement of such device.¹³

(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;¹⁴

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

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

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

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

(F) training or technical assistance for professionals (including individuals providing education and rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of such child.¹⁵

(3) Child With A Disability.

(A) In General. The term ‘child with a disability’ means a child—

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

¹³ See regulations 300.5, 300.6, 300.34(b), and 300.113 about hearing aids and cochlear implants.

¹⁴ An assistive technology evaluation may be conducted in the home, which is a customary environment for a child.

¹⁵ Children with disabilities need to use technology devices and services to increase and improve their ability to function independently in and out of school. Technology devices include dictation software, text readers, and computerized speaking devices. Parents, teachers, and other professionals will need training before they can teach the child to use technology.

(ii) who, by reason thereof needs special education and related services.¹⁶

(B) Child Aged 3 Through 9. The term ‘**child with a disability**’ for a child aged 3 through 9 (or any subset of that age range, including ages 3 through 5),¹⁷ may, at the discretion of the State and the local educational agency, include a child—

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

(ii) who, by reason thereof, needs special education and related services.^{18, 19}

(4) Core Academic Subjects. The term ‘**core academic subjects**’²⁰ has the meaning given the term in Section 9101 of the Elementary and Secondary Education Act of 1965.²¹

(5) Educational Service Agency. The term ‘**educational service agency**’ means a regional public multiservice agency authorized by State law to develop, manage, and provide services or programs to local educational agencies; and recognized as an administrative agency for purposes of the provision of special education and related services provided within public elementary schools and secondary schools of the State; and includes any other public institution or agency having administrative control and direction over a public elementary school or secondary school.

(6) Elementary School. The term ‘**elementary school**’ means a nonprofit institutional day or residential school, including a public elementary charter school,²² that provides elementary education, as determined under State law.

(7) Equipment. The term ‘**equipment**’ includes—

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

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

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

(A) amounts received—

16 A child with a disability is not automatically eligible for special education and related services under IDEA. The key phrase is “who, by reason thereof, needs special education and related services.” A child can advance steadily from grade to grade, without failing grades, and still be classified as a child with a disability. (See Regulation 300.101(c)) If the child only needs related services, the child is not eligible under IDEA 2004 per Regulation 300.8(a)(2). See also Commentary in the *Federal Register*, page 46549. If a child has a disability but does not need special education services, the child may be eligible for protections under Section 504 of the Rehabilitation Act.

17 Part C describes early intervention services for infants and toddlers with disabilities under three years of age and their families.

18 School districts may provide special education services to children with developmental delays, whether they do or do not have a specific disability label. If a child between the ages of 3 and 9 has a developmental delay but has not been found eligible for services under Section 1401(3)(A)(i), this section may open the door to special education services. The requirement that schools provide services to young children with developmental delays is intended to address their needs for early intervention services.

19 If a child only needs a related service, then depending on your state regulations, the child may or may not be eligible. (See Regulation 300.8)

20 Core academic subjects are defined as “English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography.” (20 U. S. C. § 7801)

21 All definitions in the No Child Left Behind Act are in *Wrightslaw: No Child Left Behind*.

22 For more information about charter schools, see Regulation 300.209.

- (i) under part B;
- (ii) under part A of title I of the Elementary and Secondary Education Act of 1965; and
- (iii) under parts A and B of title III of that Act; and

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

(9) Free Appropriate Public Education. The term ‘free appropriate public education’²³ means special education and related services that—

- (A) have been provided at public expense, under public supervision and direction, and without charge;
- (B) meet the standards of the State educational agency;
- (C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and
- (D) are provided in conformity with the individualized education program required under Section 1414(d) of this title.^{24, 25}

(10) Highly Qualified.²⁶

(A) In General. For any special education teacher, the term ‘highly qualified’ has the meaning given the term in Section 9101 of the Elementary and Secondary Education Act of 1965,²⁷ except that such term also—

- (i) includes the requirements described in subparagraph (B); and
- (ii) includes the option for teachers to meet the requirements of Section 9101 of such Act by meeting the requirements of subparagraph (C) or (D).²⁸

(B) Requirements For Special Education Teachers. When used with respect to any public elementary school or secondary school special education teacher teaching in a State, such term means that—

- (i) the teacher has obtained full State certification as a special education teacher (including certification obtained through alternative routes to certification), or passed the State special education teacher licensing examination, and holds a license to teach in the State as a special education teacher, except that when used with respect to any teacher teaching in a public charter school, the term means that the teacher meets the requirements set forth in the State’s public charter school law;
- (ii) the teacher has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and

23 The term “free appropriate public education” (FAPE) is not clearly defined in IDEA but is defined in caselaw. In *Board of Education v. Rowley*, 458 U.S. 176 (1982), the U. S. Supreme Court concluded that FAPE is not the best program, nor is it a program designed to maximize a child’s potential. When courts analyze the changes in IDEA 2004, they may require a higher standard.

24 In *Reexamining Rowley: A New Focus in Special Education Law*, attorney Scott Johnson argues that the “some educational benefit” standard in *Rowley* no longer reflects the present requirements of the Individuals with Disabilities Education Act. URL: www.harborhouselaw.com/articles/rowley.reexamine.johnson.htm (Retrieved on October 8, 2006)

25 Parents must never ask for what is “best” for a child nor that they want a program to maximize their child’s potential. Evaluations from experts in the private sector should never recommend “the best program” for the child. Courts have held that children with disabilities are entitled to an “appropriate” education, not the “best” education. Use the terms “appropriate” or “minimally appropriate.”

26 Parents of children who attend schools that receive Title I funds are entitled to information about the qualifications of their child’s teachers and paraprofessionals, but must request this information in writing. If the child is taught for 4 weeks or more by a teacher who is not highly qualified, the school must notify the parent. (See Commentary in the *Federal Register*, page 46693.) Special education teachers should review Regulation 300.18.

27 The definition of a “highly qualified teacher” is in Title IX of No Child Left Behind at 20 U. S. C. § 7801(23). See also 20 U. S. C. § 6311(b)(1).

28 Special educators must meet the educational requirements for highly qualified teachers. The requirements are somewhat different for new and veteran teachers, for elementary, middle school, and high school teachers, for teachers of multiple subjects, and for teachers who teach to alternate standards.

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

(C) Special Education Teachers Teaching to Alternate Achievement Standards. When used with respect to a special education teacher who teaches core academic subjects exclusively to children who are assessed against alternate achievement standards established under the regulations promulgated under Section 1111(b)(1) of the Elementary and Secondary Education Act of 1965, such term means the teacher, whether new or not new to the profession, may either—

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

(ii) meet the requirements of subparagraph (B) or (C) of Section 9101(23) of such Act as applied to an elementary school teacher, or, in the case of instruction above the elementary level, has subject matter knowledge appropriate to the level of instruction being provided, as determined by the State, needed to effectively teach to those standards.²⁹

(D) Special Education Teachers Teaching Multiple Subjects. When used with respect to a special education teacher who teaches **2 or more core academic subjects exclusively to children with disabilities**, such term means that the teacher may either—

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

(ii) in the case of a teacher who is not new to the profession, **demonstrate competence in all the core academic subjects in which the teacher teaches** in the same manner as is required for an elementary, middle, or secondary school teacher who is not new to the profession under Section 9101(23)(C)(ii) of such Act, which may include a single, high objective uniform State standard of evaluation³⁰ covering multiple subjects; or

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

(E) Rule of Construction. Notwithstanding any other individual right of action that a parent or student may maintain under this part, **nothing** in this section or part shall be construed to **create a right of action** on behalf of an individual student or class of students for the failure of a particular State educational agency or local educational agency employee to be highly qualified.³¹

(F) Definition For Purposes of the ESEA. A teacher who is highly qualified under this paragraph shall be considered highly qualified for purposes of the Elementary and Secondary Education Act of 1965.³²

(11) Homeless Children. The term ‘homeless children’ has the meaning given the term ‘homeless children

29 For guidance about how No Child Left Behind applies to special educators and paraprofessionals, read Chapter 6 “NCLB for Teachers, Principals and Paraprofessionals,” in *Wrightslaw: No Child Left Behind*. Dozens of NCLB resources are included in the NCLB CD-ROM in *Wrightslaw: No Child Left Behind*.

30 States have the option of developing a method by which teachers can demonstrate competence in the academic subjects they teach. This method must be based on a “high objective uniform state standard of evaluation” (HOUSSE) and must provide an objective way to determine if teachers have subject matter knowledge in the core academic subjects they teach. The multiple subject HOUSSE must not be based on a lesser standard.

31 There is no right of action (i.e., right to sue a state or school district) because a teacher is not highly qualified. However, parents may file complaints about inadequately trained teachers with the State department of education.

32 The timelines for highly qualified teachers are in No Child Left Behind, 20 U. S. C. § 6319(a)(2). Teachers hired after the law was enacted in 2002 (new hires) must be highly qualified. Teachers of core academic subjects must be highly qualified by the end of the 2005-2006 school year.

and youths' in Section 11434a of title 42.³³

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

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

(14) **Individualized Education Program; IEP.** The term '**individualized education program**' or '**IEP**' means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with Section 1414(d) of this title.³⁴

(15) **Individualized Family Service Plan.** The term '**individualized family service plan**' has the meaning given the term in Section 1436 of this title.

(16) **Infant or Toddler With A Disability.** The term '**infant or toddler with a disability**' has the meaning given the term in Section 1432 of this title.³⁵

(17) **Institution of Higher Education.** The term '**institution of higher education**' –

(A) has the meaning given the term in Section 1001 of this Title; and

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

(18) **Limited English Proficient.** The term '**limited English proficient**' has the meaning given the term in Section 9101 of the Elementary and Secondary Education Act of 1965.³⁶

(19) **Local Educational Agency.**

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

(B) **Educational Service Agencies and Other Public Institutions or Agencies.** The term includes –

(i) an educational service agency; and

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

(C) **BIA Funded Schools.** The term includes an elementary school or secondary school funded by the Bureau of Indian Affairs, but only to the extent that such inclusion makes the school eligible for programs for which specific eligibility is not provided to the school in another provision of law and the school does not have a student population that is smaller than the student population of the local educational agency receiving as-

33 Homeless children “lack a fixed, regular, and adequate nighttime residence . . . [are] sharing the housing of other persons . . . living in motels, hotels, trailer parks, or camping grounds . . . [or are] living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings.” (42 U. S. C. § 11434a)

34 The legal requirements for IEPs, IEP teams, meeting attendance, when IEPs must be in effect, reviewing and revising IEPs, placements, and alternative ways to participate in IEP meetings are in Section 1414(d).

35 “An individual under 3 years of age who needs early intervention services because the individual (i) is experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures in 1 or more of the areas of cognitive development, physical development, communication development, social or emotional development, and adaptive development; or (ii) has a diagnosed physical or mental condition that has a high probability of resulting in developmental delay; and . . .” (See 20 U. S. C. §1432 for the full text of this definition.)

36 “An individual between the ages of 3 and 21 who attends an elementary school or secondary school, who was not born in the United States or whose native language is not English, who may be a Native American, Alaska Native, or a resident of the outlying areas, or a migratory child whose native language is not English. The individual’s difficulties in speaking, reading, writing, or understanding English may not permit the individual to be proficient on state assessments.” (20 U. S. C. § 7801) For all NCLB definitions, see Appendix A in *Wrightslaw: No Child Left Behind*.

sistance under this title with the smallest student population, except that the school shall not be subject to the jurisdiction of any State educational agency other than the Bureau of Indian Affairs.

(20) Native Language. The term ‘**native language**’, when used with respect to an individual who is limited English proficient, means the language normally used by the individual or, in the case of a child, the language normally used by the parents of the child.

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

(22) Outlying Area. The term ‘**outlying area**’ means the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(23) Parent. The term ‘**parent**’ means—

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

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

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

(D) except as used in Sections 1415(b)(2) and 1439(a)(5), an individual assigned under either of those sections to be a surrogate parent.³⁷

(24) Parent Organization. The term ‘**parent organization**’ has the meaning given the term in Section 1471(g) of this title.

(25) Parent Training and Information Center. The term ‘**parent training and information center**’ means a center assisted under Section 1471 or 1472 of this title.

(26) Related Services.³⁸

(A) In General. The term ‘**related service**’ means transportation, and such developmental, corrective, and other supportive services (including speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, school nurse services³⁹ designed to enable a child with a disability to receive a free appropriate public education as described in the individualized education program of the child, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions in children.⁴⁰

37 The definition of “parent” was expanded to include natural, adoptive, and foster parents, guardians, individuals who act in the place of a parent, individuals who are legally responsible for the child, and surrogate parents. See Regulation 300.519 for the definition of “surrogate parent.”

38 Definitions of many related services are in Regulation 300.34(c).

39 “School nurse services” is a new and replaces “school health services” in IDEA 97.

40 Related services are services the child needs to benefit from special education. Compare the definitions of “related services” with “supplementary aids and services” (Section 1401(33)). Related services and supplementary services may include one-on-one tutoring or remediation of academic skills. The law does not require that a child be placed in a special education class in order to receive related services including tutoring or academic remediation.

(B) Exception. The term does not include a medical device that is surgically implanted, or the replacement of such device.⁴¹

(27) Secondary School. The term ‘secondary school’ means a nonprofit institutional day or residential school, including a public secondary charter school,⁴² that provides secondary education, as determined under State law, except that it does not include any education beyond grade 12.

(28) Secretary. The term ‘Secretary’ means the Secretary of Education.

(29) Special Education. The term ‘special education’ means **specially designed instruction**,⁴³ 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;⁴⁴ and

(B) instruction in physical education.

(30) Specific Learning Disability.

(A) In General. The term ‘specific learning disability’ means a disorder in 1 or more of the basic psychological processes involved in understanding or in using language, spoken or written, which disorder may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations.^{45, 46}

(B) Disorders Included. Such term **includes** such conditions as **perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia**.⁴⁷

(C) Disorders Not Included. Such term does not include a learning problem that is primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

(31) State. The term ‘State’ means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and each of the outlying areas.

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

(33) Supplementary Aids and Services. The term ‘supplementary aids and services’ means aids, services, and other supports that are provided in **regular education classes** or other education-related settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with Section 1412(a)(5) of this title.⁴⁸

41 The exclusion of surgically implanted medical devices tracks the exception in the definitions of “Assistive Technology Device” and “Assistive Technology Service.” While school districts are not responsible for surgically implanting devices, they may be responsible for corrective and supportive services. For example, schools may have to provide audiology services to operate, adjust and map cochlear implant devices.

42 For more information about charter schools, see Regulation 300.209.

43 The definition of “specially designed instruction” is in Regulation 300.39(b)(3).

44 Special education encompasses a range of services and may include one-on-one tutoring, intensive academic remediation, and 40-hour Applied Behavioral Analysis (ABA) programs. Special education is provided in a variety of settings, including the child’s home.

45 The definition of “specific learning disability” did not change.

46 For more about specific learning disabilities and discrepancy models, read Section 1414(b)(6).

47 The terms used to describe disabilities are those used during the 1970’s when Congress enacted Public Law 94-142. The term “minimal brain dysfunction” is “Attention Deficit Disorder.” “Dyslexia” is a language learning disability in reading, writing, spelling, and/or math. From a legal perspective, dyslexia is a learning disability that adversely affects educational performance.

48 Supplementary aids and services are provided in general education classes so children with disabilities can be educated with their non-disabled peers and participate in extra curricular and non-academic settings. See Regulations 300.42, 300.107, and 300.117. Compare “supplementary aids and services” with “related services” in Section 1401(26).

(34) Transition Services. The term ‘**transition services**’⁴⁹ means a coordinated set of activities for a child with a disability that—

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

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

(C) includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation.⁵⁰

(35) Universal Design. The term ‘**universal design**’ has the meaning given the term in Section 3002 in title 29.⁵¹

(36) Ward of the State.

(A) In General. The term ‘**ward of the State**’ means a child who, as determined by the State where the child resides, is a foster child, is a ward of the State, or is in the custody of a public child welfare agency.⁵²

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

20 U. S. C. § 1402. Office of Special Education Programs

WRIGHTSLAW OVERVIEW: This section authorizes the Office of Special Education Programs as the principal agency to administer the IDEA. The Secretary selects the Director who reports directly to the Assistant Secretary for Special Education and Rehabilitative Services.

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

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

(c) Voluntary and Uncompensated Services. Notwithstanding Section 1342 of title 31, United States Code, the Secretary is authorized to accept voluntary and uncompensated services in furtherance of the purposes of this title.

49 Remember the language in the “Purposes” about preparing disabled children for “further education.” See also the new language about IEPs in Sections 1414(d)(1)(A)(i)(VIII)(aa) and (bb) about “measurable postsecondary goals” and “courses of study” to reach those goals and Section 1400(c)(14) that describes “effective transition services to promote successful post-school ... education.”

50 The definition of transition services was changed to a “results-oriented process” that improves “the academic and functional achievement of the child with a disability” and facilitates the child’s transition from school to employment and further education. Transition services are based on the individual child’s needs and strengths.

51 The key concept in Universal Design, often called Universal Design for Learning, is that new curricular materials and learning technologies will be designed to be flexible to accommodate the unique learning styles of a wide range of individuals, including children with disabilities. Examples include accessible websites, electronic versions of textbooks and other materials; captioned and/or narrated videos; word processors with word prediction; and voice recognition. See www.nectac.org/topics/atech/udl.asp The definition of universal design is in the Assistive Technology Act at 29 U. S. C. § 3002(19).

52 “Ward of the State” is new in IDEA 2004. See also Section 1401(23) for the expanded definition of “parent” and Section 1414(a)(1)(D)(iii) about parental consent for children who are wards of the state.

20 U. S. C. § 1403. Abrogation of State Sovereign Immunity

WRIGHTSLAW OVERVIEW: States are not immune from suit in Federal court if they violate the IDEA.

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

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

(c) **Effective Date.** Subsections (a) and (b) apply with respect to violations that occur in whole or part after October 30, 1990.

20 U. S. C. § 1404. Acquisition of Equipment; Construction or Alteration of Facilities

WRIGHTSLAW OVERVIEW: The U.S. Department of Education may authorize funds to acquire equipment, construct new facilities, or alter existing facilities.

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

(b) **Compliance With Certain Regulations.** Any construction of new facilities or alteration of existing facilities under subsection (a) shall comply with the requirements of—

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

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

20 U. S. C. § 1405. Employment of Individuals with Disabilities

WRIGHTSLAW OVERVIEW: Recipients of funds must make positive efforts to employ individuals with disabilities.

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

20 U. S. C. § 1406. Requirements for Prescribing Regulations

WRIGHTSLAW OVERVIEW: The U.S. Department of Education is responsible for developing the federal special education regulations. After the Department publishes proposed regulations, there is a public comment period. Comments may be made in writing or at public meetings. After reviewing the comments, the Department publishes the Final Regulations. The federal special education regulations are published in the Federal Register (FR) and the Code of Federal Regulations (CFR) beginning at 34 CFR Part 300. New regulations may not lessen the protections in effect on July 20, 1983.

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

(b) **Protections Provided to Children.** The Secretary may not implement, or publish in final form, any regulation prescribed pursuant to this title that—

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

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

consent to initial evaluation or initial placement in special education, least restrictive environment, related services, timelines, attendance of evaluation personnel at individualized education program meetings, or qualifications of personnel), except to the extent that such regulation reflects the clear and unequivocal intent of Congress in legislation.⁵³

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

(d) **Policy Letters and Statements.** The Secretary may not issue policy letters or other statements (including letters or statements regarding issues of national significance) that—

- (1) violate or contradict any provision of this title; or
- (2) establish a rule that is required for compliance with, and eligibility under, this title without following the requirements of Section 553 of title 5, United States Code.

(e) **Explanation and Assurances.** Any written response by the Secretary under subsection (d) regarding a policy, question, or interpretation under part B shall include an explanation in the written response that—

- (1) such response is provided as informal guidance and is not legally binding;
- (2) when required, such response is issued in compliance with the requirements of Section 553 of title 5, United States Code; and
- (3) such response represents the interpretation by the Department of Education of the applicable statutory or regulatory requirements in the context of the specific facts presented.

(f) **Correspondence From Department of Education Describing Interpretations of This Title.**

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

(2) **Additional Information.** For each item of correspondence published in a list under paragraph (1), the Secretary shall—

- (A) identify the topic addressed by the correspondence and shall include such other summary information as the Secretary determines to be appropriate; and
- (B) ensure that all such correspondence is issued, where applicable, in compliance with the requirements of Section 553 of title 5, United States Code.

20 U. S. C. § 1407. State Administration

WRIGHTSLAW OVERVIEW: States must ensure that their rules, regulations, and policies conform to IDEA 2004.

(a) **Rulemaking.** Each State that receives funds under this title shall—

- (1) ensure that any State rules, regulations, and policies relating to this title conform to the purposes of this title;
- (2) identify in writing to local educational agencies located in the State and the Secretary **any such rule, regulation, or policy** as a State-imposed requirement that is **not required** by this title and Federal regulations; and
- (3) minimize the number of rules, regulations, and policies to which the local educational agencies and schools located in the State are subject under this title.

⁵³ The Department of Education may not publish regulations that lessen the protections provided in the 1983 regulations, unless this reflects the clear and unequivocal intent of Congress.

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

20 U. S. C. § 1408. Paperwork Reduction

WRIGHTSLAW OVERVIEW: This section about Paperwork Reduction is new in IDEA 2004. States may create pilot programs to reduce paperwork and other non-instructional burdens. The U. S. Department of Education may grant waivers to 15 States but may not waive procedural requirements under 20 U.S.C § 1415. Two years after IDEA is enacted, the Secretary must report to Congress on the effectiveness of these waivers.

(a) Pilot Program.

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

(2) Authorization.

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

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

(C) Rule of Construction. Nothing in this section shall be construed to—

- (i) affect the right of a child with a disability to receive a free appropriate public education under part B; and
- (ii) permit a State or local educational agency to waive procedural safeguards under Section 1415 of this title.

(3) Proposal.

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

(B) Content. The proposal shall include—

- (i) a list of any statutory requirements of, or regulatory requirements relating to, part B that the State desires the Secretary to waive, in whole or in part; and
- (ii) a list of any State requirements that the State proposes to waive or change, in whole or in part, to carry out a waiver granted to the State by the Secretary.

(4) Termination of Waiver. The Secretary shall terminate a State's waiver under this section if the Secretary determines that the State—

- (A) needs assistance under Section 1416(d)(2)(A)(ii) of this title and that the waiver has contributed to or caused such need for assistance;
- (B) needs intervention under Section 1416(d)(2)(A)(iii) of this title or needs substantial intervention under Section 1416(d)(2)(A)(iv) of this title; or
- (C) failed to appropriately implement its waiver.

(b) Report. Beginning 2 years after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2004, the Secretary shall include in the annual report to Congress submitted pursuant to Section 3486 of this title information related to the effectiveness of waivers granted under subsection (a), including

any specific recommendations for broader implementation of such waivers, in—

- (1) reducing –
 - (A) the paperwork burden on teachers, principals, administrators, and related service providers; and
 - (B) noninstructional time spent by teachers in complying with part B;
- (2) enhancing longer-term educational planning;
- (3) improving positive outcomes for children with disabilities;
- (4) promoting collaboration between IEP Team members; and
- (5) ensuring satisfaction of family members.

20 U. S. C. § 1409. Freely Associated States

WRIGHTSLAW OVERVIEW: Grants are available to the “Freely Associated States.”

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

End of Part A

Part B – Assistance for Education of All Children with Disabilities

WRIGHTSLAW OVERVIEW: Part B, Assistance for Education of All Children with Disabilities, governs special education for children between the ages of 3 and 21 and includes Sections 1411 through Section 1419 of Title 20 of the United States Code (U. S. C.).

- 20 U. S. C. § 1411. Authorization; allotment; use of funds; authorization of appropriations
- 20 U. S. C. § 1412. State eligibility
- 20 U. S. C. § 1413. Local educational agency eligibility
- 20 U. S. C. § 1414. Evaluations, eligibility determinations, IEPs, and educational placements
- 20 U. S. C. § 1415. Procedural safeguards
- 20 U. S. C. § 1416. Monitoring, technical assistance, and enforcement
- 20 U. S. C. § 1417. Administration
- 20 U. S. C. § 1418. Program information
- 20 U. S. C. § 1419. Preschool grants

For most readers, the key sections are Section 1412, Section 1414, and Section 1415. Section 1412 includes child find, least restrictive environment, unilateral placements, reimbursement, and state and district assessments. Section 1414 describes requirements for evaluations, reevaluations, consent, eligibility, IEPs, and placements. Section 1415 describes the rules of procedure designed to protect the rights of children with disabilities and their parents. These safeguards include the right to examine educational records and obtain an independent educational evaluation, and the legal requirements for prior written notice, procedural safeguards notice, due process complaint notice, due process hearings, resolution sessions, mediation, attorney's fees, and discipline.

20 U. S. C. § 1411. Authorization; Allotment; Use of Funds; Authorization of Appropriations.

WRIGHTSLAW OVERVIEW: Section 1411 provides funding formulas, ratios, definitions, and requirements. New in IDEA 2004 is the optional Local Educational Agency (LEA) Risk Pool in Section 1411(e)(3) that allows states to reserve up to 10% of funds for "risk pools" to address the "high need children" with disabilities. Funds in the risk pool may not be used for litigation expenses. The Regulations for Section 1411 begin at 300.700 through 300.717.

(a) Grants to States.

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

(2) Maximum amount. The **maximum amount** of the grant a State may receive under this section—

(A) for fiscal years 2005 and 2006 is—

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

(I) aged 3 through 5 if the State is eligible for a grant under Section 1419 of this title; and

(II) aged 6 through 21; multiplied by

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

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

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

(I) aged 3 through 5 if the State is eligible for a grant under Section 1419 of this title; and

(II) aged 6 through 21; multiplied by

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

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

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

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

(b) Outlying Areas and Freely Associated States, Secretary of the Interior.

(1) Outlying Areas and Freely Associated States.

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

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

(ii) to provide each freely associated State a grant in the amount that such freely associated State received for fiscal year 2003 under this part, but only if the freely associated State meets the applicable requirements of this part, as well as the requirements of Section 1411(b)(2)(C) of this title as such section was in effect on the day before the date of enactment of the Individuals with Disabilities Education Improvement Act of 2004.

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

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

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

(c) Technical Assistance.

(1) In General. The Secretary may reserve not more than 1/2 of 1 percent of the amounts appropriated under this part for each fiscal year to provide technical assistance activities authorized under Section 1416(i) of this title.

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

(d) Allocations to States.

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

(2) Special Rule for use of Fiscal Year 1999 Amount. If a State received any funds under this section for fiscal year 1999 on the basis of children aged 3 through 5, but does not make a free appropriate public education available to all children with disabilities aged 3 through 5 in the State in any subsequent fiscal year, the Secretary shall compute the State's amount for fiscal year 1999, solely for the purpose of calculating the State's allocation in that subsequent year under paragraph (3) or (4), by subtracting the amount allocated to the State for fiscal year 1999 on the basis of those children.

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

(A) Allocation of Increase.

(i) In General. Except as provided in subparagraph (B), the Secretary shall allocate for the fiscal year-

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

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

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

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

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

(i) Preceding Year Allocation. No State's allocation shall be less than its allocation under this section for the preceding fiscal year.

(ii) Minimum. No State's allocation shall be less than the greatest of-

(I) the sum of-

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

(bb) 1/3 of 1 percent of the amount by which the amount appropriated under subsection (i) for the fiscal year exceeds the amount appropriated for this section for fiscal year 1999;

(II) the sum of-

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

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

(III) the sum of-

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

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

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

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

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

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

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

(A) Amounts Greater than Fiscal Year 1999 Allocations. If the amount available for allocations is greater than the amount allocated to the States for fiscal year 1999, each State shall be allocated the sum of-

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

(ii) an amount that bears the same relation to any remaining funds as the increase the State received under this section for the preceding fiscal year over fiscal year 1999 bears to the total of all such increases for all States.

(B) Amounts Equal to or Less than Fiscal Year 1999 Allocations.

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

(ii) **Ratable Reduction.** If the amount available for allocations under this paragraph is insufficient to make the allocations described in clause (i), those allocations shall be ratably reduced.

(e) State Level Activities.

(1) State Administration.

(A) **In General.** For the purpose of administering this part, including paragraph (3), Section 1419 of this title, and the coordination of activities under this part with, and providing technical assistance to, other programs that provide services to children with disabilities—

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

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

(B) **Cumulative Annual Adjustments.** For each fiscal year beginning with fiscal year 2005, the Secretary shall cumulatively adjust

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

(ii) \$800,000, by the rate of inflation as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

(C) **Certification.** Prior to expenditure of funds under this paragraph, the State shall certify to the Secretary that the arrangements to establish responsibility for services pursuant to Section 1412(a)(12)(A) of this title are current.

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

(2) Other State Level Activities.

(A) State Level Activities.

(i) **In General.** Except as provided in clause (iii), for the purpose of carrying out State-level activities, each State may reserve for each of the fiscal years 2005 and 2006 not more than 10 percent from the amount of the State's allocation under subsection (d) for each of the fiscal years 2005 and 2006, respectively. For fiscal year 2007 and each subsequent fiscal year, the State may reserve the maximum amount the State was eligible to reserve under the preceding sentence for fiscal year 2006 (cumulatively adjusted by the rate of inflation as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor).

(ii) **Small State Adjustment.** Notwithstanding clause (i) and except as provided in clause (iii), in the case of a State for which the maximum amount reserved for State administration is not greater than \$850,000, the State may reserve for the purpose of carrying out State-level activities for each of the fiscal

years 2005 and 2006, not more than 10.5 percent from the amount of the State's allocation under subsection (d) for each of the fiscal years 2005 and 2006, respectively. For fiscal year 2007 and each subsequent fiscal year, such State may reserve the maximum amount the State was eligible to reserve under the preceding sentence for fiscal year 2006 (cumulatively adjusted by the rate of inflation as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor).

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

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

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

(B) Required Activities. Funds reserved under subparagraph (A) shall be used to carry out the following activities:

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

(ii) To establish and implement the mediation process required by section 1415(e) of this title, including providing for the cost of mediators and support personnel.

(C) Authorized Activities. Funds reserved under subparagraph (A) may be used to carry out the following activities:

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

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

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

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

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

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

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

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

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

(x) To support the development and provision of appropriate accommodations for children with disabilities, or the development and provision of alternate assessments that are valid and reliable for assessing the performance of children with disabilities, in accordance with Sections 6311(b) and 7301 of this title.

(xi) To provide technical assistance to schools and local educational agencies, and direct services, including supplemental educational services as defined in 6316(e) of the this title to children with disabilities, in schools or local educational agencies identified for improvement under Section 6316 of this title on the sole basis of the assessment results of the disaggregated subgroup of children with disabilities,

including providing professional development to special and regular education teachers, who teach children with disabilities, based on scientifically based research to improve educational instruction, in order to improve academic achievement to meet or exceed the objectives established by the State under Section 6311(b)(2)(G) of this title.

(3) Local Educational Agency Risk Pool.¹

(A) In General.

(i) Reservation of Funds. For the purpose of assisting local educational agencies (including a charter school that is a local educational agency or a consortium of local educational agencies) in addressing the needs of high need children with disabilities, each State shall have the option to reserve for each fiscal year 10 percent of the amount of funds the State reserves for State-level activities under paragraph (2)(A)–

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

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

(ii) Definition of Local Educational Agency. In this paragraph the term ‘local educational agency’ includes a charter school that is a local educational agency, or a consortium of local educational agencies.

(B) Limitation on Uses of Funds.

(i) Establishment of High Cost Fund. A State shall not use any of the funds the State reserves pursuant to subparagraph (A)(i), but may use the funds the State reserves under paragraph (1), to establish and support the high cost fund.

(ii) Innovative and Effective Cost Sharing. A State shall not use more than 5 percent of the funds the State reserves pursuant to subparagraph (A)(i) for each fiscal year to support innovative and effective ways of cost sharing among consortia of local educational agencies.

(C) State Plan for High Cost Fund.

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

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

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

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

(bb) ensures that the cost of the high need child with a disability is greater than 3 times the average per pupil expenditure (as defined in Section 7801 of the this title) in that State;

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

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

¹ The provision for risk pools to address the needs of “high need children with disabilities” is new. Funds in the risk pool may be disbursed for “innovative, effective ways of cost sharing” by districts and consortiums of districts. Funds in the risk pool may not be used to support litigation.

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

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

(D) Disbursements from the High Cost Fund.

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

(ii) Use of Disbursements. Each State educational agency shall make annual disbursements to eligible local educational agencies in accordance with its State plan under subparagraph (C)(ii).

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

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

(F) Assurance of a Free Appropriate Public Education.- Nothing in this paragraph shall be construed—

(i) to limit or condition the right of a child with a disability who is assisted under this part to receive a free appropriate public education pursuant to Section 1412(a)(1) of this title in the least restrictive environment pursuant to Section 1412(a)(5) of this title; or

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

(G) Special Rule for Risk Pool and High Need Assistance Programs in Effect as of January 1, 2004. Notwithstanding the provisions of subparagraphs (A) through (F), a State may use funds reserved pursuant to this paragraph for implementing a placement neutral cost sharing and reimbursement program of high need, low incidence, catastrophic, or extraordinary aid to local educational agencies that provides services to high need students based on eligibility criteria for such programs that were created not later than January 1, 2004, and are currently in operation, if such program serves children that meet the requirement of the definition of a high need child with a disability as described in subparagraph (C)(ii)(I).

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

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

(4) Inapplicability of Certain Prohibitions. A State may use funds the State reserves under paragraphs (1) and (2) without regard to—

(A) the prohibition on commingling of funds in Section 1412(a)(17)(B) of this title; and

(B) the prohibition on supplanting other funds in Section 1412(a)(17)(C) of this title.

(5) Report on Use of Funds. As part of the information required to be submitted to the Secretary under Section 1412 of this title, each State shall annually describe how amounts under this section—

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

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

(6) Special Rule for Increased Funds. A State may use funds the State reserves under paragraph (1)(A) as a result of inflationary increases under paragraph (1)(B) to carry out activities authorized under clause (i), (iii), (vii), or (viii) of paragraph (2)(C).

(7) Flexibility in Using Funds for Part C. Any State eligible to receive a grant under Section 1419 of this title may use funds made available under paragraph (1)(A), subsection (f)(3), or Section 1419(f)(5) of this title to develop and implement a State policy jointly with the lead agency under part C and the State educational agency to provide early intervention services (which shall include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills) in accordance with part C to children with disabilities who are eligible for services under Section 1419 of this title and who previously received services under part C until such children enter, or are eligible under State law to enter, kindergarten, or elementary school as appropriate.

(f) Subgrants to Local Educational Agencies.

(1) Subgrants Required. Each State that receives a grant under this section for any fiscal year shall distribute any funds the State does not reserve under subsection (e) to local educational agencies (including public charter schools that operate as local educational agencies) in the State that have established their eligibility under Section 1413 of this title for use in accordance with this part.

(2) Procedure for Allocations to Local Educational Agencies. For each fiscal year for which funds are allocated to States under subsection (d), each State shall allocate funds under paragraph (1) as follows:

(A) Base Payments. The State shall first award each local educational agency described in paragraph (1) the amount the local educational agency would have received under this section for fiscal year 1999, if the State had distributed 75 percent of its grant for that year under Section 1411(d) of this title as Section 1411(d) of this title was then in effect.

(B) Allocation of Remaining Funds. After making allocations under subparagraph (A), the State shall—

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

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

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

(g) Definitions. In this section:

(1) Average per Pupil Expenditure in Public Elementary Schools and Secondary Schools in the United States. The term 'average per-pupil expenditure in public elementary schools and secondary schools in the United States' means—

(A) without regard to the source of funds—

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

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

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

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

(h) Use of Amounts by Secretary of the Interior.**(1) Provision of Amounts for Assistance.**

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

- (i) 80 percent shall be allocated to such schools by July 1 of that fiscal year; and
- (ii) 20 percent shall be allocated to such schools by September 30 of that fiscal year.

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

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

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

(A) demonstrates that the Department of the Interior meets the appropriate requirements, as determined by the Secretary of Education, of Sections 1412 (including monitoring and evaluation activities) and 1413 of this title;

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

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

(D) includes an assurance that the Secretary of the Interior will provide such information as the Secretary of Education may require to comply with Section 1418 of this title;

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

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

(3) Applicability. The Secretary shall withhold payments under this subsection with respect to the information described in paragraph (2) in the same manner as the Secretary withholds payments under Section 1416(e)(6) of this title.

(4) Payments for Education and Services for Indian Children with Disabilities Aged 3 Through 5.

(A) In General. With funds appropriated under subsection (i), the Secretary of Education shall make payments to the Secretary of the Interior to be distributed to tribes or tribal organizations (as defined under Section 450b of title 25) or consortia of tribes or tribal organizations to provide for the coordination of as-

sistance for special education and related services for children with disabilities aged 3 through 5 on reservations served by elementary schools and secondary schools for Indian children operated or funded by the Department of the Interior. The amount of such payments under subparagraph (B) for any fiscal year shall be equal to 20 percent of the amount allotted under subsection (b)(2).

(B) Distribution of Funds. The Secretary of the Interior shall distribute the total amount of the payment under subparagraph (A) by allocating to each tribe, tribal organization, or consortium an amount based on the number of children with disabilities aged 3 through 5 residing on reservations as reported annually, divided by the total of those children served by all tribes or tribal organizations.

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

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

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

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

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

(6) Establishment of Advisory Board. To meet the requirements of Section 1412(a)(21) of this title, the Secretary of the Interior shall establish, under the BIA, an advisory board composed of individuals involved in or concerned with the education and provision of services to Indian infants, toddlers, children, and youth with disabilities, including Indians with disabilities, Indian parents or guardians of such children, teachers, service providers, State and local educational officials, representatives of tribes or tribal organizations, representatives from State Interagency Coordinating Councils under Section 1441 of this title in States having reservations, and other members representing the various divisions and entities of the BIA. The chairperson shall be selected by the Secretary of the Interior. The advisory board shall—

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

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

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

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

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

(7) Annual Reports.

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

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

(i) Authorizations of Appropriations. For the purpose of carrying out this part, other than Section 1419 of this title, there are authorized to be appropriated—

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

20 U. S. C. § 1412. State Eligibility.

WRIGHTSLAW OVERVIEW: Section 1412 about State Eligibility is often called the “Catch-All” statute because it includes a variety of diverse topics including child find, least restrictive environment, transition to preschool programs, equitable services for children in private schools, unilateral placements, tuition reimbursement, and assessments. Section 1412(a)(3) describes requirements for child find. Section 1412(a)(5) describes requirements for educating children with disabilities in the least restrictive environment (LRE). Section 1412(a)(10) explains services that must be provided to children who attend private schools and includes new requirements about consultation with private schools and equitable services for children who attend private schools. It also contains the requirements for unilateral placements by parents and tuition reimbursement. Section 1412(a)(11) clarifies that the state is ultimately responsible for programs operated by local school districts and ensuring that children with disabilities receive a free appropriate education. Section 1412(a)(14) describes requirements for highly qualified special education teachers. Section 1412(a)(16) includes new requirements about participating in assessments, accommodations guidelines, and alternate assessments. Section 1412(a)(23) includes requirements about access to instructional materials. Section 1412(a)(25) describes the new prohibition on mandatory medication. The Regulations for Section 1412 begin at Section 300.100 and continue to Section 300.198.

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

(1) Free Appropriate Public Education.

(A) In General. A free appropriate public education is available to all children with disabilities residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been

suspended or expelled from school.²

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

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

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

(I) **were not actually identified** as being a child with a disability under Section 1401 of this title; or

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

(C) State Flexibility. A State that provides early intervention services in accordance with part C to a child who is eligible for services under Section 1419 of this title, is not required to provide such child with a free appropriate public education.³

(2) Full Educational Opportunity Goal. The State has established a goal of providing full educational opportunity to all children with disabilities and a detailed timetable for accomplishing that goal.

(3) Child Find.

(A) In General. All children with disabilities residing in the State, including children with disabilities who are **homeless children** or are **wards of the State** and children with disabilities **attending private schools**, regardless of the severity of their disabilities, **and who are in need of special education and related services, are identified, located, and evaluated** and a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services.⁴

(B) Construction. Nothing in this title requires that children be classified by their disability so long as each child who has a disability listed in Section 1401 of this title and who, by reason of that disability, needs special education and related services is regarded as a child with a disability under this part.⁵

(4) Individualized Education Program. An individualized education program, or an individualized family service plan that meets the requirements of Section 1436(d) of this title, **is developed, reviewed, and revised for each child with a disability** in accordance with Section 1414(d) of this title.

(5) Least Restrictive Environment.

(A) In General. To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, **are educated with children who are not disabled**, and special classes, separate schooling, or other removal of children with disabilities from the regular educational

² All children who are eligible for special education services under IDEA are entitled to a free appropriate public education (FAPE), including children who have been suspended or expelled from school. Before Congress enacted Public Law 94-142, millions of children with disabilities were not allowed to attend public schools. (See Findings in Section 1400(c) and Discipline in Section 1415(k)).

³ See Section 1432(4)(B) which describes early intervention services that “are provided at no cost except where a federal or State law provides for a system for payments by families, including a schedule of sliding fees”

⁴ Child find requires school districts to identify, locate, and evaluate all children with disabilities, including children who are home schooled, homeless, wards of the state, and children who attend private schools. See also Section 1412(a)(10) regarding the child find requirements that public schools have regarding students who attend private schools, including consultations with private school officials.

⁵ If the child has a disability that adversely affects educational performance (i.e., the child is eligible for special education services under Section 1401(3) of IDEA) the school is not required to determine the child’s “label” or classification before it provides services. Schools often spend months performing evaluations before they provide any special education services. During this time, the child falls further behind. See also Section 1414(a)(1)(C)(i)(I) about the new 60 calendar day timeline between parental consent and completion of the evaluation process.

environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.⁶

(B) Additional Requirement.

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

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

(6) Procedural Safeguards.

(A) In General. Children with disabilities and their parents are afforded the procedural safeguards required by Section 1415 of this title.

(B) Additional Procedural Safeguards. Procedures to ensure that **testing and evaluation materials and procedures** utilized for the purposes of evaluation and placement of children with disabilities for services under this title will be selected and administered so as **not to be racially or culturally discriminatory**. Such materials or procedures shall be provided and **administered in the child’s native language or mode of communication**, unless it clearly is not feasible to do so, and **no single procedure shall be the sole criterion** for determining an appropriate educational program for a child.⁷

(7) Evaluation. Children with disabilities are evaluated in accordance with subsections (a) through (c) of Section 1414 of this title.

(8) Confidentiality. Agencies in the State comply with Section 1417(c) of this title (relating to the confidentiality of records and information).

(9) Transition from Part C to Preschool Programs. Children participating in early intervention programs assisted under part C, and who will participate in preschool programs assisted under this part, experience a **smooth and effective transition to those preschool programs** in a manner consistent with Section 1437(a)(9) of this title. By the third birthday of such a child, an individualized education program or, if consistent with Sections 1414(d)(2)(B) and 1436(d) of this title, an individualized family service plan, has been developed and is being implemented for the child. The local educational agency will participate in transition planning conferences arranged by the designated lead agency under Section 1435(a)(10) of this title.

(10) Children in Private Schools.

(A) Children Enrolled in Private Schools by Their Parents.

(i) In General. To the extent consistent with the number and location of **children with disabilities** in the State who are **enrolled by their parents in private elementary schools and secondary schools** in

⁶ The definition of “least restrictive environment” did not change. Judicial decisions about “mainstreaming,” “least restrictive environment” (LRE) and “inclusion” vary, even within the same state. Some districts claim the law requires them to mainstream all children with disabilities, even children who need individualized instruction that cannot be delivered in general education classrooms. In other districts, parents must fight to have their disabled child “included” in general education classes. The law takes a commonsense approach to this issue: children with disabilities should be educated with children who are not disabled “to the maximum extent appropriate.” However, children can receive one-to-one or small group instruction outside of regular classes if this is necessary for them to learn. The placement is to be as close to the child’s home as possible, preferably in the school the child would attend if non-disabled. See Regulation 300.116.

⁷ In “Findings” at Section 1400(c), Congress described the over-representation of minority children and limited English proficient children in special education. These children often do not perform as well on traditional measures of intelligence and educational achievement. The requirements that evaluations shall be administered in the child’s native language or mode of communication and that “no single procedure shall be the sole criterion” for determining an appropriate educational program, attempt to remedy evaluations that have caused minority children to be over-represented in special education.

the school district served by a local educational agency, **provision is made for the participation of those children in the program** assisted or carried out under this part by providing for such children special education and related services in accordance with the following requirements, unless the Secretary has arranged for services to those children under subsection (f):

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

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

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

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

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

(ii) Child Find Requirement.

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

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

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

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

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

(iii) Consultation. To ensure timely and meaningful consultation, a local educational agency, or where appropriate, a State educational agency, **shall consult with private school representatives and representatives of parents of parentally placed private school children with disabilities during the design and development of special education and related services for the children,**⁸ including regarding—

⁸ IDEA includes new requirements about consultation between public school and private school officials and equitable participation of children who attend private schools. The consultation process in Section 1412(a)(10)(A) includes written affirmation, compliance, complaints to the state by private schools, and the provision of equitable services to children who attend private schools. The language about consultation with “private school representatives and representatives of parents of parentally placed private school children” brings IDEA 2004 into conformity with No Child Left Behind. (20 U. S. C. § 6320)

(I) the child find process and how **parentally placed private school children suspected of having a disability can participate equitably**,⁹ including how parents, teachers, and private school officials will be informed of the process;

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

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

(IV) how, where, and by whom special education and related services will be provided for parentally placed private school children with disabilities, including a discussion of types of services, including direct services and alternate service delivery mechanisms, how such services will be apportioned if funds are insufficient to serve all children, and how and when these decisions will be made; and

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

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

(v) **Compliance.**

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

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

(vi) **Provision of Equitable Services.**

(I) **Directly or Through Contracts.** The provision of services pursuant to this subparagraph shall be provided

(aa) by employees of a public agency; or

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

⁹ “No parentally-placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school.” See Regulation 300.137 and Commentary in the *Federal Register*, page 46595.

(II) Secular, Neutral, Nonideological. Special education and related services provided to parentally placed private school children with disabilities, including materials and equipment, shall be secular, neutral, and nonideological.¹⁰

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

(B) Children Placed in, or Referred to, Private Schools by Public Agencies.

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

(ii) Standards. In all cases described in clause (i), the State educational agency shall determine whether such schools and facilities meet standards that apply to State educational agencies and local educational agencies and that children so served **have all the rights** the children would have if served by such agencies.¹¹

(C) Payment for Education of Children Enrolled in Private Schools Without Consent of or Referral by the Public Agency.

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

(ii) Reimbursement for Private School Placement. **If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private elementary school or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made a free appropriate public education available to the child in a timely manner prior to that enrollment.**¹²

(iii) Limitation on Reimbursement. The cost of reimbursement described in clause (ii) **may be reduced or denied—**

(I) if—

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

10 Court decisions about whether school districts must provide special education and related services at a child's private school differ around the country. Many courts have held that the public school must make these services available, but that services do not have to be provided at the private school.

11 If a public school places a child in a private school, the child has the same rights under IDEA as if the child attended a public school.

12 The law about reimbursement for unilateral parental placements in private schools did not change. If the parent removes the child from a public school program and places the child into a private program, the parent may be reimbursed for the costs of the private program if a hearing officer or court determines that the public school did not offer FAPE "in a timely manner."

(bb) **10 business days** (including any holidays that occur on a business day) **prior to the removal of the child** from the public school, the **parents did not give written notice** to the public agency of the information described in item (aa);¹³

(II) **if**, prior to the parents' removal of the child from the public school, the public agency **informed the parents**, through the notice requirements described in Section 1415(b)(3) of this title, **of its intent to evaluate the child** (including a statement of the purpose of the evaluation that was appropriate and reasonable), **but the parents did not make the child available for such evaluation**; or

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

(iv) **Exception.** Notwithstanding the notice requirement in clause (iii)(I), the cost of reimbursement

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

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

(bb) the parents had not received notice, pursuant to Section 1415 of this title, of the notice requirement in clause (iii)(I); or

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

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

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

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

(11) State Educational Agency Responsible for General Supervision.¹⁴

(A) In General. The State educational agency **is responsible for ensuring** that

(i) the requirements of this part are met;

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

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

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

(iii) in carrying out this part with respect to homeless children, the requirements of subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U. S. C. § 11431 *et seq.*) are met.¹⁵

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

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

(12) Obligations Related to and Methods of Ensuring Services—

(A) Establishing Responsibility for Services. The Chief Executive Officer of a State or designee of the officer shall ensure that an interagency agreement or other mechanism for interagency coordination is in ef-

¹³ Sample letters about the 10 business day notice of removal are in *Wrightslaw: From Emotions to Advocacy*.

¹⁴ State departments of education (SEAs) are responsible for supervising school districts (LEAs). State complaint procedures are described in Regulation 300.151 through 300.153. Many state departments of education view their role as a source of funding, technical assistance and training, not as an enforcement agency. In lawsuits, States often argue that they have sovereign immunity despite the clear opposite language in Section 1403, Abrogation of Sovereign Immunity.

¹⁵ See Chapter 10 for the full text of the McKinney-Vento Homeless Act.

fect between each public agency described in subparagraph (B) and the State educational agency, in order to ensure that all services described in subparagraph (B)(i) that are needed to ensure a free appropriate public education are provided, including the provision of such services during the pendency of any dispute under clause (iii). Such agreement or mechanism shall include the following:

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

(ii) **Conditions and Terms of Reimbursement.** The conditions, terms, and procedures under which a local educational agency shall be reimbursed by other agencies.

(iii) **Interagency Disputes.** Procedures for resolving interagency disputes (including procedures under which local educational agencies may initiate proceedings) under the agreement or other mechanism to secure reimbursement from other agencies or otherwise implement the provisions of the agreement or mechanism.

(iv) **Coordination of Services Procedures.** Policies and procedures for agencies to determine and identify the interagency coordination responsibilities of each agency to promote the coordination and timely and appropriate delivery of services described in subparagraph (B)(i).

(B) Obligation of Public Agency.

(i) **In General.** If any public agency other than an educational agency is otherwise obligated under Federal or State law, or assigned responsibility under State policy pursuant to subparagraph (A), to provide or pay for any services that are also considered special education or related services (such as, but not limited to, services described in Section 1401(1) of this title relating to assistive technology devices, 1401(2) of this title relating to assistive technology services, 1401(26) of this title relating to related services, 1401(33) of this title relating to supplementary aids and services, and 1401(34) of this title relating to transition services) that are necessary for ensuring a free appropriate public education to children with disabilities within the State, such public agency shall fulfill that obligation or responsibility, either directly or through contract or other arrangement pursuant to subparagraph (A) or an agreement pursuant to subparagraph (C).

(ii) **Reimbursement for Services by Public Agency.** If a public agency other than an educational agency fails to provide or pay for the special education and related services described in clause (i), the local educational agency (or State agency responsible for developing the child's IEP) shall provide or pay for such services to the child.¹⁶ Such local educational agency or State agency is authorized to claim reimbursement for the services from the public agency that failed to provide or pay for such services and such public agency shall reimburse the local educational agency or State agency pursuant to the terms of the interagency agreement or other mechanism described in subparagraph (A)(i) according to the procedures established in such agreement pursuant to subparagraph (A)(ii).

(C) Special Rule. The requirements of subparagraph (A) may be met through—

- (i) State statute or regulation;
- (ii) signed agreements between respective agency officials that clearly identify the responsibilities of each agency relating to the provision of services; or
- (iii) other appropriate written methods as determined by the Chief Executive Officer of the State or designee of the officer and approved by the Secretary.

¹⁶ When other public agencies are responsible for providing services, they must comply with this section. Because IDEA focuses on the transition from school to work and further education, state Departments of Vocational Rehabilitation or other agencies may be responsible for providing services.

(13) Procedural Requirements Relating to Local Educational Agency Eligibility. The State educational agency will not make a final determination that a local educational agency is not eligible for assistance under this part without first affording that agency reasonable notice and an opportunity for a hearing.

(14) Personnel Qualifications.¹⁷

(A) In General. The State educational agency has established and maintains qualifications to ensure that personnel necessary to carry out this part are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities.¹⁸

(B) Related Services Personnel and Paraprofessionals. The qualifications under subparagraph (A) include qualifications for related services personnel and paraprofessionals that

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

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

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

(C) Qualifications for Special Education Teachers. The qualifications described in subparagraph (A) shall ensure that each person employed as a **special education teacher** in the State who teaches elementary school, middle school, or secondary school is **highly qualified** by the deadline established in Section 6319(a)(2) of this title.¹⁹

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

(E) Rule of Construction. Notwithstanding any other individual right of action that a parent or student may maintain under this part, **nothing** in this paragraph **shall be construed to create a right of action on behalf of an individual student** for the failure of a particular State educational agency or local educational agency staff person to be highly qualified, or to prevent a parent from filing a complaint about staff qualifications with the State educational agency as provided for under this part.²⁰

(15) Performance Goals and Indicators. The State-

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

(i) promote the purposes of this title, as stated in Section 1400(d) of this title;

(ii) are the same as the State's definition of **adequate yearly progress**, including the State's objectives

¹⁷ The requirements about the qualifications of special education teachers in Section 1412(a)(14) are new and track the highly qualified teacher requirements in No Child Left Behind. (20 U. S. C. § 6319) Teachers of core academic subjects must be highly qualified by the end of the 2005-2006 school year. (NCLB, 20 U. S. C. § 6319 (a)(2)) The requirements for related services personnel and paraprofessionals did not change in IDEA 2004.

¹⁸ The law requires states to take measurable steps "to recruit, hire, train, and retain highly qualified personnel to provide special education and related services." (Section 1412(a)(14)(D))

¹⁹ For more information about requirements for teachers and paraprofessionals, read Chapter 6, "NCLB for Teachers, Principals and Paraprofessionals" in *Wrightslaw: No Child Left Behind*.

²⁰ There is no right of action (i.e., no right to sue a state or school district) because a teacher is not highly qualified, but this may be evidence that an IEP is not appropriate or that a teacher is not adequately trained to implement the IEP. Parents may file complaints about inadequately trained teachers with the State Department of Education.

for progress by children with disabilities, under Section 6311(b)(2)(C) of this title;

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

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

(B) has established performance indicators the State will use to assess progress toward achieving the goals described in subparagraph (A), including **measurable annual objectives for progress** by children with disabilities under Section 6311(b)(2)(C)(v)(II)(cc) of this title;

(C) will annually report to the Secretary and the public on the progress of the State, and of children with disabilities in the State, toward meeting the goals established under subparagraph (A), which may include elements of the reports required under Section 6311(h) of this title.

(16) Participation in Assessments.²¹

(A) In General. All children with disabilities are included in **all** general State and districtwide **assessment programs**, including assessments described under Section 6311 of this title, with **appropriate accommodations and alternate assessments where necessary** and as indicated in their respective individualized education programs.²²

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

(C) Alternate Assessments.²³

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

(ii) Requirements for Alternate Assessments. The guidelines under clause (i) shall provide for alternate assessments that

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

(II) if the State has adopted alternate academic achievement standards permitted under the regulations promulgated to carry out Section 6311(b)(1) of this title, measure the achievement of children with disabilities against those standards.

(iii) Conduct of Alternate Assessments. The State conducts the alternate assessments described in this subparagraph.

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

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

(ii) The number of children with disabilities participating in alternate assessments described in sub-

21 Section 1414(a)(16) was changed to: "**All** children with disabilities are included in **all** general State and districtwide assessment programs . . . **with appropriate accommodations** . . ." IDEA describes requirements for accommodation guidelines and alternate assessments.

22 The requirement that school districts include all children with disabilities in all State and district assessments may have a negative impact on schools that fail to use research-based methods to teach children with disabilities to read, write, and do arithmetic and who fail to assess progress frequently.

23 See the chapters about Alternate Assessments in the *Toolkit on Teaching and Assessing Students with Disabilities* (2006) from the U. S. Department of Education. URL: www.osepideasthatwork.org/toolkit/index.asp (Last visited on September 19, 2006)

paragraph (C)(ii)(I).

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

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

(E) Universal Design. The State educational agency (or, in the case of a districtwide assessment, the local educational agency) shall, to the extent feasible, use universal design principles in developing and administering any assessments under this paragraph.²⁴

(17) Supplementation of State, Local, and Other Federal Funds.

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

(B) Prohibition Against Commingling. Funds paid to a State under this part will not be commingled with State funds.

(C) Prohibition Against Supplantation and Conditions for Waiver by Secretary. Except as provided in Section 1413 of this title, funds paid to a State under this part will be used to supplement the level of Federal, State, and local funds (including funds that are not under the direct control of State or local educational agencies) expended for special education and related services provided to children with disabilities under this part and in no case to supplant such Federal, State, and local funds, except that, where the State provides clear and convincing evidence that all children with disabilities have available to them a free appropriate public education, the Secretary may waive, in whole or in part, the requirements of this subparagraph if the Secretary concurs with the evidence provided by the State.

(18) Maintenance of State Financial Support.

(A) In General. The State does not reduce the amount of State financial support for special education and related services for children with disabilities, or otherwise made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year.

(B) Reduction of Funds for Failure to Maintain Support. The Secretary shall reduce the allocation of funds under Section 1411 of this title for any fiscal year following the fiscal year in which the State fails to comply with the requirement of subparagraph (A) by the same amount by which the State fails to meet the requirement.

(C) Waivers for Exceptional or Uncontrollable Circumstances. The Secretary may waive the requirement of subparagraph (A) for a State, for 1 fiscal year at a time, if the Secretary determines that

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

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

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

²⁴ The definition of Universal Design is in Section 1401(35). "The term 'universal design' is a philosophy for designing and delivering products and services that are usable by people with the widest range of functional capabilities. This includes products and services that are directly accessible (without requiring assistive technologies) and that are interoperable with assistive technologies." See Section 3(17) of Assistive Technology Act of 1998. (Retrieved from www.nectac.org/topics/atech/udl.asp)

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

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

(21) State Advisory Panel.²⁵

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

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

- (i) parents of children with disabilities (ages birth through 26);
- (ii) individuals with disabilities;
- (iii) teachers;
- (iv) representatives of institutions of higher education that prepare special education and related services personnel;
- (v) State and local education officials, including officials who carry out activities under subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U. S. C. 11431 et seq.);
- (vi) administrators of programs for children with disabilities;
- (vii) representatives of other State agencies involved in the financing or delivery of related services to children with disabilities;
- (viii) representatives of private schools and public charter schools;
- (ix) not less than 1 representative of a vocational, community, or business organization concerned with the provision of transition services to children with disabilities;
- (x) a representative from the State child welfare agency responsible for foster care; and
- (xi) representatives from the State juvenile and adult corrections agencies.

(C) Special Rule. A **majority** of the members of the panel **shall** be individuals with disabilities or parents of children with disabilities (ages birth through 26).

(D) Duties. The advisory panel shall—

- (i) advise the State educational agency of unmet needs within the State in the education of children with disabilities;
- (ii) comment publicly on any rules or regulations proposed by the State regarding the education of children with disabilities;
- (iii) advise the State educational agency in developing evaluations and reporting on data to the Secretary under Section 1418 of this title;
- (iv) advise the State educational agency in developing corrective action plans to address findings identified in Federal monitoring reports under this part; and

²⁵ The majority of the members of state advisory panels shall be individuals with disabilities or parents of children with disabilities. Other members include representatives from private and charter schools, child welfare agencies, and corrections agencies.

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

(22) Suspension and Expulsion Rates.

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

- (i) among local educational agencies in the State; or
- (ii) compared to such rates for nondisabled children within such agencies.

(B) Review and Revision of Policies. If such discrepancies are occurring, the State educational agency reviews and, if appropriate, revises (or requires the affected State or local educational agency to revise) its **policies, procedures, and practices relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards**, to ensure that such policies, procedures, and practices comply with this title.

(23) Access to Instructional Materials.²⁶

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

(B) Rights of State Educational Agency. Nothing in this paragraph shall be construed to require any State educational agency to coordinate with the National Instructional Materials Access Center. If a State educational agency chooses not to coordinate with the National Instructional Materials Access Center, such agency shall provide an assurance to the Secretary that the agency **will provide instructional materials to blind persons or other persons with print disabilities in a timely manner**.

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

- (i) require the publisher to prepare and, on or before delivery of the print instructional materials, provide to the National Instructional Materials Access Center electronic files containing the contents of the print instructional materials using the National Instructional Materials Accessibility Standard; or
- (ii) purchase instructional materials from the publisher that are produced in, or may be rendered in, specialized formats.

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

(E) Definitions. In this paragraph:

(i) National Instructional Materials Access Center. The term ‘National Instructional Materials Access Center’ means the center established pursuant to Section 1474(e) of this title.

(ii) National Instructional Materials Accessibility Standard. The term ‘National Instructional

²⁶ The requirements about access to instructional materials and accessibility standards are new in IDEA 2004.

Materials Accessibility Standard' has the meaning given the term in Section 1474(e)(3)(A) of this title.²⁷

(iii) **Specialized Formats.** The term 'specialized formats' has the meaning given the term in Section 1474(e)(3)(D) of this title.

(24) **Overidentification and Disproportionality.**²⁸ The State has in effect, consistent with the purposes of this title and with Section 1418(d) of this title, **policies and procedures designed to prevent the inappropriate overidentification or disproportionate representation by race and ethnicity** of children as children with disabilities, including children with disabilities with a particular impairment described in Section 1401 of this title.

(25) **Prohibition on Mandatory Medication.**²⁹

(A) **In General.** The State educational agency **shall prohibit** State and local educational agency personnel from **requiring a child to obtain a prescription for a substance covered by the Controlled Substances Act** (21 U. S. C. 801 et seq.) **as a condition of attending school, receiving an evaluation** under subsection (a) or (c) of Section 1414 of this title, **or receiving services** under this title.

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

(b) **State Educational Agency as Provider of Free Appropriate Public Education or Direct Services.** If the State educational agency provides free appropriate public education to children with disabilities, or provides direct services to such children, such agency—

(1) shall comply with any additional requirements of Section 1413(a) of this title, 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 1413(a)(2)(A)(i) of this title (relating to excess costs).

(c) **Exception for Prior State Plans.**

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

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

(3) **Modifications Required by the Secretary.** If, after the effective date of the Individuals with Disabilities

27 The National Instructional Materials Accessibility Standard (NIMAS) provides a system to produce and distribute digital versions of textbooks and other instructional materials that can be converted to accessible formats. IDEA requires that all textbooks and supplemental curricular materials be provided as NIMAS files by mid-December 2006. The American Printing House for the Blind is the coordinating agency and the Center for Applied Special Technology (CAST) is providing technical support. See <http://nimas.cast.org> and www.ahead.org

28 This section about Overidentification and Disproportionality is new. In Findings, Congress found that "African-American children are identified as having mental retardation and emotional disturbance at rates greater than their White counterparts. Schools with predominately white students and teachers have placed disproportionately high numbers of their minority students into special education." (Section 1400(c)(12)(C)). States must develop policies and procedures to correct these problems.

29 The requirements that prohibit school personnel from requiring a child to obtain a prescription for a controlled substance (i.e., Ritalin, Adderal, etc.) in order to attend school, receive an evaluation, or receive special education services are new.

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

(d) Approval by the Secretary.

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

(2) Notice and Hearing. The Secretary shall not make a final determination that a State is not eligible to receive a grant under this part until after providing the State—

(A) with reasonable notice; and

(B) with an opportunity for a hearing.

(e) Assistance Under Other Federal Programs. Nothing in this title permits a State to reduce medical and other assistance available, or to alter eligibility, under titles V and XIX of the Social Security Act with respect to the provision of a free appropriate public education for children with disabilities in the State.

(f) By-Pass for Children in Private Schools.

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

(2) Payments.

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

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

(ii) the number of children with disabilities served in the prior year, as reported to the Secretary by the State under Section 1418 of this title.

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

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

(3) Notice and Hearing.

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

(B) Review of Action. If a State educational agency is dissatisfied with the Secretary's final action after a

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

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

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

20 U. S. C. § 1413. Local Educational Agency Eligibility.

WRIGHTSLAW OVERVIEW: Section 1413 includes requirements for school district (LEA) and charter school eligibility. This section includes new requirements about purchasing instructional materials, records of migratory children, and early intervening services. School districts must provide services to children with disabilities who attend charter schools in the same manner as children who attend other public schools, and must provide supplementary services and related services on site at the charter school. Section 1413(a)(6) describes new requirements about access to instructional materials and the option of coordinating with the National Instructional Materials Access Center. Section 1413(f) describes new requirements for early intervening services. If a school district does not comply with the law, States can provide direct services.

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

(1) **Consistency With State Policies.** The local educational agency, in providing for the education of children with disabilities within its jurisdiction, has in effect policies, procedures, and programs that are consistent with the State policies and procedures established under Section 1412 of this title.

(2) **Use of Amounts.**

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

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

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

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

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

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

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

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

(I) has left the jurisdiction of the agency;

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

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

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

(C) Adjustment to Local Fiscal Effort in Certain Fiscal Years.

(i) Amounts in Excess. Notwithstanding clauses (ii) and (iii) of subparagraph (A), for any fiscal year for which the allocation received by a local educational agency under Section 1411(f) of this title exceeds the amount the local educational agency received for the previous fiscal year, the local educational agency may reduce the level of expenditures otherwise required by subparagraph (A)(iii) by not more than 50 percent of the amount of such excess.

(ii) Use of Amounts to Carry Out Activities Under ESEA. If a local educational agency exercises the authority under clause (i), the agency shall use an amount of local funds equal to the reduction in expenditures under clause (i) to carry out activities authorized under the Elementary and Secondary Education Act of 1965. [20 U. S. C. § 6301 *et seq.*]

(iii) State Prohibition. Notwithstanding clause (i), if a State educational agency determines that a local educational agency is unable to establish and maintain programs of free appropriate public education that meet the requirements of subsection (a) or the State educational agency has taken action against the local educational agency under Section 1416 of this title, the State educational agency shall prohibit the local educational agency from reducing the level of expenditures under clause (i) for that fiscal year.

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

(D) Schoolwide Programs Under Title I of the ESEA.³⁰ Notwithstanding subparagraph (A) or any other provision of this part, a local educational agency may use funds received under this part for any fiscal year to carry out a schoolwide program under Section 6314 of this title, except that the amount so used in any such program shall not exceed—

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

(ii)

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

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

(3) Personnel Development. The local educational agency **shall ensure that all personnel** necessary to carry out this part **are appropriately and adequately prepared**, subject to the requirements of Section 1412(a)(14) of this title and Section 6622 of this title.

(4) Permissive Use of Funds.

(A) Uses. Notwithstanding paragraph (2)(A) or Section 1412(a)(17)(B) of this title (relating to commingled funds), funds provided to the local educational agency under this part may be used for the following activities:

³⁰ ESEA is also known as “No Child Left Behind.” For the full text of 20 U. S. C. § 6314, see *Wrightslaw: No Child Left Behind*.

(i) **Services and Aids That Also Benefit Nondisabled Children.** For the costs of special education and related services, and supplementary aids and services, provided in a regular class or other education-related setting to a child with a disability in accordance with the individualized education program of the child, even if 1 or more nondisabled children benefit from such services.

(ii) **Early Intervening Services.** To develop and implement coordinated, early intervening educational services in accordance with subsection (f).

(iii) **High Cost Education and Related Services.** To establish and implement cost or risk sharing funds, consortia, or cooperatives for the local educational agency itself, or for local educational agencies working in a consortium of which the local educational agency is a part, **to pay for high cost special education and related services.**

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

(5) **Treatment of Charter Schools³¹ and Their Students.** In carrying out this part with respect to charter schools that are public schools of the local educational agency, the local educational agency—

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

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

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

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

(6) **Purchase of Instructional Materials.**

(A) **In General.** Not later than **2 years** after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2004, a local educational agency that chooses to coordinate with the National Instructional Materials Access Center, when purchasing print instructional materials, shall acquire the print instructional materials in the same manner and subject to the same conditions as a State educational agency acquires print instructional materials under Section 1412(a)(23) of this title.

(B) **Rights of Local Educational Agency.** Nothing in this paragraph shall be construed to require a local educational agency to coordinate with the National Instructional Materials Access Center. If a local educational agency chooses not to coordinate with the National Instructional Materials Access Center, the local educational agency shall provide an assurance to the State educational agency that the local educational agency will provide instructional materials to blind persons or other persons with print disabilities in a timely manner.

(7) **Information for State Educational Agency.** The local educational agency shall provide the State educational agency with information necessary to enable the State educational agency to carry out its duties under this part, including, with respect to paragraphs (15) and (16) of Section 1412(a) of this title, information relating to the performance of children with disabilities participating in programs carried out under this part.

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

³¹ For more information about charter schools, see Regulation 300.209.

(9) Records Regarding Migratory Children with Disabilities. The local educational agency shall cooperate in the Secretary's efforts under Section 6398 of this title to ensure the linkage of records pertaining to migratory children with a disability for the purpose of electronically exchanging, among the States, health and educational information regarding such children.

(b) Exception for Prior Local Plans.

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

(2) Modification Made by Local Educational Agency. Subject to paragraph (3), an application submitted by a local educational agency in accordance with this section shall remain in effect until the local educational agency submits to the State educational agency such modifications as the local educational agency determines necessary.

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

(c) Notification of Local Educational Agency or State Agency in Case of Ineligibility. If the State educational agency determines that a local educational agency or State agency is not eligible under this section, then the State educational agency shall notify the local educational agency or State agency, as the case may be, of that determination and shall provide such local educational agency or State agency with reasonable notice and an opportunity for a hearing.

(d) Local Educational Agency Compliance.³²

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

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

(3) Consideration. In carrying out its responsibilities under paragraph (1), the State educational agency **shall consider any decision made in a hearing held under Section 1415** of this title that is adverse to the local educational agency or State agency involved in that decision.³³

(e) Joint Establishment of Eligibility.

(1) Joint Establishment.

(A) In General. A State educational agency may require a local educational agency to establish its eligibility jointly with another local educational agency if the State educational agency determines that the local educational agency will be ineligible under this section because the local educational agency will not be able

³² If a school district fails to comply with the requirements described in Section 1413(a), the State must eliminate payments until the district is in compliance. This requirement is not discretionary.

³³ In determining compliance with the law and whether to withhold funds, the State **shall** consider due process decisions that are adverse to the LEA.

to establish and maintain programs of sufficient size and scope to effectively meet the needs of children with disabilities.

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

(2) Amount of Payments. If a State educational agency requires the joint establishment of eligibility under paragraph (1), the total amount of funds made available to the affected local educational agencies shall be equal to the sum of the payments that each such local educational agency would have received under Section 1411(f) of this title 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 1412(a) of this title; 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 1412(a)(5) of this title.

(f) Early Intervening Services.³⁴

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

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

(A) **professional development** (which may be provided by entities other than local educational agencies) for teachers and other school staff to enable such personnel to deliver **scientifically based academic instruction and behavioral interventions**, including **scientifically based literacy instruction**,³⁵ and, where appropriate, instruction on the use of adaptive and instructional software; and

³⁴ The new requirements for early intervening services reflect the requirement to use “proven methods of teaching and learning” based on “replicable research.” (See Findings, Section 1400(c)(4)). School districts may use **up to 15 percent** of their funds from Part B to develop and implement early intervening services for students who need academic and behavioral assistance but have not been identified as needing special education services. Funds can be used for training so teachers have the knowledge and skills to deliver scientifically based academic instruction and literacy instruction. Funds can also be used to provide students with educational evaluations, services and supports, including scientifically based literacy instruction.

³⁵ The definitions of reading, scientifically based reading research, the essential components of reading instruction, and screening, diagnostic, and classroom-based reading assessments are in No Child Left Behind at 20 U. S. C. Section 6368. (See *Wrightslaw: No Child Left Behind*)

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

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

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

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

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

(5) **Coordination with Elementary and Secondary Education Act of 1965.** Funds made available to carry out this subsection may be used to carry out coordinated, early intervening services aligned with activities funded by, and carried out under, the Elementary and Secondary Education Act of 1965 if such funds are used to supplement, and not supplant, funds made available under the Elementary and Secondary Education Act of 1965 for the activities and services assisted under this subsection.

(g) Direct Services by the State Educational Agency.

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

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

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

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

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

(2) **Manner and Location of Education and Services.** The State educational agency may provide special education and related services under paragraph (1) in such manner and at such locations (including regional or State centers) as the State educational agency considers appropriate. Such education and services shall be provided in accordance with this part.

(h) **State Agency Eligibility.** Any State agency that desires to receive a subgrant for any fiscal year under Section 1411(f) of this title shall demonstrate to the satisfaction of the State educational agency that —

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

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

(i) **Disciplinary Information.** The State may require that a local educational agency include in the records of a child with a disability a statement of **any current or previous disciplinary action** that has been taken against the child and transmit such statement to the same extent that such disciplinary information is included in, and transmitted with, the student records of nondisabled children. The statement may include a description of any behavior engaged in by the child that required disciplinary action, a description of the disciplinary action taken, and any other information that is relevant to the safety of the child and other individuals involved with the child. If the State adopts such a policy, and the child transfers from 1 school to another, the transmission of any of the child's records

shall include both the child's current individualized education program and any such statement of current or previous disciplinary action that has been taken against the child.

(j) State Agency Flexibility.

(1) Adjustment to State Fiscal Effort in Certain Fiscal Years. For any fiscal year for which the allotment received by a State under Section 1411 of this title exceeds the amount the State received for the previous fiscal year and if the State in school year 2003-2004 or any subsequent school year pays or reimburses all local educational agencies within the State from State revenue 100 percent of the non-Federal share of the costs of special education and related services, the State educational agency, notwithstanding paragraphs (17) and (18) of Section 1412(a) of this title and Section 1412(b) of this title, may reduce the level of expenditures from State sources for the education of children with disabilities by not more than 50 percent of the amount of such excess.

(2) Prohibition. Notwithstanding paragraph (1), if the Secretary determines that a State educational agency is unable to establish, maintain, or oversee programs of free appropriate public education that meet the requirements of this part, or that the State needs assistance, intervention, or substantial intervention under Section 1416(d)(2)(A) of this title, the Secretary shall prohibit the State educational agency from exercising the authority in paragraph (1).

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

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

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

20 U. S. C. § 1414. Evaluations, Eligibility Determinations, Individualized Education Programs, and Educational Placements.

WRIGHTSLAW OVERVIEW: Section 1414 includes requirements for evaluations, reevaluations, eligibility, Individualized Education Programs, and educational placements. Section 1414(a) describes new requirements for initial evaluations, parental consent, the new 60-day timeline to complete evaluations, and new limits on reevaluations. Section 1414(b) describes evaluation procedures, new requirements about determining educational needs, and the movement away from using discrepancy models to identify children with specific learning disabilities. Section 1414(c) states that schools must review evaluations and information provided by parents and that schools must reevaluate a child before terminating eligibility, with two exceptions. IDEA 2004 made significant changes in Section 1414(d) about Individualized Education Programs (IEPs), IEP Team members, meeting attendance, consolidated meetings, and reviewing and revising IEPs. Section 1414(e) clarifies that the parent is a member of any group that makes decisions about a child's educational placement. Section 1414(f) is new and describes alternate means of participating in meetings. The Regulations about evaluations start at 300.300 and Commentary in the *Federal Register*, page 46629. The Regulations about IEPs start at 300.320 and Commentary in the *Federal Register*, page 46661.

(a) Evaluations, Parental Consent, and Reevaluations.

(1) Initial Evaluations.³⁶

³⁶ Section 1414(a)(1)(B) is new and states that the parents, the state department of education, other state agencies, and the school district may request an initial evaluation.

(A) In General. A State educational agency, other State agency, or local educational agency **shall conduct a full and individual initial evaluation** in accordance with this paragraph and subsection (b), before the initial provision of special education and related services to a child with a disability under this part.

(B) Request for Initial Evaluation.³⁷ Consistent with subparagraph (D), either a **parent** of a child,³⁸ or a State educational agency, other State agency, or local educational agency **may initiate a request for an initial evaluation** to determine if the child is a child with a disability.³⁹

(C) Procedures.

(i) In General. Such initial evaluation shall consist of procedures—

(I) to determine whether a child is a child with a disability (as defined in Section 1401 of this title) **within 60 days of receiving parental consent** for the evaluation,⁴⁰ **or**, if the State establishes a timeframe within which the evaluation must be conducted, within such timeframe;⁴¹ and

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

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

(I) a child enrolls in a school served by the local educational agency after the relevant timeframe in clause (i)(I) has begun and prior to a determination by the child's previous local educational agency as to whether the child is a child with a disability (as defined in Section 1401 of this title), but only if the subsequent local educational agency is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent local educational agency agree to a specific time when the evaluation will be completed; or

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

(D) Parental Consent.⁴²

(i) In General.

(I) Consent for Initial Evaluation. The agency proposing to conduct an initial evaluation to determine if the child qualifies as a child with a disability as defined in Section 1401 of this title **shall obtain informed consent from the parent**⁴³ of such child before conducting the evaluation. Parental consent for evaluation **shall not** be construed as consent for placement for receipt of special education and related services.

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

37 If a parent requests an evaluation and the LEA refuses, the LEA must provide Prior Written Notice (PWN). See Section 1415(c)(1) and the Commentary in the *Federal Register*, page 46636.

38 For sample letters, including a letter to request an evaluation for special education services, see *Wrightslaw: From Emotions to Advocacy*.

39 A “child with a disability” is defined in Section 1401(3) in the statute and in Regulation 300.8.

40 IDEA 2004 includes a new requirement that initial evaluations and eligibility be completed within 60 days of receiving parental consent. When federal law and regulations create a timeline of “days,” per Regulation 300.11, this means calendar days (not school days) unless the law or regulation specifies an alternative. Earlier reauthorizations of IDEA did not include a timeline, so some states adopted very long timelines, leading to delays that prevented children from receiving the services they needed. You need to check your State regulations for the timeline.

41 Some states have established timeframes beyond 60 calendar days. You need to check your state's regulations on this issue.

42 The school must obtain parental consent before conducting the initial evaluation. Parental consent for an evaluation is not consent for the child to receive special education services. For information about consent, see Regulation 300.9. For information about initial evaluations, see Regulation 300.301. The school must obtain informed parental consent before providing special education services.

43 The definitions of “parent” and “foster parent” are at Section 1401(23). The definition of “ward of the state” is at Section 1401(36).

(ii) Absence of Consent.⁴⁴

(I) For Initial Evaluation. If the parent of such child **does not provide consent for an initial evaluation** under clause (i)(I), or the parent fails to respond to a request to provide the consent, the local educational agency **may pursue the initial evaluation of the child by utilizing the procedures described in Section 1415 of this title**, except to the extent inconsistent with State law relating to such parental consent.⁴⁵

(II) For Services. If the parent of such child **refuses to consent to services** under clause (i)(II), the local educational agency **shall not provide special education and related services** to the child by utilizing the procedures described in Section 1415 of this title.

(III) Effect on Agency Obligations. If the parent of such child **refuses to consent to the receipt of special education and related services**, or the parent fails to respond to a request to provide such consent

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

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

(iii) Consent for Wards of the State.⁴⁶

(I) In General. If the child is a ward of the State and is not residing with the child's parent, the agency shall make reasonable efforts to obtain the **informed consent from the parent** (as defined in Section 1401 of this title) of the child for an initial evaluation to determine whether the child is a child with a disability.

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

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

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

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

⁴⁴ "Absence of Consent" is new. If the parent does not consent to an evaluation, the district may request a due process hearing against the parent. However, if the parent does not consent to special education services, the district may not pursue a due process hearing against the parent. The "Effect on Agency Obligations" section is also new. If the parent refuses consent for services, the district has not violated the IDEA, and is not required to convene an IEP meeting or develop an IEP for the child.

⁴⁵ Pursuant to Regulation 300.300(d)(4)(i), if the child is in a private school or home school, the LEA cannot use due process procedures to force the evaluation.

⁴⁶ The consent requirements for children who are wards of the state are new. If the child is a ward of the state, the school must try to obtain parental consent for an initial evaluation. Exceptions to this requirement are listed in Section 1414(a)(1)(D)(iii)(II). If a judge terminates parental rights or takes educational decision-making rights from the parent, the judge may appoint another individual, such as a probation officer or social worker or other individual, who can make decisions for the child and give consent to an initial evaluation.

(E) Rule of Construction. The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation **shall not be considered to be an evaluation for eligibility** for special education and related services.⁴⁷

(2) Reevaluations.⁴⁸

(A) In General. A local educational agency **shall ensure that a reevaluation** of each child with a disability is conducted in accordance with subsections (b) and (c)–

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

(ii) **if the child’s parents⁴⁹ or teacher requests a reevaluation.**

(B) Limitation. A reevaluation conducted under subparagraph (A) **shall occur–**

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

(ii) **at least once every 3 years**, unless the parent and the local educational agency agree that a reevaluation is unnecessary.⁵⁰

(b) Evaluation Procedures.⁵¹

(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 1415 of this title, that describes any evaluation procedures such agency proposes to conduct.

(2) Conduct of Evaluation. In conducting the evaluation, the local educational agency **shall–**

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

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

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

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

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

(3) Additional Requirements. Each local educational agency **shall ensure that**

47 A “screening” by a teacher or educational diagnostician to determine instructional strategies is not an “evaluation” subject to the parental consent requirements for evaluations in Section 1414.

48 The language about reevaluations changed. The school is not required to reevaluate a child more often than once a year, unless the parent and school agree otherwise. The school shall evaluate at least every three years, unless the parent and school agree that a reevaluation is unnecessary. The school must reevaluate if the child’s educational needs change or if the child’s parent or teacher request a reevaluation.

49 The right to an Independent Educational Evaluation (IEE) at public expense is in Section 1415(b)(1).

50 These limits on the frequency of reevaluations are likely to cause difficulties in developing IEPs. The law requires that the IEP include “a statement of the child’s present levels of academic achievement and functional performance” (Section 1414(d)(1)(A)(i)). If the child has not been evaluated for a year or more, the IEP Team will not have accurate information about the child’s present levels of academic achievement and functional performance. If a parent requests a reevaluation and the LEA refuses, as with initial evaluations, the LEA must provide Prior Written Notice (PWN). See Section 1415(c)(1) and Commentary in the *Federal Register*, page 46640.

51 The school “shall use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information” about the child. The school shall “not use any single measure or assessment as the sole criterion” for determining if a child is eligible. Information from the evaluation is to be used in determining the contents of the child’s IEP and how to help the child make progress in the general education curriculum.

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

- (i) are selected and administered so as **not to be discriminatory on a racial or cultural basis**;
- (ii) are provided and administered in the language and form most likely to **yield accurate information on what the child knows and can do academically, developmentally, and functionally**, unless it is not feasible to so provide or administer;
- (iii) are used for purposes for which the assessments or measures are **valid and reliable**;
- (iv) are administered by **trained and knowledgeable personnel**; and
- (v) are administered in accordance with any instructions provided by the producer of such assessments;

(B) the child is assessed in **all areas of suspected disability**;⁵²

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

(D) assessments of children with disabilities **who transfer from 1 school district to another school district in the same academic year** are coordinated with such children’s prior and subsequent schools, as necessary and as expeditiously as possible, to ensure prompt completion of full evaluations.⁵³

(4) **Determination of Eligibility and Educational Need.**⁵⁴ Upon completion of the administration of assessments and other evaluation measures—

(A) the **determination of whether the child is a child with a disability** as defined in Section 1401(3) of this title and the **educational needs of the child** shall be made by a team of qualified professionals and the parent of the child in accordance with paragraph (5); and

(B) a copy of the **evaluation report** and the documentation of determination of eligibility **shall be given to the parent.**^{55, 56}

(5) **Special Rule for Eligibility Determination.** In making a determination of eligibility under paragraph (4)(A), a child shall not be determined to be a child with a disability if the determinant factor for such determination is—

(A) **lack of appropriate instruction in reading, including in the essential components of reading instruction** (as defined in Section 6368(3) of this title);⁵⁷

52 Be sure to inform the school **in writing** of all disabilities you suspect. It is more likely that you will get a useful evaluation if you provide each evaluator with a written copy of all your concerns and questions before beginning the evaluation.

53 IDEA 2004 includes additional requirements for assessments. When a child transfers to a new school, the receiving school must complete assessments “as expeditiously as possible to ensure prompt completion of full evaluations.” The language that requires the school to assess children “in all areas of suspected disability” and that assessments shall provide relevant information to determine the child’s educational needs did not change. Parents can help expedite the transfer of records by requesting in writing that the previous school forward records quickly.

54 “Determination of Eligibility” was changed to “Determination of Eligibility and Educational Need.” A team of qualified professionals and the parent determine “whether the child is a child with a disability ... and the educational needs of the child...” The requirements about providing the parent with copies of the evaluation report and documentation of eligibility are unchanged.

55 If the parent disagrees with the school’s decision regarding eligibility or classification of the child’s disability, the parent should obtain a comprehensive psycho-educational evaluation from an expert in the private sector. For more on this topic, read Chapters 8, 10 and 11 in *Wrightslaw: From Emotions to Advocacy*.

56 The evaluation reports are to be provided “at no cost to the parent.” Regulation 300.306(a)(2)

57 The language about “lack of appropriate instruction in reading, including the essential components of reading instruction” is new and brings IDEA into conformity with NCLB. The essential components of reading instruction are defined as explicit and systematic instruction in - (A) phonemic awareness; (B) phonics; (C) vocabulary development; (D) reading fluency, including oral reading skills; and (E) reading comprehension strategies. (See 20 U. S. C § 6368 in *Wrightslaw: No Child Left Behind* and the Commentary to the *Federal Register*, pages 46655 through 46657)

(B) lack of instruction in math;⁵⁸ or

(C) **limited English proficiency.**

(6) Specific Learning Disabilities.⁵⁹

(A) In General. Notwithstanding Section 1407(b) of this title, when determining whether a child has a specific learning disability as defined in Section 1401 of this title, a local educational agency **shall not be required to take into consideration whether a child has a severe discrepancy between achievement and intellectual ability** in oral expression, listening comprehension, written expression, basic reading skill, reading comprehension,⁶⁰ mathematical calculation, or mathematical reasoning.⁶¹

(B) Additional Authority. In determining whether a child has a specific learning disability, a local educational agency **may** use a process that **determines if the child responds to scientific, research-based intervention**⁶² as a part of the evaluation procedures described in paragraphs (2) and (3).^{63, 64}

(c) Additional Requirements for Evaluation and Reevaluations.

(1) Review of Existing Evaluation Data. As part of an **initial evaluation** (if appropriate) and as part of **any reevaluation** under this section, the IEP Team and other qualified professionals, as appropriate, **shall** –

(A) review existing evaluation data on the child, **including–**

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

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

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

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

(i) whether the child is a child with a disability as defined in Section 1401(3) of this title, and the **educational needs of the child,**⁶⁵ or, in case of a reevaluation of a child, whether the child continues to have such a disability and such educational needs;

58 Regulation 300.306 explains that lack of “appropriate” instruction in math, as in reading, is the critical factor.

59 Schools are not required to determine if a child has a severe discrepancy between achievement and intellectual ability to determine that a child has a specific learning disability and needs special education services, nor are schools prohibited from using a discrepancy model. In lieu of a severe discrepancy, a child may be found to exhibit “a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, state-approved grade level standards, or intellectual development . . .” See Regulation 300.309(a)(2)(ii) and 300.311(a)(5)(ii)(B).

60 Reading fluency is now included with reading comprehension, per Regulation 300.309(a)(1)(v).

61 Regulation 300.309 advises that a child may be eligible for services as a child with a specific learning disability “if the child does not achieve adequately for the child’s age or to meet State-approved grade-level standards . . .” The eligibility requirements as a child with a specific learning disability are likely to vary from state to state. Check your state special education regulations for the requirements in your state.

62 The legal definition of “scientifically based research” is in No Child Left Behind, 20 U. S. C. § 9101(37) (see *Wrightslaw: No Child Left Behind*). Also, see Regulation 300.35 and the Glossary of Terms at the end of this book.

63 Response to scientific research-based intervention (RTI) is an educational issue, not a legal concept and thus is not given exhaustive analysis in this book. Schools may use Response to Intervention (RTI) to determine if the child responds to scientific, research-based intervention as part of the evaluation process, but RTI “does not replace the need for a comprehensive evaluation.” See Commentary in the *Federal Register*, page 46648, which discusses Regulation 300.307(a)(2). For a comprehensive article about RTI from the Department of Education, see “Responsiveness to Intervention in the SLD Process” in the *Toolkit on Teaching and Assessing Students with Disabilities* at www.osepideasthatwork.org/toolkit/pdf/RTI_SLD.pdf (Retrieved on October 10, 2006).

64 The evaluation/eligibility timeline for a specific learning disability may be extended by mutual agreement. See Regulation 300.309(c). The child suspected of having a specific learning disability must be observed in the regular classroom after the child has been referred for an evaluation. See Regulation 300.310(b). The evaluation “may not use any single measure or assessment [such as RTI] as the sole criterion . . .” See Section 1414(b)(2)(B).

65 The language about using evaluations and reevaluations to determine the “educational needs of the child” and “present levels of academic achievement and related developmental needs of the child” are new in IDEA 2004. See Section 1414(c)(1).

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

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

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

(2) **Source of Data.** The local educational agency shall administer such assessments and other evaluation measures as may be needed to produce the data identified by the IEP Team under paragraph (1)(B).

(3) **Parental Consent.** Each local educational agency shall obtain informed parental consent, in accordance with subsection (a)(1)(D), prior to conducting any reevaluation of a child with a disability, except that such informed parental consent need not be obtained if the local educational agency can demonstrate that it had taken reasonable measures to obtain such consent and the child's parent has failed to respond.⁶⁶

(4) **Requirements If Additional Data Are Not Needed.**⁶⁷ If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability and to determine the child's educational needs,⁶⁸ the local educational agency—

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

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

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

(B) shall not be required to conduct such an assessment unless requested to by the child's parents.⁶⁹

(5) Evaluations Before Change in Eligibility.

(A) **In General.** Except as provided in subparagraph (B), a local educational agency **shall** evaluate a child with a disability in accordance with this section **before determining** that the child is no longer a child with a disability.⁷⁰

(B) Exception.

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

(ii) **Summary of Performance.** For a child whose eligibility under this part terminates under circumstances described in clause (i), a local educational agency shall provide the child with a **summary of the child's academic achievement and functional performance**, which shall include recommendations on

66 Pursuant to Regulation 300.300(d)(4)(i), if the child is in a private school or home school, the LEA cannot use due process procedures to force a reevaluation.

67 The new language that allows school personnel to decide if "no additional data are needed" to determine educational needs or eligibility (Section 1414(c)(4)) appears to be at odds with the requirement that the school reevaluate "at least once every 3 years." (Section 1414 (a)(2)(B)(ii))

68 IEP Teams must determine the child's "educational needs" and "present levels of academic achievement and related developmental needs." If a child is not tested at regular intervals, the IEP Team will not have information about the child's educational needs, "present levels of academic achievement" and "related developmental needs." (Section 1414(d)(1)(A)(i)(I))

69 Parents have a right to request an assessment to determine their child's educational needs. (Section 1414(a)(4)(ii)). To ensure that your request is honored, make your request for an assessment of your child's educational needs in writing.

70 The school must evaluate a child before exiting the child from special education, unless the child meets one of the two exceptions in 1414(c)(5)(B)(i). A certificate of attendance, a special education diploma, or anything other than a "regular diploma" does not relieve the school of the requirement for a reevaluation.

how to assist the child in meeting the child's postsecondary goals.⁷¹

(d) Individualized Education Programs.^{72, 73}

(1) Definitions. In this title:

(A) Individualized Education Program.

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

(I) a statement of the child's present levels of academic achievement⁷⁴ and functional performance,⁷⁵ including—⁷⁶

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

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

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

(II) a statement of measurable annual goal, including academic and functional goals,⁷⁷ designed to—

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

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

(III) a description of how the child's progress toward meeting the annual goals described in sub-clause (II) will be measured⁷⁸ and when periodic reports on the progress the child is making toward

71 If parents or eligible students want the school to provide specific testing (e.g., the WAIS-III and W-J III) for college admissions, they should ensure that such testing is written into the child's transition plan, usually during the junior year. This requirement is new in IDEA 2004.

72 The IEP regulations begin at 300.320 through 300.328. Since the IEP regulations no longer include the comprehensive question and answer appendices, as in prior IDEA revisions, you need to obtain a copy of the *Federal Register* Commentary to the IEP regulations that begins on page 46661. The Commentary is on the Wrightslaw site at www.wrightslaw.com/idea/commentary.htm

73 The U. S. Department of Education does not “. . . encourage public agencies to prepare a draft IEP prior to the IEP Team meeting . . . [however, the LEA] should provide the parent with a copy of its draft proposal, if the agency has developed one, **prior to the IEP Team meeting** so as to give the parent an opportunity to review the recommendations of the public agency prior to the IEP Team meeting, and be better able to engage in full discussion of the proposals for the IEP. It is not permissible for an agency to have the final IEP completed before an IEP Team meeting begins.” See Commentary in the *Federal Register*, page 46678.

74 The term “academic achievement generally refers to the child's performance in academic areas (e.g., reading or language arts, math, science, and history.)” See Commentary in the *Federal Register*, pages 46661-46662. To learn about your child's standardized test scores in reading and math (i.e., standard scores, percentile ranks, age and grade equivalent scores), read Chapters 10 and 11 about “Tests and Measurements” in *Wrightslaw: From Emotions to Advocacy*.

75 The term “functional is a term that is generally understood to refer to skills or activities that are not considered academic or related to a child's academic achievement. Instead ‘functional’ is often used in the context of routine activities of everyday living.” See Commentary in the *Federal Register*, page 46661.

76 The IEP must include “a statement of the child's present levels of academic achievement and functional performance . . .” If the child takes an alternate assessment, the IEP must include “a description of benchmarks or short-term objectives.”

77 To learn how to write IEPs that are Specific, Measurable, use Action words, are Realistic and Time specific, read Chapter 11, SMART IEPs, in *Wrightslaw: From Emotions to Advocacy*.

78 The IEP must include measurable annual goals that address the child's “present levels of academic achievement and functional performance.” John Willis, evaluator and co-author of *Guide to the Identification of Learning Disabilities*, advised that “If the team is correctly using curriculum-based assessment as part of Response to Intervention in a Problem-Solving Model, progress on the short-term objectives and annual goals could be measured precisely. This may be something on which parents should insist.”

meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;

(IV) a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research⁷⁹ to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child⁸⁰

(aa) to advance appropriately toward attaining the annual goals;⁸¹

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

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

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

(VI)

(aa) a statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments consistent with Section 1412(a)(16)(A) of this title; and

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

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

(BB) the particular alternate assessment⁸² selected is appropriate for the child;

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

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

(aa) appropriate measurable postsecondary goals⁸³ based upon age appropriate transition assessments⁸⁴ related to training, education, employment, and, where appropriate, independent living skills;

79 Congress added new language about research-based instruction to IDEA 2004. “Peer-reviewed research” . . . generally refers to research that is reviewed by qualified and independent reviewers to ensure that the quality of the information meets the standards of the field before the research is published. However, there is no single definition . . .” See Commentary in the *Federal Register*, page 46664.

80 IDEA contains new language about “individual appropriate accommodations” on state and district testing and new requirements for alternate assessments. The child’s IEP must include “a statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments. . . .”

81 The U. S. Department of Education advised that instructional methodology may be written into an IEP. “The Department’s longstanding position on including instructional methodology in a child’s IEP is that it is an IEP Team’s decision. Therefore, if an IEP Team determines that specific instructional methods are necessary for the child to receive FAPE, the instructional methods may be addressed in the IEP.” See Commentary in the *Federal Register*, page 46665.

82 An alternate assessment might mean denial of a regular high school diploma. See Commentary in the *Federal Register*, page 46666.

83 “Post secondary goals” . . . is generally understood to refer to those goals that a child hopes to achieve after leaving secondary school (i.e., high school).” See Commentary in the *Federal Register*, page 46668.

84 The requirements for transition in IEPs changed. The “first IEP to be in effect when the child is 16” means this IEP must be in effect by the child’s 16th birthday.

(bb) the transition services (including **courses of study**)^{85,86} needed to assist the child in reaching those goals; and

(cc) beginning **not later than 1 year** before the child reaches the age of majority under State law, a statement that the child has been informed of the child's rights under this title, if any, that will transfer to the child on reaching the age of majority under Section 1415(m) of this title.

(ii) Rule of Construction. Nothing in this section shall be construed to require –

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

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

(B) Individualized Education Program Team. The term 'individualized education program team' or IEP Team' means a group of individuals composed of–

(i) the **parents** of a child with a disability;⁸⁷

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

(iii) not less than 1 **special education teacher**, or where appropriate, not less than 1 special education provider⁸⁸ of such child;

(iv) a **representative of the local educational agency** who–

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

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

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

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

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

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

(C) IEP Team Attendance.⁸⁹

(i) Attendance Not Necessary.⁹⁰ A member of the IEP Team shall not be required to attend an IEP

85 Course of study can be "participation in advanced placement courses or a vocational education program." See Commentary in the *Federal Register*, page 46668.

86 Part B funds can be used for student "participation in transitional programs on college campuses or in community-based settings . . ." See Commentary in the *Federal Register*, page 46668.

87 The LEA "must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP Team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English." See Regulation 300.322(e).

88 A special education provider is "responsible for implementing the IEP" and may be the child's speech pathologist, occupational therapist, or other person, dependent upon the child's disability and whether the child is receiving speech services, occupational therapy, or other services." See Commentary in the *Federal Register*, page 46675.

89 A member of the IEP Team may be excused from attending an IEP meeting if their area of curriculum or service will not be discussed or modified during the meeting. An IEP Team member may also be excused from an IEP meeting that involves their area of curriculum or service if they submit input in writing and if the parent and school consent. The parent's consent must be in writing.

90 "An LEA that routinely excuses IEP Team members from IEP Team meetings would not be in compliance with the requirements of the Act and therefore would be subject to the States' monitoring and enforcement provisions." See Commentary in the *Federal Register*, page 46674.

meeting,⁹¹ in whole or in part, if the parent of a child with a disability and the local educational agency agree that the attendance of such member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.

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

- (I) the parent and the local educational agency consent to the excusal; and
- (II) the member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior to the meeting.

(iii) **Written Agreement and Consent Required.** A parent's agreement under clause (i) and consent under clause (ii) shall be in writing.

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

(2) Requirement That Program Be in Effect.

(A) **In General. At the beginning of each school year,** each local educational agency, State educational agency, or other State agency, as the case may be, **shall** have in effect, for each child with a disability in the agency's jurisdiction, an individualized education program,⁹² as defined in paragraph (1)(A).⁹³

(B) **Program for Child Aged 3 Through 5.** In the case of a child with a disability aged 3 through 5 (or, at the discretion of the State educational agency, a 2-year-old child with a disability who will turn age 3 during the school year), **the IEP Team shall consider the individualized family service plan** that contains the material described in Section 1436 of this title, and that is developed in accordance with this section, and the individualized family service plan may serve as the IEP of the child if using that plan as the IEP is—

- (i) consistent with State policy; and
- (ii) agreed to by the agency and the child's parents.⁹⁴

(C) Program for Children Who Transfer School Districts.⁹⁵

(i) **In General.**⁹⁶

(I) **Transfer within the Same State.** In the case of a child with a disability who transfers school districts within the same academic year, who enrolls in a new school, and who had an IEP that was in effect in the same State, the local educational agency **shall** provide such child with a free appropriate

91 The Commentary to the IEP regulations states that "To ensure that all IEP Team members are aware of their responsibilities regarding the implementation of a child's IEP, Section 300.323(d) requires that the child's IEP be accessible to each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation." See Commentary in the *Federal Register*, page 46669.

92 IEPs must be in effect at the beginning of the school year for all children with disabilities, including children who are enrolled in private programs. Under IDEA 2004, public schools may be responsible for offering IEPs to students who attend private schools. (See Sections 1412(a)(3)+(10) about child find and private schools.) However, if the parent refuses to consent to an evaluation or to special education services, the school is not required to develop an IEP. (Section 1414(a)(1)(D)(ii)) If the parent refuses to permit the school to evaluate the child, any entitlement to reimbursement for a private school program may be reduced or barred. (Section 1412(a)(10))

93 See Regulation 300.323(c) for the 30-day IEP timeline.

94 "The IFSP may serve as the IEP of the child . . . [and the public agency] must provide to the child's parents a detailed explanation of the differences between an IFSP and an IEP . . ." See Regulation 300.323(b) and (c).

95 The subsection about programs for children who transfer is new. If the child transfers to a district in the same state or another state, the receiving school must provide comparable services to those in the sending district's IEP until they develop and implement a new IEP.

96 The Commentary to Regulation 300.323(f) explains that "the Department interprets 'comparable' to have the plain meaning of the word, which is 'similar' or 'equivalent.'" See Commentary in the *Federal Register*, page 46681.

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

(II) Transfer Outside State. In the case of a child with a disability who transfers school districts within the same academic year, who enrolls in a new school, and who had an IEP that was in effect in another State, the local educational agency shall provide such child with a free appropriate public education, including services **comparable to** those described in the previously held IEP, in consultation with the parents **until such time** as the local educational agency **conducts an evaluation** pursuant to subsection (a)(1), if determined to be necessary by such agency, and **develops a new IEP**, if appropriate, that is consistent with Federal and State law.⁹⁷

(ii) Transmittal of Records. To facilitate the transition for a child described in clause (i)–

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

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

(3) Development of IEP.

(A) In General. In developing each child’s IEP, the IEP Team, subject to subparagraph (C), **shall consider**⁹⁸

- (i) the **strengths** of the child;
- (ii) the **concerns of the parents** for enhancing the education of their child;⁹⁹
- (iii) the **results of the initial evaluation or most recent evaluation** of the child;¹⁰⁰ and
- (iv) the **academic, developmental, and functional needs** of the child.¹⁰¹

(B) Consideration of Special Factors. The IEP Team shall–

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

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

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

(iv) consider the **communication needs** of the child, and in the case of a child who is deaf or hard of hearing, consider the child’s language and communication needs, opportunities for direct communica-

⁹⁷ This is a new “initial” evaluation, not a reevaluation. See Commentary in the *Federal Register*, page 46682.

⁹⁸ In developing the IEP, the IEP Team must consider the parents’ concerns about the child’s education, including concerns about inadequate progress. Some IEP Teams refuse to accept information from private sector evaluations of the child. The law clearly states that schools shall consider the most recent evaluation on the child.

⁹⁹ A parent can consent to some services in an IEP and refuse to consent to other services. The agreed upon services must be implemented. See Regulation 300.300(d)(3) and 300.518(c).

¹⁰⁰ Pursuant to regulation 300.613(a), upon request, the LEA must provide the parent with the child’s education records prior to an IEP meeting.

¹⁰¹ The Department of Education published a model Individualized Education Program (IEP) form at the time the regulations were published. Links to the regulations and model forms are at www.wrightslaw.com/idea/law.htm

tions with peers and professional personnel in the child’s language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child’s language and communication mode; and

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

(C) Requirement with Respect to Regular Education Teacher. A regular education teacher of the child, as a member of the IEP Team, shall, to the extent appropriate, participate in the development of the IEP of the child, including the determination of appropriate positive behavioral interventions and supports, and other strategies, and the determination of supplementary aids and services, program modifications, and support for school personnel consistent with paragraph (1)(A)(i)(IV).

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

(E) Consolidation of IEP Team Meetings. To the extent possible, the local educational agency shall encourage the consolidation of reevaluation meetings for the child and other IEP Team meetings for the child.

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

(4) Review and Revision of IEP. ^{102, 103}

(A) In General. The local educational agency **shall** ensure that, subject to subparagraph (B), the IEP Team—

(i) reviews the child’s IEP periodically, but **not less frequently than annually**,¹⁰⁴ to determine whether the annual goals for the child are being achieved; and

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

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

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

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

(IV) the child’s anticipated needs; or

(V) other matters.

(B) Requirement with Respect to Regular Education Teacher. A regular education teacher of the child, as a member of the IEP Team, shall, consistent with paragraph (1)(C), participate in the review and revision of the IEP of the child.

102 IDEA 2004 made significant changes to reviewing and revising IEPs. If the parent and school decide to amend or modify the IEP developed at the annual IEP meeting, and do not want to convene another IEP meeting, they may revise the IEP by agreement. The IEP Team must create a written document to amend or modify the IEP. This document should describe the changes or modifications in the IEP and note that, by agreement, an IEP meeting was not convened. The parent should request a copy of the revised IEP.

103 The Commentary to the regulations notes that: “The IEP Team is expected to act in the best interest of the child. As with any IEP Team meeting, if additional information is needed to finalize an appropriate IEP, there is nothing in the Act that prevents an IEP Team from reconvening after the needed information is obtained, as long as the IEP is developed in a timely manner.” See Commentary in the *Federal Register*, page 46676.

104 “[A]n amendment to an IEP . . . [cannot] take the place of an annual IEP meeting.” See Commentary in the *Federal Register*, page 46685.

(5) Multi-Year IEP Demonstration.¹⁰⁵**(A) Pilot Program.**

(i) Purpose. The purpose of this paragraph is to provide an opportunity for States to allow parents and local educational agencies the opportunity for long-term planning by offering the option of developing a comprehensive multi-year IEP, not to exceed 3 years, that is designed to coincide with the natural transition points¹⁰⁶ for the child.

(ii) Authorization. In order to carry out the purpose of this paragraph, the Secretary is authorized to approve not more than 15 proposals from States to carry out the activity described in clause (i).

(iii) Proposal.

(I) In General. A State desiring to participate in the program under this paragraph shall submit a proposal to the Secretary at such time and in such manner as the Secretary may reasonably require.

(II) Content. The proposal shall include—

(aa) assurances that the development of a multi-year IEP under this paragraph is **optional for parents**;

(bb) assurances that the parent is required to provide informed consent before a comprehensive multi-year IEP is developed;

(cc) a list of required elements for each multi-year IEP, including—

(AA) measurable goals pursuant to paragraph (1)(A)(i)(II), coinciding with natural transition points for the child, that will enable the child to be involved in and make progress in the general education curriculum and that will meet the child's other needs that result from the child's disability; and

(BB) measurable annual goals for determining progress toward meeting the goals described in subitem (AA); and

(dd) a description of the process for the review and revision of each multi-year IEP, including—

(AA) a review by the IEP Team of the child's multi-year IEP at each of the child's **natural transition points**;

(BB) in years other than a child's natural transition points, **an annual review of the child's IEP** to determine the child's current levels of progress and whether the annual goals for the child are being achieved, and a requirement to amend the IEP, as appropriate, to enable the child to continue to meet the measurable goals set out in the IEP;

(CC) if the IEP Team determines on the basis of a review that the child is not making sufficient progress toward the goals described in the multi-year IEP, a requirement that the local educational agency shall ensure that the IEP Team carries out a more thorough review of the IEP in accordance with paragraph (4) within 30 calendar days; and

(DD) at the request of the parent, a requirement that the IEP Team shall conduct a review of the child's multi-year IEP rather than or subsequent to an annual review.

(B) Report. Beginning 2 years after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2004, the Secretary shall submit an annual report to the Committee on Education and

¹⁰⁵ IDEA 2004 authorizes a multi-year IEP pilot project. Fifteen states may apply for approval to use three-year IEPs. IEP review dates must be based on "natural transition points." Parents have the right to opt-out of this program. The parent of a child served under a multi-year IEP can have a review of the IEP without waiting for a natural transition point.

¹⁰⁶ See Section 1414(d)(5)(C) for an explanation of "natural transition points."

the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate regarding the effectiveness of the program under this paragraph and any specific recommendations for broader implementation of such program, including

- (i) reducing—
 - (I) the paperwork burden on teachers, principals, administrators, and related service providers; and
 - (II) noninstructional time spent by teachers in complying with this part;
- (ii) enhancing longer-term educational planning;
- (iii) improving positive outcomes for children with disabilities;
- (iv) promoting collaboration between IEP Team members; and
- (v) ensuring satisfaction of family members.

(C) Definition. In this paragraph, the term ‘**natural transition points**’ means those periods that are close in time to the transition of a child with a disability from preschool to elementary grades, from elementary grades to middle or junior high school grades, from middle or junior high school grades to secondary school grades, and from secondary school grades to post-secondary activities, **but in no case a period longer than 3 years.**

(6) Failure to Meet Transition Objectives. If a participating agency, other than the local educational agency, fails to provide the transition services described in the IEP in accordance with paragraph (1)(A)(i)(VIII), the local educational agency shall reconvene the IEP Team to identify alternative strategies to meet the transition objectives for the child set out in the IEP.

(7) Children with Disabilities in Adult Prisons.¹⁰⁷

(A) In General. The following requirements shall not apply to children with disabilities who are **convicted as adults** under State law **and incarcerated in adult prisons**:

- (i) The requirements contained in Section 1412(a)(16) of this title and paragraph (1)(A)(i)(VI) (relating to participation of children with disabilities in general assessments).
- (ii) The requirements of items (aa) and (bb) of paragraph (1)(A)(i)(VIII) (relating to transition planning and transition services), do not apply with respect to such children whose eligibility under this part will end, because of such children’s age, before such children will be released from prison.

(B) Additional Requirement. If a child with a disability is convicted as an adult under State law and incarcerated in an adult prison, the child’s IEP Team may modify the child’s IEP or placement notwithstanding the requirements of Sections 1412(a)(5)(A) of this title and paragraph (1)(A) if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

(e) Educational Placements. Each local educational agency or State educational agency shall ensure that the **parents** of each child with a disability are **members of any group that makes decisions** on the educational placement of their child.¹⁰⁸

¹⁰⁷ A school district is not required to offer a free appropriate education to a child with a disability who was convicted as an adult and is incarcerated in an adult prison. A child who was convicted as an adult and is in prison (not jail) shall not be tested on the statewide assessments. The “appropriate measurable postsecondary goals,” “transition services” and “courses of study” are not required. Sentences of less than one year are usually served in jails. Longer sentences are usually served in prisons. In general, individuals who are convicted of misdemeanors serve sentences in jails, while individuals convicted of felonies serve their sentences in prisons.

¹⁰⁸ An educational placement “refers to the provision of special education and related services rather than a specific place, such as a specific classroom or specific school.” See Commentary in the *Federal Register*, page 46687. Decisions about the child’s placement cannot be made until after the IEP Team, which includes the child’s parent(s), meets and reaches consensus about the IEP goals. Although the law on this issue is clear, school personnel sometimes decide on the child’s placement before the IEP meeting.

(f) Alternative Means of Meeting Participation.¹⁰⁹ When conducting **IEP Team meetings** and placement meetings pursuant to this section, Section 1415(e) of this title, and Section 1415(f)(1)(B) of this title, and carrying out administrative matters under Section 1415 of this title (such as scheduling, exchange of witness lists, and status conferences), the parent of a child with a disability and a local educational agency may agree to use alternative means of meeting participation, such as **video conferences and conference calls**.

20 U. S. C. § 1415. Procedural Safeguards.

WRIGHTSLAW OVERVIEW: Section 1415 describes the procedural safeguards designed to protect the rights of children with disabilities and their parents. These safeguards include the right to participate in all meetings, to examine all educational records, and to obtain an independent educational evaluation (IEE) of the child. Parents have the right to written notice when the school proposes to change or refuses to change the identification, evaluation or placement of the child Section 1415(c). Section 1415(d) describes requirements for the Procedural Safeguards Notice that must be provided to parents.

Section 1415(e) describes requirements for using mediation to resolve disputes, legally binding written mediation agreements, and confidentiality. Section 1415(f) describes the requirements for due process hearings and the Resolution Session that may allow the parties to resolve their dispute before a due process hearing. Section 1415(f) includes new requirements for hearing officers and timelines, including a new two-year statute of limitations. Section 1415(i) describes the appeals process and the new 90-day deadline on appeals. Section 1415(j) is the “stay put” statute that allows the child to remain in the “current educational placement” during litigation.

Section 1415(k) is the discipline statute. This statute authorizes school personnel to place children in interim alternative educational settings. This statute includes manifestation determinations, placement as determined by the IEP Team, appeals, authority of the hearing officer, and transfer of rights at the age of majority.

The procedural safeguards regulations begin at 300.500 and the Commentary in the Federal Register begins at 46688.

(a) Establishment of Procedures. Any State educational agency, State agency, or local educational agency that receives assistance under this part shall establish and maintain procedures in accordance with this section to ensure that children with disabilities and their parents are guaranteed procedural safeguards with respect to the provision of a free appropriate public education by such agencies.

(b) Types of Procedures.¹¹⁰ The procedures required by this section shall include the following:

(1) An opportunity for the parents of a child with a disability **to examine all records** relating to such child and **to participate in meetings** with respect to the **identification, evaluation, and educational placement** of the child, and the provision of a free appropriate public education to such child, and **to obtain an independent educational evaluation**^{111, 112} of the child.

109 School meetings do not have to be face-to-face. IEP and placement meetings (Sections 1414(d)+(e)), mediation (Section 1415(e)), and due process (IEP) resolution sessions (Section 1415(f)(1)(B)) may be convened by conference calls or video conferences.

110 Parents have the right to examine all educational records, including test data. The right to examine records may include personal notes, if these notes have been shared with other staff. Parents should make their request for a complete copy of all files, including test data (i.e., standard scores, percentile ranks, age equivalent scores, and grade equivalent scores), in writing.

111 Parents have the right to obtain an Independent Educational Evaluation (IEE) of their child. Many school districts attempt to restrict the parent’s choice of evaluators to a list of approved evaluators selected by the school. The Office of Special Education Programs issued a policy letter clarifying that parents have the right to choose their own independent evaluator. (See OSEP, Letter to Parker, 2004 on the Wrightslaw website at www.wrightslaw.com/info/test.eval.choice.osep.htm) See Regulation 300.502 regarding IEEs. See Commentary in the *Federal Register*, page 46690, regarding fees for an IEE.

112 At a minimum, the IEE should determine if the child has or continues to have a disability, and the educational needs of the child. “There is an affirmative obligation on a public agency to consider the results of a parent initiated evaluation at private expense in any decision regarding the provision of FAPE to the child.” However, if an IEE is rejected or not given proper consideration by the LEA, it is “appropriate for the agency to explain to the parent why it believes that the parent-initiated evaluation does not meet agency criteria.” See Commentary in the *Federal Register*, page 46690.

(2)

(A) Procedures to protect the rights of the child whenever the parents of the child are not known, the agency cannot, after reasonable efforts, locate the parents, or the child is a ward of the State, including the assignment of an individual to act as a **surrogate for the parents**, which surrogate shall not be an employee of the State educational agency, the local educational agency, or any other agency that is involved in the education or care of the child. In the case of—

(i) a child who is a **ward of the State**, such surrogate may alternatively be appointed by the judge overseeing the child's care provided that the surrogate meets the requirements of this paragraph; and

(ii) an **unaccompanied homeless youth** as defined in Section 11434a(6) of title 42, the local educational agency shall appoint a surrogate in accordance with this paragraph.

(B) The State shall make reasonable efforts to ensure the assignment of a surrogate **not more than 30 days after** there is a determination by the agency that the child needs a surrogate.

(3) **Written prior notice**¹¹³ to the parents of the child, in accordance with subsection (c)(1), whenever the local educational agency—

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

(B) **refuses to initiate or change**, the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child.

(4) Procedures designed to ensure that the notice required by paragraph (3) is in the native language of the parents, unless it clearly is not feasible to do so.

(5) An opportunity for mediation, in accordance with subsection (e).

(6) An opportunity for any party to present a **complaint**

(A) with respect to **any matter** relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child; and

(B) which sets forth an alleged violation that occurred **not more than 2 years before** the date¹¹⁴ the parent or public agency knew or should have known about the alleged action that forms the basis of the complaint, **or, if the State has an explicit time limitation** for presenting such a complaint under this part, in such time as the State law allows, except that the exceptions to the timeline described in subsection (f)(3)(D) shall apply to the timeline described in this subparagraph.

(7)

(A) Procedures that require either party, or the attorney representing a party, to provide **due process complaint notice**¹¹⁵ in accordance with subsection (c)(2) (which shall remain confidential)—

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

(ii) that shall include—

(I) the name of the child, the address of the residence of the child (or available contact information in the case of a homeless child), and the name of the school the child is attending;

(II) in the case of a homeless child or youth (within the meaning of Section 11434a(2) of title 42), available contact information for the child and the name of the school the child is attending;

(III) a **description of the nature of the problem** of the child relating to such proposed initiation or change, including facts relating to such problem; and

113 The school district must provide, in writing, the reason for refusing to evaluate a child or change the educational program.

114 The two-year statute of limitations to present a complaint is new.

115 The party who requests a due process hearing must provide a detailed notice to the other party. This notice must include identifying information about the child, the nature of the problem, facts, and proposed resolution. The party who requests a due process hearing may not have the hearing until they provide this notice.

(IV) a **proposed resolution of the problem** to the extent known and available to the party at the time.¹¹⁶

(B) A requirement that a party **may not have a due process hearing until** the party, or the attorney representing the party, files a notice that meets the requirements of subparagraph (A)(ii).

(8) Procedures that require the State educational agency to develop a model form to assist parents in filing a complaint and due process complaint notice in accordance with paragraphs (6) and (7), respectively.

(c) Notification Requirements.

(1) **Content of Prior Written Notice.**¹¹⁷ The notice required by subsection (b)(3) shall include—

(A) a description of the action **proposed or refused** by the agency;

(B) an **explanation** of why the agency proposes or refuses to take the action and a **description of each evaluation procedure, assessment, record, or report** the agency used as a basis for the proposed or refused action;

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

(D) sources for parents to contact to obtain assistance in understanding the provisions of this part;

(E) a **description of other options** considered by the IEP Team and the reason why those options were rejected; and

(F) a **description of the factors** that are relevant to the agency's proposal or refusal.

(2) **Due Process Complaint Notice.**¹¹⁸

(A) **Complaint.** The **due process complaint notice** required under subsection (b)(7)(A) shall be deemed to be sufficient unless the party receiving the notice notifies the hearing officer and the other party in writing that the receiving party believes the notice has not met the requirements of subsection (b)(7)(A).

(B) **Response to Complaint.**

(i) **Local Educational Agency Response.**

(I) **In General.** If the local educational agency **has not sent a prior written notice** to the parent regarding the subject matter contained in the parent's due process complaint notice, such local educational agency **shall**, within 10 days of receiving the complaint, send to the parent a response that shall include—

116 A Due Process Complaint Notice can be a letter to request a due process hearing that includes the required components. To learn how to write persuasive letters that make readers want to help, read Chapter 24, "Letter to the Stranger," in *Wrightslaw: From Emotions to Advocacy*. Your state is required to develop a Model Form for requesting a due process hearing. See Regulation 300.509.

117 Prior Written Notice (PWN) is easier to understand if you eliminate the word "prior" from your analysis. Assume a parent requests that the school increase the child's speech language therapy from three 15-minute sessions per week (45 minutes per week) to three 30-minute sessions per week (90 minutes per week). If the school refuses, they must provide "written notice" about their refusal. This written notice must describe what they refused to do and their alternate proposal, if any. The notice must explain their rationale and must describe each evaluation procedure, assessment, record, or report used as the basis of their refusal. The notice must also provide a description of all other options the IEP Team considered and the reasons why the team rejected these options. Finally, the notice must describe any other factors that are relevant to their proposal or refusal. Schools often fail to provide Prior Written Notice when parents request more services or different services. IDEA 2004 strengthened prior written notice requirements and requires schools to provide this notice in the event of a due process hearing. (Section 1415(c)(2)(B)(i)(I))

118 Section 1415(c)(2) includes requirements and timelines for the Due Process Complaint Notice and the Amended Complaint Notice. If the school did not provide the parent with Prior Written Notice, the school must send this Notice within 10 days. The non-complaining party must respond to the complaint within 10 days. If the notice is insufficient, the receiving party must complain to the Hearing Officer within 15 days. (See Section 1415(c)(2)(C)) The Hearing Officer has 5 days to determine whether the complaint is sufficient. If it is not sufficient, an amended complaint may be filed.

(aa) an explanation of why the agency proposed or refused to take the action raised in the complaint;

(bb) a description of other options that the IEP Team considered and the reasons why those options were rejected;

(cc) a description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and

(dd) a description of the factors that are relevant to the agency's proposal or refusal.

(II) Sufficiency. A response filed by a local educational agency pursuant to subclause (I) shall not be construed to preclude such local educational agency from asserting that the parent's due process complaint notice was insufficient where appropriate.

(ii) Other Party Response. Except as provided in clause (i), the non-complaining party **shall, within 10 days** of receiving the complaint, **send to the complainant a response** that specifically addresses the issues raised in the complaint.

(C) Timing. The party providing a hearing officer notification under subparagraph (A) shall provide the notification within 15 days of receiving the complaint.

(D) Determination. **Within 5 days** of receipt of the notification provided under subparagraph (C), the hearing officer shall make a determination on the face of the notice of whether the notification meets the requirements of subsection (b)(7)(A), and shall immediately notify the parties in writing of such determination.

(E) Amended Complaint Notice.

(i) In General. A party **may amend** its due process complaint notice **only if**—

(I) the other party **consents in writing** to such amendment and is given the opportunity to resolve the complaint through a meeting held pursuant to subsection (f)(1)(B); or

(II) the **hearing officer grants permission**, except that the hearing officer may only grant such permission at any time not later than 5 days before a due process hearing occurs.

(ii) Applicable Timeline. The applicable timeline for a due process hearing under this part shall recommence at the time the party files an amended notice, including the timeline under subsection (f)(1)(B).

(d) Procedural Safeguards Notice.¹¹⁹

(1) In General.

(A) Copy to Parents. A copy of the procedural safeguards available to the parents of a child with a disability **shall be given to the parents** only 1 time a year, **except** that a copy also shall be given to the parents—

(i) upon initial referral or parental request for evaluation;

(ii) upon the first occurrence of the filing of a complaint under subsection (b)(6); and

(iii) upon request by a parent.

(B) Internet Websites. A local educational agency may place a current copy of the procedural safeguards notice on its Internet website if such website exists.¹²⁰

119 The purpose of the Procedural Safeguards Notice is to provide parents with information about their rights and protections under the law. Upon request for a due process hearing or at least once a year, parents must be provided with notice of the time period (statute of limitations) within which “to make a complaint.” The Procedural Safeguards Notice also includes rights about mediation, “stay put,” discipline, reimbursement for private placements, and attorneys’ fees.

120 Simply referring the parent to the Procedural Safeguard Notice on the school website is not sufficient.

(2) **Contents.** The procedural safeguards notice¹²¹ shall include a full explanation of the procedural safeguards, written **in the native language of the parents** (unless it clearly is not feasible to do so) and **written in an easily understandable manner**, available under this section and under regulations promulgated by the Secretary relating to—

- (A) independent educational evaluation;
- (B) prior written notice;
- (C) parental consent;
- (D) access to educational records;
- (E) the opportunity to present and resolve complaints, including—
 - (i) the time period in which to make a complaint;
 - (ii) the opportunity for the agency to resolve the complaint; and
 - (iii) the availability of mediation;
- (F) the child’s placement during pendency of due process proceedings;
- (G) procedures for students who are subject to placement in an interim alternative educational setting;
- (H) requirements for unilateral placement by parents of children in private schools at public expense;
- (I) due process hearings, including requirements for disclosure of evaluation results and recommendations;
- (J) State-level appeals (if applicable in that State);
- (K) civil actions, including the time period in which to file such actions; and
- (L) attorneys’ fees.

(e) Mediation.¹²²

(1) **In General.** Any State educational agency or local educational agency that receives assistance under this part shall ensure that procedures are established and implemented to allow parties to disputes involving any matter, including matters arising **prior to the filing of a complaint** pursuant to subsection (b)(6), to resolve such disputes through a mediation process.

(2) **Requirements.** Such procedures **shall** meet the following requirements:

- (A) The procedures shall ensure that the mediation process—
 - (i) **is voluntary** on the part of the parties;
 - (ii) **is not used to deny or delay a parent’s right to a due process hearing** under subsection (f), or to deny any other rights afforded under this part; and
 - (iii) is conducted by a **qualified and impartial** mediator who is trained in effective mediation techniques.¹²³

¹²¹ Many states have their own forms for Procedural Safeguards Notice. The Education Department published a model Procedural Safeguards Notice form. Links to the federal special education regulations and model forms are at www.wrightslaw.com/idea/law.htm and in the Resources section in Section Five of this book. Download and print the model “Procedural Safeguard Notice” from the Education Department of Education and keep it with this book.

¹²² Mediation is a confidential process that allows parties to resolve disputes without litigation. The mediator helps the parties express their views and positions and understand the views and positions of the other party. To be successful, both parties must discuss their views and differences frankly. Before entering into mediation, you need to understand your rights and the law. A due process hearing does not have to be pending to request mediation.

¹²³ When you mediate or negotiate, your goals are to resolve the dispute and protect the parent-school relationship. The Bibliography includes recommended books that will help you learn to negotiate effectively. The terms of a mediated agreement can be incorporated into an IEP so that the IEP reflects the agreement. The mediator can act as a facilitator for an IEP meeting. See Commentary in the *Federal Register*, page 46695.

(B) Opportunity to Meet with a Disinterested Party. A local educational agency or a State agency may establish procedures to offer to parents and schools that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to the parents, with a disinterested party who is under contract with—

(i) a parent training and information center or community parent resource center in the State established under Section 1471 of this title or 1472 of this title; or

(ii) an appropriate alternative dispute resolution entity, to encourage the use, and explain the benefits, of the mediation process to the parents.

(C) List of Qualified Mediators.¹²⁴ The State shall maintain a list of individuals who are qualified mediators¹²⁵ and knowledgeable in laws and regulations relating to the provision of special education and related services.

(D) Costs. The State **shall bear the cost** of the mediation process, including the costs of meetings described in subparagraph (B).

(E) Scheduling and Location. Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute.¹²⁶

(F) Written Agreement.¹²⁷ In the case that a resolution is reached to resolve the complaint through the mediation process, the parties shall execute a **legally binding agreement** that sets forth such resolution and that—

(i) states that **all discussions** that occurred during the mediation process **shall be confidential** and may not be used as evidence in any subsequent due process hearing or civil proceeding;

(ii) is signed by both the parent and a representative of the agency who has the authority to bind such agency; and

(iii) **is enforceable** in any State court of competent jurisdiction or in a district court of the United States.

(G) Mediation Discussions. Discussions that occur during the mediation process **shall be confidential** and may not be used as evidence in any subsequent due process hearing or civil proceeding.¹²⁸

(f) Impartial Due Process Hearing.¹²⁹

(1) In General.

(A) Hearing. Whenever a complaint has been received under subsection (b)(6) or (k), the parents or the local educational agency involved in such complaint shall have an opportunity for an impartial due process

124 The mediator's role is to facilitate the communication process. Mediators should not take positions or take sides. A good mediator does not have to be knowledgeable about special education law and practice but must know how to facilitate communication between parties. If mediators are not well trained in the process of mediation, their biases and opinions will have an adverse impact on the mediation process. Mediators are not arbitrators. Arbitrators issue rulings in favor of one party or the other.

125 Mediators are selected "on a random, rotational, or other impartial basis." See Regulation 300.506(b)(3)(ii).

126 Mediation sessions and resolution sessions do not have to be face-to-face, and per Section 1414(f), may be may be convened by conference calls or video conferences.

127 Legally binding written settlement agreements are new in IDEA 2004. Previously, when a party breached a mediation agreement, the other party had to enforce the agreement by filing suit under a breach of contract theory, usually in state court. Now a party can use the power of federal courts to ensure that settlement agreements are honored.

128 In mediation, discussions and admissions against interests by the parties are confidential. If the case is not settled, information from settlement discussions may not be used or disclosed in a subsequent trial. An attempt to use confidential disclosures from mediation or settlement discussions in court could cause the case to be dismissed or the judge to issue an adverse ruling.

129 IDEA 2004 includes many new pre-trial procedures and timelines for due process hearings.

hearing, which shall be conducted by the State educational agency or by the local educational agency, as determined by State law or by the State educational agency.¹³⁰

(B) Resolution Session.¹³¹

(i) Preliminary Meeting. Prior to the opportunity for an impartial due process hearing under subparagraph (A), the local educational agency **shall convene a meeting with the parents and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the complaint**

(I) **within 15 days** of receiving notice of the parents' complaint;¹³²

(II) which shall include a representative of the agency who has **decisionmaking authority** on behalf of such agency;

(III) which **may not include an attorney** of the local educational agency **unless the parent is accompanied by an attorney**; and

(IV) where the **parents of the child discuss their complaint, and the facts** that form the basis of the complaint, and the local educational agency is provided the opportunity to resolve the complaint, unless the parents and the local educational agency agree¹³³ in writing to waive such meeting, or agree to use the mediation process described in subsection (e)

(ii) Hearing. If the local educational agency has not resolved the complaint to the satisfaction of the parents **within 30 days** of the receipt of the complaint, the due process hearing may occur, and all of the applicable timelines for a due process hearing under this part shall commence.¹³⁴

(iii) Written Settlement Agreement.¹³⁵ In the case that a resolution is reached to resolve the complaint at a meeting described in clause (i), the parties **shall execute a legally binding agreement** that is—

(I) signed by both the parent and a representative of the agency who has the authority to bind such agency; and

(II) enforceable in any State court of competent jurisdiction or in a district court of the United States.

(iv) Review Period. If the parties execute an agreement pursuant to clause (iii), a party **may void such agreement within 3 business days** of the agreement's execution.

130 States have “one-tier” or “two-tier” systems for due process hearings. In a one-tier system, the state department of education conducts the hearing and the losing party can appeal to state or federal court. In a two-tier system, the hearing is conducted by the school district. The losing party must appeal to the state department of education, which will appoint a review officer or review panel. After the review officer or panel issues a decision, the losing party can appeal to state or federal court.

131 The resolution session provides the parties with an opportunity to resolve their complaint before the due process hearing. The school district is required to convene the resolution session within 15 days of receiving the parent's due process complaint notice. The school district must send “the relevant member or members of the IEP Team” who have knowledge about the facts in the parent's complaint and a district representative who has decision-making authority (settlement authority). The school board attorney may not attend the resolution session, unless the parent is accompanied by an attorney. The parents and district may agree to waive the resolution session or use the mediation process. If the LEA initiates the due process hearing, a resolution session is not required. This meeting can be conducted by telephone or video conference call. See Commentary in the *Federal Register*, pages 46700-46701 and Regulation 300.328.

132 The “resolution session should not be postponed” even if the parent's complaint is insufficient. See Commentary in the *Federal Register*, page 46698.

133 Waiver of resolution session must be a joint written agreement. See Regulation 300.510.

134 The due process decision must be rendered within 45 days after the 30-day window. See Regulation 300.515(a).

135 The requirements for legally binding written settlement agreements are new. Previously, when a party breached a settlement agreement, the other party had to enforce the agreement by filing suit under a breach of contract theory. Now the power of the federal courts may be used to ensure that settlement agreements are honored. Either party may void a settlement agreement within 3 business days. Note: The three-day rule does not apply to settlement agreements created in mediation.

(2) Disclosure of Evaluations and Recommendations.¹³⁶

(A) In General. Not less than **5 business days** prior to a hearing conducted pursuant to paragraph (1), each party **shall disclose** to all other parties all evaluations completed by that date, and recommendations based on the offering party's evaluations, that the party intends to use at the hearing.

(B) Failure to Disclose. A hearing officer may bar any party that fails to comply with subparagraph (A) from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

(3) Limitations on Hearing.

(A) Person Conducting Hearing.¹³⁷ A hearing officer conducting a hearing pursuant to paragraph (1)(A) shall, at a minimum—

(i) not be—

(I) an employee of the State educational agency or the local educational agency involved in the education or care of the child; or

(II) a person having a personal or professional interest that conflicts with the person's objectivity in the hearing;

(ii) possess knowledge of, and the ability to understand, the provisions of this title, Federal and State regulations pertaining to this title, and legal interpretations of this title by Federal and State courts;

(iii) **possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice;** and

(iv) possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

(B) Subject Matter of Hearing. The party requesting the due process hearing **shall not be allowed** to raise issues at the due process hearing that were not raised in the notice filed under subsection (b)(7), unless the other party agrees otherwise.

(C) Timeline for Requesting Hearing.¹³⁸ A parent or agency shall request an impartial due process hearing within **2 years** of the date the parent or agency knew or should have known about the alleged action that forms the basis of the complaint, **or**, if the State has an explicit time limitation for requesting such a hearing under this part, in such time as the State law allows.

(D) Exceptions to the Timeline. The timeline described in subparagraph (C) shall not apply to a parent if the parent was prevented from requesting the hearing due to—

(i) specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint; or

136 Evaluations and recommendations must be disclosed at least 5 business days before a due process hearing. Most state statutes and regulations, and standards of practice, require that all exhibits (including evaluations and recommendations), exhibit lists, and witness lists, be disclosed at least 5 days prior to a hearing. Failure to comply with requirements about disclosure often causes hearing officers to dismiss or postpone cases. For a sample document list that can be used as an exhibit list, see Chapter 9, "The File: Do It Right," in *Wrightslaw: From Emotions to Advocacy*. See also Regulation 300.512.

137 The law includes new standards for hearing officers. Hearing officers must be knowledgeable about the law, federal and state regulations, and caselaw. Hearing officers must also have the knowledge and ability to "conduct hearings and write decisions in accordance with appropriate standard legal practice." Hearing Officers may not be employees of the state department of education or the school district that is involved in the child's education, nor may they have a "personal or professional conflict of interest" that may affect their ability to be objective.

138 The two-year statute of limitations to present a complaint is new. If your state does not have a statute of limitations, you must request a due process hearing within two years. The two-year statute of limitations may not apply if the parent was prevented from requesting a hearing because of misrepresentations by the district or because the district withheld information it was required to provide.

(ii) the local educational agency's withholding of information from the parent that was required under this part to be provided to the parent.

(E) Decision of Hearing Officer.¹³⁹

(i) **In General.** Subject to clause (ii), a decision made by a hearing officer **shall be made on substantive grounds** based on a determination of whether the child received a free appropriate public education.¹⁴⁰

(ii) **Procedural Issues.**¹⁴¹ In matters alleging a procedural violation, a hearing officer may find that a child did not receive a free appropriate public education **only if** the procedural inadequacies—

(I) impeded the child's right to a free appropriate public education;

(II) significantly impeded the parents' opportunity to participate in the decisionmaking process regarding the provision of a free appropriate public education to the parents' child; or

(III) **caused a deprivation of educational benefits.**

(iii) **Rule of Construction.** Nothing in this subparagraph shall be construed to preclude a hearing officer from ordering a local educational agency to comply with procedural requirements under this section.

(F) Rule of Construction. Nothing in this paragraph shall be construed to affect the right of a parent to file a complaint with the State educational agency.

(g) Appeal.¹⁴²

(1) **In General.** If the hearing required by subsection (f) is conducted by a local educational agency, any party aggrieved by the findings and decision rendered in such a hearing may appeal such findings and decision to the State educational agency.

(2) **Impartial Review and Independent Decision.** The State educational agency shall conduct an impartial review of the findings and decision appealed under paragraph (1). The officer conducting such review shall make an independent decision upon completion of such review.

(h) Safeguards.¹⁴³ Any party to a hearing conducted pursuant to subsection (f) or (k), or an appeal conducted pursuant to subsection (g), shall be accorded —

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

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

(3) the right to a written, or, at the option of the parents, electronic verbatim record of such hearing; and

(4) the right to written, or, at the option of the parents, electronic findings of fact and decisions, which findings and decisions—

¹³⁹ Rulings by hearing officers should be based substantive issues, not procedural issues, unless the procedural violation impeded the child's right to a free appropriate public education, significantly impeded the parents' opportunity to participate in the decision-making process or deprived the child of educational benefit. This language is new and incorporates existing caselaw about procedural and substantive issues.

¹⁴⁰ Issues of substance include whether a child has a disability that adversely affects educational performance (eligibility), whether a child has received FAPE (a free appropriate public education), or whether a child needs extended school year (ESY) services.

¹⁴¹ Procedural issues include delays in scheduling evaluations, determining eligibility, convening IEP meetings, or the failure to include appropriate personnel in IEP meetings. The facts of a case will determine whether the procedural breach rises to the level identified in this subsection.

¹⁴² Most states have a single tier due process hearing system. In a single tier state, after the hearing, the losing party can appeal to state or federal court. This subsection (g) applies to two tier states in which an appeal is made to the State. After an adverse state level review decision, the losing party can appeal to court.

¹⁴³ In a due process hearing, the parents or their attorney have the right to present evidence and cross-examine witnesses, and to issue subpoenas for witnesses. Parents have a right to a written verbatim record (transcript) of the hearing and to written findings of fact and decisions. In some states, parents may be represented by lay advocates.

(A) shall be made available to the public consistent with the requirements of Section 1417(b) of this title (relating to the confidentiality of data, information, and records); and

(B) shall be transmitted to the advisory panel established pursuant to Section 1412(a)(21) of this title.

(i) Administrative Procedures.

(1) In General.

(A) Decision Made in Hearing – A decision made in a hearing conducted pursuant to subsection (f) or (k) **shall be final**, except that any party involved in such hearing **may appeal** such decision under the provisions of subsection (g) and paragraph (2).

(B) Decision Made at Appeal. A decision made under subsection (g) **shall be final**, except that **any party may bring an action** under paragraph (2).¹⁴⁴

(2) Right to Bring Civil Action.

(A) In General. Any party aggrieved by the findings and decision made under subsection (f) or (k) who does not have the right to an appeal under subsection (g), and **any party** aggrieved by the findings and decision made under this subsection, **shall have the right to bring a civil action** with respect to the complaint presented pursuant to this section, which action may be brought in any State court of competent jurisdiction or in a district court of the United States, without regard to the amount in controversy.¹⁴⁵

(B) Limitation. The party bringing the action shall have **90 days** from the date of the decision of the hearing officer to bring such an action, **or**, if the State has an explicit time limitation for bringing such action under this part, in such time as the State law allows.¹⁴⁶

(C) Additional Requirements. In any action brought under this paragraph, the court

(i) shall receive the records of the administrative proceedings;

(ii) shall hear additional evidence at the request of a party;¹⁴⁷ and

(iii) basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.

(3) Jurisdiction of District Courts; Attorneys' Fees.

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

(B) Award of Attorneys' Fees.

(i) In General. In any action or proceeding brought under this section, the court, in its discretion, **may award reasonable attorneys' fees** as part of the costs—

(I) to a prevailing party who is the parent of a child with a disability;

(II) to a prevailing party who is a State educational agency or local educational agency against the attorney of a parent who files a complaint or subsequent cause of action that is **frivolous, unreason-**

144 In two-tier states (discussed in Section 1415(f)(1)(A)), the losing party must first appeal to the state department of education (SEA). If the party does not appeal, the due process decision is the final decision.

145 In two-tier states, the losing party does not have a right to appeal to state or federal court until a decision is rendered by a Review Officer or Review Panel. After an adverse decision from the State, the losing party has a right to appeal to state or federal court.

146 The losing party has 90 days to appeal to state or federal court. This 90-day timeline is new. States may provide different or shorter timelines. You need to know your state's statute of limitations for filing appeals in Court. To be safe, if it is longer than 90 days, assume that the longer timeline does not apply.

147 Despite language in IDEA that the Court "shall hear additional evidence at the request of a party," many Courts will not hear evidence that could have been offered at the due process hearing. Parties should put all their evidence into the record during the due process hearing.

able, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation;¹⁴⁸ or

(III) to a prevailing State educational agency or local educational agency against the attorney of a parent, or against the parent, if the parent's complaint or subsequent cause of action was presented for any improper purpose, such as to **harass, to cause unnecessary delay, or to needlessly increase the cost of litigation**.¹⁴⁹

(ii) **Rule of Construction.** Nothing in this subparagraph shall be construed to affect section 327 of the District of Columbia Appropriations Act, 2005.

(C) **Determination of Amount of Attorneys' Fees.** Fees awarded under this paragraph shall be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this subsection.

(D) **Prohibition of Attorneys' Fees and Related Costs for Certain Services.**

(i) **In General.** Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under this section for services performed subsequent to the time of a written offer of settlement to a parent if—

(I) the offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than 10 days before the proceeding begins;

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

(III) the court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.¹⁵⁰

(ii) **IEP Team Meetings.** Attorneys' fees **may not be awarded** relating to any **meeting of the IEP Team** unless such meeting is convened as a result of an administrative proceeding or judicial action, **or**, at the discretion of the State, **for a mediation** described in subsection (e).

(iii) **Opportunity to Resolve Complaints.** A meeting conducted pursuant to subsection (f)(1)(B)(i)¹⁵¹ shall not be considered—

(I) a meeting convened as a result of an administrative hearing or judicial action; or

(II) an administrative hearing or judicial action for purposes of this paragraph.

(E) **Exception to Prohibition on Attorneys' Fees and Related Costs.** Notwithstanding subparagraph (D), an award of attorneys' fees and related costs¹⁵² may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.

148 Parents who prevail can recover attorneys' fees from school districts. Now, school districts may recover attorneys' fees from the parents' attorney under specific, limited circumstances. If the parent or the parent's attorney files a complaint that is frivolous, unreasonable, or for an improper purpose (i.e., to harass, cause unnecessary delay, or needlessly increase the cost of litigation), the Court may award attorneys' fees to the school district.

149 Some parents, driven by anger and frustration, request due process hearings although they have not prepared their case. They may be focused on perceived wrongs by the school, not on obtaining a program that will meet their child's needs. Unfortunately, many hearing officers and judges view parents of children with disabilities as emotional "loose cannons." These parents not only lose their cases, but they create ill will for other parents who use due process procedures to resolve disputes.

150 If the school district makes a written settlement offer 10 days before the due process hearing and the terms of the offer are the same or similar to the relief obtained through litigation, the parents may not be entitled to attorneys' fees. Attorneys' fees will not be awarded for IEP meetings. Some courts have held that only federal courts can award attorney's fees. Other courts have held that a state court or federal court can award attorneys' fees.

151 This refers to a resolution session meeting, thus no attorneys fees. See also *Federal Register* Commentary at 46708 regarding Regulation 300.517.

152 Pursuant to the U. S. Supreme Court decision in *Arlington v. Murphy* parents may not recover fees for expert witnesses even if the parents prevail (see U. S. Supreme Court decisions in Chapter 12).

(F) **Reduction in Amount of Attorneys' Fees.** Except as provided in subparagraph (G), whenever the court finds that

(i) the parent, or the parent's attorney, during the course of the action or proceeding, **unreasonably protracted** the final resolution of the controversy;

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

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

(iv) the attorney representing the parent did not provide to the local educational agency the appropriate information in the notice of the complaint described in subsection (b)(7)(A), the court shall reduce, accordingly, the amount of the attorneys' fees awarded under this section.

(G) **Exception to Reduction in Amount of Attorneys' Fees.** The provisions of subparagraph (F) shall not apply in any action or proceeding if the court finds that the State or local educational agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of this section.

(j) **Maintenance of Current Educational Placement.**¹⁵³ Except as provided in **subsection (k)(4)**, during the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents otherwise agree, the **child shall remain in the then-current educational placement** of the child, or, if applying for initial admission to a public school, shall, with the consent of the parents, be placed in the public school program until all such proceedings have been completed.¹⁵⁴

(k) **Placement in Alternative Educational Setting.**^{155, 156}

(1) **Authority of School Personnel.**

(A) **Case-by-Case Determination.** School personnel may consider any unique circumstances on a **case-by-case** basis¹⁵⁷ when determining whether to order a change in placement for a child with a disability who violates a **code of student conduct**.

(B) **Authority.** School personnel under this subsection **may remove** a child with a disability who violates a code of student conduct¹⁵⁸ from their current placement to an appropriate interim alternative educational setting, another setting, or suspension, for **not more than 10 school days** (to the extent such alternatives are applied to children without disabilities).

153 The "Stay Put" statute holds that during the due process hearing and appeal, the child will remain (stay put) in the current educational placement. "Current educational placement" is not the physical location of services, but the nature of the educational program. This does not apply to transition from an early intervention program under Part C to an age 5-21 program under Part B. See Regulation 300.518(c) and Commentary in the *Federal Register*, page 46709.

154 Pursuant to the U. S. Supreme Court decisions in *Burlington* and *Carter*, the parent may remove a child from an inappropriate placement, place their child into a private program, and request reimbursement for the private placement, subject to the restrictions in Section 1412(a)(10). When the final decision at the State level awards reimbursement for a private placement, that private placement is the "current educational placement." If the school district appeals this decision, they must pay for the child's private placement while the case is being appealed. See the Regulation at 300.518(d).

155 This is the discipline statute. The Regulations begin at 300.530.

156 "A free appropriate public education is available to all children with disabilities residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school." (Section 1412(a)(1)(A))

157 Many school administrators and school boards refuse to exercise discretion in disciplinary matters. They claim "the law" does not allow them to evaluate the circumstances of a particular child's case. Congress added language that school personnel may "consider any unique circumstances on a case-by-case basis" in determining whether to order a change of placement. This clarifies that school officials may use discretion and consider each individual situation carefully, and rebuts arguments by administrators who refuse to exercise discretion.

158 If a child with a disability violates a code of student conduct, school officials may suspend the child for up to 10 days. Codes of Conduct are usually written policies adopted by the School Board.

(C) **Additional Authority.**¹⁵⁹ If school personnel seek to order a **change in placement that would exceed 10 school days** and the behavior that gave rise to the violation of the school code is **determined not to be a manifestation** of the child's disability pursuant to subparagraph (E), the relevant disciplinary procedures applicable to children without disabilities may be applied¹⁶⁰ to the child in the same manner and for the same duration in which the procedures would be applied to children without disabilities, except as provided in Section 1412(a)(1)¹⁶¹ of this title although it may be provided in an interim alternative educational setting.

(D) **Services.** A child with a disability who is removed from the child's current placement under subparagraph (G) (irrespective of whether the behavior is determined to be a manifestation of the child's disability) or subparagraph (C) **shall** –

(i) **continue to receive educational services**, as provided in Section 1412(a)(1) of this title, so as to enable the child **to continue to participate in the general education curriculum**, although in another setting, **and to progress toward meeting the goals set out in the child's IEP**; and

(ii) receive, as appropriate, **a functional behavioral assessment, behavioral intervention services and modifications**, that are designed to address the behavior violation so that it does not recur.¹⁶²

(E) **Manifestation Determination.**^{163, 164}

(i) **In General.** Except as provided in subparagraph (B), **within 10 school days of any decision to change the placement** of a child with a disability **because of a violation of a code of student conduct**, the local educational agency, the parent, and relevant members of the IEP Team (as determined by the parent and the local educational agency) **shall review all relevant information** in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine–

(I) **if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability**; or

(II) **if the conduct in question was the direct result of the local educational agency's failure to implement the IEP.**

159 Look at subsection (b)(c) and (d) of 300.530 for the distinctions between change of placement, a 10 day removal for one incident, a series of additional 10 day removals in one school year, and cumulative removals that exceed 10 days in one year. See Commentary in the *Federal Register*, pages 46714 to 46719.

160 If the school suspends the child with a disability for more than 10 days and determines that the child's behavior was not a manifestation of the disability, they may use the same procedures as with non-disabled children, but they must continue to provide the child with a free appropriate public education (FAPE). (Section 1412(a)(1)(A)) If the child has a Section 504 plan, and the behavior was not a manifestation of the disability, the school may suspend or expel the child. The child is not entitled to receive a free appropriate public education.

161 The school is obligated to provide a free, appropriate public education to the child, even if the child has been suspended or expelled.

162 If the school district suspends a child with a disability for more than 10 days, regardless of severity of the child's misconduct (i.e., violation of a code of conduct v. possession of a weapon), the child must continue to receive FAPE (see Section 1412(a)(1)(A)), so the child can participate in the general education curriculum, make progress on the IEP goals, and receive a functional behavioral assessment, behavioral intervention services and modifications to prevent the behavior from reoccurring.

163 The IEP Team must review all information about the child and determine if the negative behavior was caused by the child's disability, had a direct and substantial relationship to the disability, or was the result of the school's failure to implement the IEP.

164 If you are dealing with a discipline issue, you need to obtain a comprehensive psycho-educational evaluation of the child by an evaluator in the private sector who has expertise in the disability (i.e., autism, attention deficit, bipolar disorder, Asperger's syndrome, auditory processing deficits). The evaluator must analyze the relationship between the child's disability and behavior. If there is a causal relationship, the evaluator should write a detailed report that describes the child's disability, the basis for determining that the behavior was a manifestation of the disability, and recommendations for an appropriate program. If you are dealing with a manifestation review, ask the evaluator to attend the hearing to explain the findings and make recommendations about alternative plans. Your goal is to develop a win-win solution to the problem.

(ii) **Manifestation.** If the local educational agency, the parent, and relevant members of the IEP Team determine that either subclause (I) or (II) of clause (i) is applicable for the child, the conduct **shall be determined to be a manifestation of the child's disability.**

(F) **Determination That Behavior Was a Manifestation.** If the local educational agency, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, **the IEP Team shall—**

(i) **conduct a functional behavioral assessment, and implement a behavioral intervention plan**¹⁶⁵ for such child, provided that the local educational agency had not conducted such assessment prior to such determination before the behavior that resulted in a change in placement described in subparagraph (C) or (G);

(ii) in the situation where a behavioral intervention plan has been developed, **review** the behavioral intervention plan if the child already has such a behavioral intervention plan, and **modify** it, as necessary, **to address the behavior;** and

(iii) except as provided in subparagraph (G), return the child to the placement from which the child was removed, unless the parent and the local educational agency agree to a change of placement as part of the modification of the behavioral intervention plan.

(G) **Special Circumstances.** School personnel may remove a student to an interim alternative educational setting for **not more than 45 school days** without regard to whether the behavior is determined to be a manifestation of the child's disability, in cases where a child—

(i) **carries or possesses a weapon**¹⁶⁶ to or at school, on school premises, or to or at a school function under the jurisdiction of a State or local educational agency;

(ii) **knowingly possesses or uses illegal drugs**, or sells or solicits the sale of a controlled substance,¹⁶⁷ while at school, on school premises, or at a school function under the jurisdiction of a State or local educational agency; **or**

(iii) **has inflicted serious bodily injury** upon another person while at school, on school premises, or at a school function under the jurisdiction of a State or local educational agency.^{168, 169}

(H) **Notification.** Not later than the date on which the decision to take disciplinary action is made, the local educational agency shall notify the parents of that decision, and of all procedural safeguards accorded under this section.

(2) **Determination of Setting.** The interim alternative educational setting in subparagraphs (C) and (G) of paragraph (1) **shall be determined by the IEP Team.**¹⁷⁰

165 If the child's behavior did not involve weapons, drugs, or serious bodily injury (see Section 1415(k)(1)(G)), the child should return to the prior placement.

166 Section 1415(k)(7)(C) clarifies that the term "weapon" means a "dangerous weapon" capable of causing death or serious bodily injury.

167 If a doctor prescribes a controlled substance for the child, and the child has possession of the medication at school, this is not illegal possession or illegal use. The school may not expel or suspend the child for possessing prescribed medication. If the child attempts to sell or solicit the sale of the controlled substance, this "special circumstance" warrants a suspension for 45 school days and possible criminal prosecution.

168 See Section 1415(k)(7) for the statutory differences between "controlled drugs" (Schedule I - V) and "illegal drugs," and definitions of "weapon" and "serious bodily injury."

169 If the child's behavior involves a dangerous weapon, illegal drugs, or serious bodily injury, the child may be suspended for 45 school days even if the behavior was a manifestation of the disability. The child is still entitled to FAPE pursuant to Section 1412(a)(1)(A) and Section 1415(k)(1)(D).

170 The decision to place a child into an interim alternative educational setting shall be made by the IEP Team, not by an administrator or school board member. This is mandatory. The educational setting is an interim placement, not a permanent placement. Remember: parents are full members of the IEP Team.

(3) Appeal.

(A) In General. The parent of a child with a disability who disagrees with any decision regarding placement, or the manifestation determination under this subsection, or a local educational agency that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others, may request a hearing.¹⁷¹

(B) Authority of Hearing Officer.¹⁷²

(i) In General. A hearing officer shall hear, and make a determination regarding, an appeal requested under subparagraph (A).

(ii) Change of Placement Order. In making the determination under clause (i), the hearing officer may order a change in placement of a child with a disability. In such situations, the **hearing officer may**

(I) **return a child** with a disability to the placement from which the child was removed; or

(II) **order a change in placement** of a child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of such child is substantially likely to result in injury to the child or to others.

(4) Placement During Appeals. When an appeal under paragraph (3) has been requested by either the parent or the local educational agency—

(A) the **child shall remain in the interim alternative educational setting** pending the decision of the hearing officer or until the expiration of the time period provided for in paragraph (1)(C), whichever occurs first, unless the parent and the State or local educational agency agree otherwise; and

(B) the State or local educational agency shall arrange for an **expedited hearing**, which shall occur within **20 school days** of the date the hearing is requested and shall result in a determination within **10 school days** after the hearing.¹⁷³

(5) Protections for Children Not Yet Eligible for Special Education and Related Services.

(A) In General. A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violates a code of student conduct, **may assert any of the protections** provided for in this part **if the local educational agency had knowledge** (as determined in accordance with this paragraph) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

(B) Basis of Knowledge. A local educational agency shall be deemed to have **knowledge**¹⁷⁴ that a child is a child with a disability if, **before** the behavior that precipitated the disciplinary action occurred—

(i) the parent of the child has **expressed concern in writing** to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services;

171 The parent can request a hearing to appeal the manifestation determination or the decision to place the child in an interim alternative educational setting. The school can request a hearing to maintain the current educational placement if they think changing the placement is “substantially likely to result in injury.” (See Section 1415(j) regarding “stay-put.”) Appeal of a manifestation determination may be futile in a case that involves a dangerous weapon, illegal drugs, or serious bodily injury. The school can suspend a student for 45 school days for these behaviors even if the behavior was a manifestation of the child’s disability.

172 A hearing officer has the authority to return the child to the original placement. If the hearing officer concludes that the child is likely to injure himself or others, the hearing officer may order the child to be placed in an interim alternative educational setting for not more than 45 school days.

173 Expedited hearings must be held within 20 school days and a decision rendered within 10 school days. While the decision is pending, the child shall remain in the alternative setting, unless the time limit for this placement expired.

174 If the school knew, or should have known, that the child is a child with a disability and entitled to an IEP, then the child is protected under IDEA. The factors affecting “knowledge” are listed. If the parent refused to permit an evaluation or special education services, the child loses these protections.

(ii) the parent of the child has **requested an evaluation** of the child pursuant to Section 1414(a)(1)(B) of this title; **or**

(iii) the teacher of the child, or other personnel of the local educational agency, **has expressed specific concerns** about a pattern of behavior demonstrated by the child, directly to the director of special education of such agency or to other supervisory personnel of the agency.¹⁷⁵

(C) **Exception.** A local educational agency shall not be deemed to have knowledge that the child is a child with a disability if the **parent of the child has not allowed an evaluation** of the child pursuant to Section 1414 of this title **or has refused services** under this part or the child has been evaluated and it was determined that the child was not a child with a disability under this part.

(D) Conditions that Apply if No Basis of Knowledge.

(i) **In General.** If a local educational agency does not have knowledge that a child is a child with a disability (in accordance with subparagraph (B) or (C)) prior to taking disciplinary measures against the child, the child may be subjected to disciplinary measures applied to children without disabilities who engaged in comparable behaviors consistent with clause (ii).

(ii) **Limitations.** If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under this subsection, the evaluation **shall be conducted in an expedited manner**. If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency shall provide special education and related services¹⁷⁶ in accordance with this part, except that, pending the results of the evaluation, the child shall remain in the educational placement determined by school authorities.

(6) Referral to and Action by Law Enforcement and Judicial Authorities.¹⁷⁷

(A) **Rule of Construction.** Nothing in this part shall be construed to prohibit an agency from reporting a crime committed by a child with a disability to appropriate authorities or to prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.

(B) **Transmittal of Records.** An agency reporting a crime committed by a child with a disability shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime.

(7) Definitions. In this subsection:

(A) **Controlled Substance.** The term ‘**controlled substance**’ means a drug or other substance identified under schedule I, II, III, IV, or V in Section 812(c) of title 21, United States Code.

(B) **Illegal Drug.** The term ‘**illegal drug**’ means a controlled substance but does **not** include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or

175 If you are concerned that your child may have a disability, you must put your concerns in writing. You should document important conversations, meetings, and telephone calls with notes or letters that describe what happened, what you were told, and your concerns. To do less is unwise. Courts have little sympathy for individuals who know or should know they have rights, fail to safeguard their rights, then complain that their rights were violated. Courts believe that the party who complains that their rights were violated must prove that they took reasonable steps to protect themselves, yet their rights were still violated.

176 If the school did not have knowledge that the child had a disability and was entitled to an IEP, the child may be treated like a nondisabled child. If an evaluation is requested, it shall be expedited. Once it is determined that the child is eligible for special education and is entitled to an IEP, the child will receive all rights and protections under IDEA, including the detailed procedures provided in Section 1415(k).

177 The school is not prohibited or required to report crimes committed by children with disabilities. Discretion and common sense should prevail. The practice of reporting behavior caused by emotional disturbances as “crimes” puts law enforcement personnel into positions for which they have not been trained. Treating emotionally distraught or emotionally disturbed children as criminals may inflict permanent emotional damage on vulnerable children.

that is legally possessed¹⁷⁸ or used under any other authority under that Act or under any other provision of Federal law.

(C) Weapon. The term ‘**weapon**’¹⁷⁹ has the meaning given the term ‘dangerous weapon’ under Section 930(g)(2) of title 18, United States Code.

(D) Serious Bodily Injury. The term ‘serious bodily injury’¹⁸⁰ has the meaning given the term ‘serious bodily injury’ under paragraph (3) of subsection (h) of Section 1365 of title 18, United States Code.

(I) Rule of Construction. Nothing in this title shall be construed to restrict or limit the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, [42 USC § 12101] title V of the Rehabilitation Act of 1973, [29 USC § 790] 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.¹⁸¹

(m) Transfer of Parental Rights at Age of Majority.¹⁸²

(1) In General. A State that receives amounts from a grant under this part may provide that, **when a child with a disability reaches the age of majority** under State law (except for a child with a disability who has been determined to be incompetent under State law)–

(A) the agency shall provide any notice required by this section to both the individual and the parents;

(B) all other **rights accorded to parents** under this part **transfer to the child**;

(C) the agency shall notify the individual and the parents of the transfer of rights; and

(D) all rights accorded to parents under this part transfer to children who are incarcerated in an adult or juvenile Federal, State, or local correctional institution.

(2) Special Rule.¹⁸³ If, under State law, a child with a disability who has reached the age of majority under State law, who has not been determined to be incompetent, but **who is determined not to have the ability to provide informed consent** with respect to the educational program of the child, the State shall establish procedures **for appointing the parent of the child**, or if the parent is not available, another appropriate individual, to represent the educational interests of the child throughout the period of eligibility of the child under this part.

178 Many schools suspend and expel students who bring over-the-counter medications (i.e., aspirin, ibuprofen, Tums) to school, claiming that these medications are “drugs.” This subsection clarifies that over-the-counter medications are not illegal drugs or controlled substances. A child with a disability who receives services under IDEA is protected from these abuses of power. A child who has a Section 504 Plan is not protected.

179 The term ‘dangerous weapon’ means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2 1/2 inches in length.” (18 U. S. C. § 930(g)(2))

180 The term ‘serious bodily injury’ means bodily injury which involves (A) a substantial risk of death; (B) extreme physical pain; (C) protracted and obvious disfigurement; or (D) protracted loss or impairment of the function of a bodily member, organ, or mental faculty...” (18 U. S. C. § 1365(h)(3))

181 If a parent or child with a disability has a case against a school district or school employee for reasons, facts, and events that are not related to IDEA, they may file suit under that legal theory, but must usually initiate their case by a due process hearing. This often occurs when a lawsuit for dollar damages under Section 504 of the Rehabilitation Act is initiated. According to Section 1415(I): “before the filing of a civil action...the (due process) procedures under subsections (f) and (g) shall be exhausted . . .” This is called the “exhaustion of administrative remedies requirement.” Case law in this area continues to evolve.

182 The district must provide notice to the parent and child that the parents’ rights will transfer to the child when the child reaches the “age of majority,” which is usually age eighteen. With a “grant of authority” or “power of attorney” a parent can continue to represent the educational interests of the child.

183 If possible, have your child write a statement that says, “I [child’s name], pursuant to 20 U. S. C. Section 1415(m) and [your state’s special education regulation section], hereby appoint my parent, [your name], to represent my educational interests.” If the child is able, have this statement written out longhand, signed and dated. Use the language in your state’s special education regulation verbatim. If possible, do not add to it, subtract from it, or rephrase it.

(n) **Electronic Mail.** A parent of a child with a disability may elect to receive notices required under this section by an electronic mail (**e-mail**) communication, if the agency makes such option available.¹⁸⁴

(o) **Separate Complaint.** Nothing in this section shall be construed to preclude a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed.¹⁸⁵

20 U. S. C. § 1416. Monitoring, Technical Assistance, and Enforcement.

WRIGHTSLAW OVERVIEW: Section 1416 is the enforcement statute. Although the Department of Education is responsible for enforcing IDEA, the National Council on Disability found that the Department had never required states to enforce the law. As a result, no state was in compliance with the law, leaving parents who requested due process hearings to act as the main enforcers of the law.¹⁸⁶ After passing the No Child Left Behind Act in 2001, Congress looked at special education outcomes and added new language about Focused Monitoring. Previously, enforcement focused on procedural compliance. The Department of Education did not focus on whether schools and districts were teaching children with disabilities how to read, write, spell, do arithmetic or prepare the children for further education, employment, independent living. Section 1416 includes stronger language about accountability. If the Department of Education determines that a state department of education (SEA) “needs assistance” for two consecutive years, the Department shall take corrective action and impose special conditions. If the state remains in the “needs assistance” category for three consecutive years, the Department of Education may recover funds paid, withhold further funds, and refer the matter to the Department of Justice.

(a) Federal and State Monitoring.

(1) **In General.** The Secretary shall—

(A) monitor implementation of this part through—

(i) oversight of the exercise of general supervision by the States, as required in Section 1412(a)(11) of this title; and

(ii) the State performance plans, described in subsection (b);

(B) enforce this part in accordance with subsection (e); and

(C) require States to—

(i) monitor implementation of this part by local educational agencies; and

(ii) enforce this part in accordance with paragraph (3) and subsection (e).

(2) **Focused Monitoring.**¹⁸⁷ The primary focus of Federal and State monitoring activities described in paragraph (1) shall be on—

184 At the parent’s option, the district can send notices by e-mail. Given the prevalence of email problems, this option is not recommended as the primary means of providing or receiving notice. You may want to receive notice by email as a supplement to the usual notification procedures.

185 If a due process hearing is pending on one issue, and a new issue arises, the parent may file a separate due process complaint notice. In the alternative, if the hearing officer and both sides agree, and the hearing has not been held, the parent may be able to file an Amended Complaint as described in Section 1415(c)(2)(E).

186 *Back to School on Civil Rights* is available from the National Council on Disability at: www.ncd.gov/newsroom/publications/2000/backtoschool_1.htm

187 In IDEA 2004, monitoring focuses on educational results and functional outcomes. This language is similar to No Child Left Behind and is a refreshing change from the focus on procedural compliance. When the special education law was passed in 1975 (Public Law 94-142), many children with disabilities were denied services without due process of law. As a result, the law focused on protecting the rights of children and their parents (Section 1400(d)(1)(B)) and providing remedies for violations. During the early years, educational outcomes took a back seat to procedural compliance. Before the IDEA was reauthorized in 1997, the word “measurable” (or any variation of the word) was rarely used to describe outcomes, goals, or objectives. When the law was reauthorized in 1997, the word “measurable” (or a variation of the word) appeared 16 times. In IDEA 2004, the word “measurable” appears 30 times. This measurable change in the frequency of the word “measurable” may bode well for the future.

(A) improving educational results¹⁸⁸ and functional outcomes for all children with disabilities; and

(B) ensuring that States meet the program requirements under this part, with a particular emphasis on those requirements that are most closely related to improving educational results for children with disabilities.

(3) Monitoring Priorities. The Secretary shall monitor the States, and **shall require each State to monitor the local educational agencies** located in the State (except the State exercise of general supervisory responsibility), using quantifiable indicators in each of the following priority areas, and using such qualitative indicators as are needed to adequately measure performance in the following priority areas:

(A) Provision of a free appropriate public education in the least restrictive environment.

(B) State exercise of general supervisory authority, including child find, effective monitoring, the use of resolution sessions, mediation, voluntary binding arbitration, and a system of transition services as defined in Sections 1401(34) and 1437(a)(9) of this title.

(C) Disproportionate representation of racial and ethnic groups in special education and related services, to the extent the representation is the result of inappropriate identification.

(4) Permissive Areas of Review. The Secretary shall consider other relevant information and data, including data provided by States under Section 1418 of this title.

(b) State Performance Plans.¹⁸⁹

(1) Plan.

(A) In General. Not later than 1 year after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2004, each State shall have in place a performance plan that evaluates that State's efforts to implement the requirements and purposes of this part and describes how the State will improve such implementation.

(B) Submission for Approval. Each State shall submit the State's performance plan to the Secretary for approval in accordance with the approval process described in subsection (c).

(C) Review. Each State shall review its State performance plan at least once every 6 years and submit any amendments to the Secretary.

(2) Targets.

(A) In General. As a part of the State performance plan described under paragraph (1), each State **shall establish measurable and rigorous targets** for the indicators established under the priority areas described in subsection (a)(3).

(B) Data Collection.

(i) In General. Each State shall collect valid and reliable information as needed to report annually to the Secretary on the priority areas described in subsection (a)(3).

(ii) Rule of Construction. Nothing in this title shall be construed to authorize the development of a nationwide database of personally identifiable information on individuals involved in studies or other collections of data under this part.

(C) Public Reporting and Privacy.

(i) In General. The State shall use the targets established in the plan and priority areas described in subsection (a)(3) to analyze the performance of each local educational agency in the State in implementing this part.

¹⁸⁸ However, attempting to measure educational results from year to year appears to be a moving target. Why not take a child's initial standardized test data from eligibility and compare using the same tests to changes in one year, two years, and three years later.

¹⁸⁹ Information on Monitoring and Enforcement activities of the U. S. Department of Education is at www.ed.gov/policy/spced/guid/idea/monitor/index.html (Last visited on September 22, 2006)

(ii) Report.

(I) Public Report. The State **shall report** annually to the public on the performance of each local educational agency located in the State on the targets in the State's performance plan. The State shall make the State's performance plan available through public means, including by posting on the website of the State educational agency, distribution to the media, and distribution through public agencies.

(II) State Performance Report. The State shall report annually to the Secretary on the performance of the State under the State's performance plan.

(iii) Privacy. The State shall not report to the public or the Secretary any information on performance that would result in the disclosure of personally identifiable information about individual children or where the available data is insufficient to yield statistically reliable information.

(c) Approval Process.

(1) Deemed Approval. The Secretary shall review (including the specific provisions described in subsection (b)) each performance plan submitted by a State pursuant to subsection (b)(1)(B) and the plan shall be deemed to be approved by the Secretary unless the Secretary makes a written determination, prior to the expiration of the 120-day period beginning on the date on which the Secretary received the plan, that the plan does not meet the requirements of this section, including the specific provisions described in subsection (b).

(2) Disapproval. The Secretary shall not finally disapprove a performance plan, except after giving the State notice and an opportunity for a hearing.

(3) Notification. If the Secretary finds that the plan does not meet the requirements, in whole or in part, of this section, the Secretary **shall** –

(A) give the State notice and an opportunity for a hearing; and

(B) notify the State of the finding, and in such notification shall–

(i) cite the specific provisions in the plan that do not meet the requirements; and

(ii) request additional information, only as to the provisions not meeting the requirements, needed for the plan to meet the requirements of this section.

(4) Response. If the State responds to the Secretary's notification described in paragraph (3)(B) during the 30-day period beginning on the date on which the State received the notification, and resubmits the plan with the requested information described in paragraph (3)(B)(ii), the Secretary shall approve or disapprove such plan prior to the later of –

(A) the expiration of the 30-day period beginning on the date on which the plan is resubmitted; or

(B) the expiration of the 120-day period described in paragraph (1).

(5) Failure to Respond. If the State does not respond to the Secretary's notification described in paragraph (3)(B) during the 30-day period beginning on the date on which the State received the notification, such plan shall be deemed to be disapproved.

(d) Secretary's Review and Determination.

(1) Review. The Secretary shall annually review the State performance report submitted pursuant to subsection (b)(2)(C)(ii)(II) in accordance with this section.

(2) Determination.

(A) In General. Based on the information provided by the State in the State performance report, information obtained through monitoring visits, and any other public information made available, the Secretary shall determine if the State–

(i) meets the requirements and purposes of this part;

(ii) needs assistance in implementing the requirements of this part;

(iii) needs intervention in implementing the requirements of this part; or

(iv) needs substantial intervention in implementing the requirements of this part.

(B) Notice and Opportunity for a Hearing. For determinations made under clause (iii) or (iv) of subparagraph (A), the Secretary shall provide reasonable notice and an opportunity for a hearing on such determination.

(e) Enforcement.

(1) Needs Assistance. If the Secretary determines, **for 2 consecutive years**, that a State needs assistance under subsection (d)(2)(A)(ii) in implementing the requirements of this part, the Secretary **shall take 1 or more of the following actions:**

(A) Advise the State of available sources of technical assistance that may help the State address the areas in which the State needs assistance, which may include assistance from the Office of Special Education Programs, other offices of the Department of Education, other Federal agencies, technical assistance providers approved by the Secretary, and other federally funded nonprofit agencies, and require the State to work with appropriate entities. Such technical assistance may include—

(i) the provision of advice by experts to address the areas in which the State needs assistance, including explicit plans for addressing the area for concern within a specified period of time;

(ii) assistance in identifying and implementing professional development, instructional strategies, and methods of instruction that are based on scientifically based research;

(iii) designating and using distinguished superintendents, principals, special education administrators, special education teachers, and other teachers to provide advice, technical assistance, and support; and

(iv) devising additional approaches to providing technical assistance, such as collaborating with institutions of higher education, educational service agencies, national centers of technical assistance supported under part D, and private providers of scientifically based technical assistance.

(B) Direct the use of State-level funds under Section 1411(e) of this title on the area or areas in which the State needs assistance.

(C) Identify the State as a **high-risk grantee and impose special conditions** on the State's grant under this part.

(2) Needs Intervention. If the Secretary determines, **for 3 or more consecutive years**, that a State needs intervention under subsection (d)(2)(A)(iii) in implementing the requirements of this part, the following shall apply:

(A) The Secretary may take any of the actions described in paragraph (1).

(B) The Secretary **shall take 1 or more of the following actions:**

(i) Require the State to prepare a corrective action plan or improvement plan if the Secretary determines that the State should be able to correct the problem within 1 year.

(ii) Require the State to enter into a compliance agreement under Section 1234f of this title, if the Secretary has reason to believe that the State cannot correct the problem within 1 year.

(iii) For each year of the determination, withhold not less than 20 percent and not more than 50 percent of the State's funds under Section 1411(e) of this title, until the Secretary determines the State has sufficiently addressed the areas in which the State needs intervention.

(iv) Seek to recover funds under Section 1234a this title.

(v) **Withhold**, in whole or in part, **any further payments** to the State under this part pursuant to paragraph (5).

(vi) Refer the matter for appropriate enforcement action, which may include referral to the Department of Justice.

(3) Needs Substantial Intervention. Notwithstanding paragraph (1) or (2), **at any time** that the Secretary determines that a State needs substantial intervention in implementing the requirements of this part or that there is a substantial failure to comply with any condition of a State educational agency's or local educational agency's eligibility under this part, the Secretary **shall take 1 or more of the following actions:**

(A) Recover funds under Section 1234a of this title.

(B) Withhold, in whole or in part, any further payments to the State under this part.

(C) Refer the case to the Office of the Inspector General at the Department of Education.

(D) Refer the matter for appropriate enforcement action, which may include **referral to the Department of Justice.**

(4) Opportunity for Hearing.

(A) Withholding Funds. Prior to withholding any funds under this section, the Secretary shall provide reasonable notice and an opportunity for a hearing to the State educational agency involved.

(B) Suspension. Pending the outcome of any hearing to withhold payments under subsection (b), the Secretary may suspend payments to a recipient, suspend the authority of the recipient to obligate funds under this part, or both, after such recipient has been given reasonable notice and an opportunity to show cause why future payments or authority to obligate funds under this part should not be suspended.

(5) Report to Congress. The Secretary shall report to the **Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate** within 30 days of taking enforcement action pursuant to paragraph (1), (2), or (3), on the specific action taken and the reasons why enforcement action was taken.

(6) Nature of Withholding.

(A) Limitation. If the Secretary withholds further payments pursuant to paragraph (2) or (3), the Secretary may determine—

(i) that such withholding will be limited to programs or projects, or portions of programs or projects, that affected the Secretary's determination under subsection (d)(2); or

(ii) that the State educational agency shall not make further payments under this part to specified State agencies or local educational agencies that caused or were involved in the Secretary's determination under subsection (d)(2).

(B) Withholding Until Rectified. Until the Secretary is satisfied that the condition that caused the initial withholding has been substantially rectified—

(i) payments to the State under this part shall be withheld in whole or in part; and

(ii) payments by the State educational agency under this part shall be limited to State agencies and local educational agencies whose actions did not cause or were not involved in the Secretary's determination under subsection (d)(2), as the case may be.

(7) Public Attention. Any State that has received notice under subsection (d)(2) shall, by means of a public notice, take such measures as may be necessary to bring the pendency of an action pursuant to this subsection to the attention of the public within the State.

(8) Judicial Review.

(A) In General. If any State is dissatisfied with the Secretary's action with respect to the eligibility of the State under Section 1412 of this title, such State may, not later than 60 days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be transmitted by the clerk of the court to the Secretary. The Secretary

thereupon shall file in the court the record of the proceedings upon which the Secretary's action was based, as provided in Section 2112 of title 28, United States Code.

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

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

(f) State Enforcement. If a State educational agency determines that **a local educational agency is not meeting the requirements** of this part, including the targets in the State's performance plan, the State educational agency **shall prohibit** the local educational agency from reducing the local educational agency's maintenance of effort under Section 1413(a)(2)(C) of this title for any fiscal year.

(g) Rule of Construction. Nothing in this section shall be construed to restrict the Secretary from utilizing any authority under the General Education Provisions Act to monitor and enforce the requirements of this title.

(h) Divided State Agency Responsibility. For purposes of this section, where responsibility for ensuring that the requirements of this part are met with respect to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons is assigned to a public agency other than the State educational agency pursuant to Section 1412(a)(11)(C) of this title, the Secretary, in instances where the Secretary finds that the failure to comply substantially with the provisions of this part are related to a failure by the public agency, shall take appropriate corrective action to ensure compliance with this part, except that

(1) any reduction or withholding of payments to the State shall be proportionate to the total funds allotted under Section 1411 of this title to the State as the number of eligible children with disabilities in adult prisons under the supervision of the other public agency is proportionate to the number of eligible individuals with disabilities in the State under the supervision of the State educational agency; and

(2) any withholding of funds under paragraph (1) shall be limited to the specific agency responsible for the failure to comply with this part.

(i) Data Capacity and Technical Assistance Review. The Secretary shall—

(1) review the data collection and analysis capacity of States to ensure that data and information determined necessary for implementation of this section is collected, analyzed, and accurately reported to the Secretary; and

(2) provide technical assistance (from funds reserved under Section 1411(c) of this title), where needed, to improve the capacity of States to meet the data collection requirements.

20 U. S. C. § 1417. Administration.

WRIGHTSLAW OVERVIEW: Section 1417 describes requirements for administering the law. The Department of Education may not mandate, direct, or control specific instructional content, curriculum or programs of instruction. When the special education regulations were published, the Department of Education published a model Individualized Education Program (IEP) form, an Individualized Family Service Plan (IFSP) form, procedural safeguards notice form, and prior written notice form.

(a) Responsibilities of Secretary. The Secretary shall—

(1) cooperate with, and (directly or by grant or contract) furnish technical assistance necessary to, a State in matters relating to—

(A) the education of children with disabilities; and

(B) carrying out this part; and

(2) provide short-term training programs and institutes.

(b) Prohibition Against Federal Mandates, Direction, or Control. Nothing in this title shall be construed to authorize an officer or employee of the Federal Government to mandate, direct, or control a State, local educational agency, or school's specific instructional content, academic achievement standards and assessments, curriculum, or program of instruction.

(c) Confidentiality. The Secretary shall take appropriate action, in accordance with Section 1232g of this title, to ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by the Secretary and by State educational agencies and local educational agencies pursuant to this part.

(d) Personnel. The Secretary is authorized to hire qualified personnel necessary to carry out the Secretary's duties under subsection (a), under Section 1418 of this title, and under subpart 4 of part D, without regard to the provisions of title 5, United States Code, relating to appointments in the competitive service and without regard to chapter 51 and subchapter III of chapter 53 of such title relating to classification and general schedule pay rates, except that no more than 20 such personnel shall be employed at any time.

(e) Model Forms.¹⁹⁰ Not later than the date that the Secretary publishes final regulations under this title, to implement amendments made by the Individuals with Disabilities Education Improvement Act of 2004, the Secretary shall publish and disseminate widely to States, local educational agencies, and parent and community training and information centers—

(1) a model **IEP form**;

(2) a model **individualized family service plan (IFSP) form**;

(3) a model form of the **notice of procedural safeguards** described in Section 1415(d) of this title; and

(4) a model form of the **prior written notice** described in subsections (b)(3) and (c)(1) of Section 1415 of this title that is consistent with the requirements of this part and is sufficient to meet such requirements.

20 U. S. C. § 1418. Program Information.

WRIGHTSLAW OVERVIEW: IDEA 2004 requires States to provide detailed reports about the number and percentage of children with disabilities by race, ethnicity, English proficiency, gender, and disability category, including children removed from school. The state must report Information about litigation and due process hearings. To address issues of over-identification of minority children and the disproportionate number of minority children in special education, the Department of Education requires states to review and revise policies, procedures, and practices, and requires districts to publicly report on their revised policies, procedures and practices.

(a) In General. Each State that receives assistance under this part, and the Secretary of the Interior, **shall provide data each year to** the Secretary of Education and **the public** on the following:

(1)

(A) The number and percentage of children with disabilities, by race, ethnicity, limited English proficiency status, gender, and disability category, who are in each of the following separate categories:

(i) Receiving a free appropriate public education.

(ii) Participating in regular education.

(iii) In separate classes, separate schools or facilities, or public or private residential facilities.

(iv) For each year of age from age 14 through 21, stopped receiving special education and related services because of program completion (including graduation with a regular secondary school diploma), or other reasons, and the reasons why those children stopped receiving special education and related

¹⁹⁰ Download the model forms from www.wrightslaw.com/idea/law.htm or check the Resources section at the end of this book for links to the model forms.

services.

(v)

(I) Removed to an interim alternative educational setting under Section 1415(k)(1) of this title.

(II) The acts or items precipitating those removals.

(III) The number of children with disabilities who are subject to long-term suspensions or expulsions.

(B) The number and percentage of children with disabilities, by race, gender, and ethnicity, who are receiving early intervention services.

(C) The number and percentage of children with disabilities, by race, gender, and ethnicity, who, from birth through age 2, stopped receiving early intervention services because of program completion or for other reasons.

(D) The incidence and duration of disciplinary actions by race, ethnicity, limited English proficiency status, gender, and disability category, of children with disabilities, including suspensions of 1 day or more.

(E) The number and percentage of children with disabilities who are removed to alternative educational settings or expelled as compared to children without disabilities who are removed to alternative educational settings or expelled.

(F) The number of due process complaints filed under Section 1415 of this title and the number of hearings conducted.

(G) The number of hearings requested under Section 1415(k) of this title and the number of changes in placements ordered as a result of those hearings.

(H) The number of mediations held and the number of settlement agreements reached through such mediations.

(2) The number and percentage of infants and toddlers, by race, and ethnicity, who are at risk of having substantial developmental delays (as defined in Section 1432 of this title), and who are receiving early intervention services under part C.

(3) Any other information that may be required by the Secretary.

(b) Data Reporting.

(1) **Protection of Identifiable Data.** The data described in subsection (a) shall be publicly reported by each State in a manner that does not result in the disclosure of data identifiable to individual children.

(2) **Sampling.** The Secretary may permit States and the Secretary of the Interior to obtain the data described in subsection (a) through sampling.

(c) **Technical Assistance.** The Secretary may provide technical assistance to States to ensure compliance with the data collection and reporting requirements under this title.

(d) Disproportionality.¹⁹¹

(1) **In General.** Each State that receives assistance under this part, and the Secretary of the Interior, shall provide for the collection and examination of data to determine if significant disproportionality based on race and ethnicity is occurring in the State and the local educational agencies of the State with respect to—

(A) the identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment described in Section 1401(3) of this title;

(B) the placement in particular educational settings of such children; and

(C) the incidence, duration, and type of disciplinary actions, including suspensions and expulsions.

¹⁹¹ See Section 1412(a)(24) about policies and practices regarding the over-identification or disproportionate representation by race and ethnicity.

(2) Review and Revision of Policies, Practices, and Procedures. In the case of a determination of significant disproportionality with respect to the identification of children as children with disabilities, or the placement in particular educational settings of such children, in accordance with paragraph (1), the State or the Secretary of the Interior, as the case may be, shall—

(A) provide for the review and, if appropriate, revision of the policies, procedures, and practices used in such identification or placement to ensure that such policies, procedures, and practices comply with the requirements of this title;

(B) require any local educational agency identified under paragraph (1) to reserve the maximum amount of funds under Section 1413(f) of this title to provide comprehensive coordinated early intervening services to serve children in the local educational agency, particularly children in those groups that were significantly overidentified under paragraph (1); and

(C) require the local educational agency to publicly report on the revision of policies, practices, and procedures described under subparagraph (A).

20 U. S. C. § 1419. Preschool Grants.

WRIGHTSLAW OVERVIEW: This section provides requirements for preschool grants.

(a) In General. The Secretary shall provide grants under this section to assist States to provide special education and related services, in accordance with this part

(1) to children with disabilities aged 3 through 5, inclusive; and

(2) at the State's discretion, to 2-year-old children with disabilities who will turn 3 during the school year.

(b) Eligibility. A State shall be eligible for a grant under this section if such State—

(1) is eligible under Section 1412 of this title to receive a grant under this part; and

(2) makes a free appropriate public education available to all children with disabilities, aged 3 through 5, residing in the State.

(c) Allocations to States.

(1) In General. The Secretary shall allocate the amount made available to carry out this section for a fiscal year among the States in accordance with paragraph (2) or (3), as the case may be.

(2) Increase in Funds. If the amount available for allocations to States under paragraph (1) for a fiscal year is equal to or greater than the amount allocated to the States under this section for the preceding fiscal year, those allocations shall be calculated as follows:

(A) Allocation.

(i) In General. Except as provided in subparagraph (B), the Secretary shall—

(I) allocate to each State the amount the State received under this section for fiscal year 1997;

(II) allocate 85 percent of any remaining funds to States on the basis of the States' relative populations of children aged 3 through 5; and

(III) allocate 15 percent of those remaining funds to States on the basis of the States' relative populations of all children aged 3 through 5 who are living in poverty.

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

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

(i) Preceding Years. No State's allocation shall be less than its allocation under this section for the

preceding fiscal year.

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

(I) the sum of—

(aa) the amount the State received under this section for fiscal year 1997; and

(bb) 1/3 of 1 percent of the amount by which the amount appropriated under subsection (j) for the fiscal year exceeds the amount appropriated for this section for fiscal year 1997;

(II) the sum of—

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

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

(III) the sum of—

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

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

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

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

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

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

(3) **Decrease in Funds.** If the amount available for allocations to States under paragraph (1) for a fiscal year is less than the amount allocated to the States under this section for the preceding fiscal year, those allocations shall be calculated as follows:

(A) **Allocations.** If the amount available for allocations is greater than the amount allocated to the States for fiscal year 1997, each State shall be allocated the sum of—

(i) the amount the State received under this section for fiscal year 1997; and

(ii) an amount that bears the same relation to any remaining funds as the increase the State received under this section for the preceding fiscal year over fiscal year 1997 bears to the total of all such increases for all States.

(B) **Ratable Reductions.** If the amount available for allocations is equal to or less than the amount allocated to the States for fiscal year 1997, each State shall be allocated the amount the State received for fiscal year 1997, ratably reduced, if necessary.

(d) **Reservation for State Activities.**

(1) **In General.** Each State may reserve not more than the amount described in paragraph (2) for administration and other State-level activities in accordance with subsections (e) and (f).

(2) **Amount Described.** For each fiscal year, the Secretary shall determine and report to the State educational agency an amount that is 25 percent of the amount the State received under this section for fiscal year 1997, cumulatively adjusted by the Secretary for each succeeding fiscal year by the lesser of —

(A) the percentage increase, if any, from the preceding fiscal year in the State's allocation under this section; or

(B) the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor.

(e) State Administration.

(1) In General. For the purpose of administering this section (including the coordination of activities under this part with, and providing technical assistance to, other programs that provide services to children with disabilities) a State may use not more than 20 percent of the maximum amount the State may reserve under subsection (d) for any fiscal year.

(2) Administration of Part C. Funds described in paragraph (1) may be used for the administration of part C.

(f) Other State-Level Activities. Each State shall use any funds the State reserves under subsection (d) and does not use for administration under subsection (e)–

(1) for support services (including establishing and implementing the mediation process required by Section 1415(e) of this title), which may benefit children with disabilities younger than 3 or older than 5 as long as those services also benefit children with disabilities aged 3 through 5;

(2) for direct services for children eligible for services under this section;

(3) for activities at the State and local levels to meet the performance goals established by the State under Section 1412(a)(15) of this title;

(4) to supplement other funds used to develop and implement a statewide coordinated services system designed to improve results for children and families, including children with disabilities and their families, but not more than 1 percent of the amount received by the State under this section for a fiscal year;

(5) to provide early intervention services (which shall include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills) in accordance with part C to children with disabilities who are eligible for services under this section and who previously received services under part C until such children enter, or are eligible under State law to enter, kindergarten; or

(6) at the State's discretion, to continue service coordination or case management for families who receive services under part C.

(g) Subgrants to Local Educational Agencies.

(1) Subgrants Required. Each State that receives a grant under this section for any fiscal year shall distribute all of the grant funds that the State does not reserve under subsection (d) to local educational agencies in the State that have established their eligibility under Section 1413 of this title, as follows:

(A) Base Payments. The State shall first award each local educational agency described in paragraph (1) the amount that agency would have received under this section for fiscal year 1997 if the State had distributed 75 percent of its grant for that year under Section 1419(c)(3) of this title, as such section was then in effect.

(B) Allocation of Remaining Funds. After making allocations under subparagraph (A), the State shall

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

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

(2) Reallocation of Funds. If a State educational agency determines that a local educational agency is adequately providing a free appropriate public education to all children with disabilities aged 3 through 5 residing in the area served by the local educational agency with State and local funds, the State educational agency may reallocate any portion of the funds under this section that are not needed by that local educational agency to provide a free appropriate public education to other local educational agencies in the State that are not adequately providing special education and related services to all children with disabilities aged 3 through 5 residing in the areas the other local educational agencies serve.

End of Part B

Part C – Infants and Toddlers with Disabilities

WRIGHTSLAW OVERVIEW: Part C governs early intervention services for infants and toddlers under age 3. Part C includes Sections 1431 through Section 1442 of Title 20 of the United States Code (U. S. C.): The regulations are not expected until 2008.¹

- 20 U. S. C. § 1431. Findings and Policy
- 20 U. S. C. § 1432. Definitions
- 20 U. S. C. § 1433. General Authority
- 20 U. S. C. § 1434. Eligibility
- 20 U. S. C. § 1435. Requirements for Statewide System
- 20 U. S. C. § 1436. Individualized Family Service Plans
- 20 U. S. C. § 1437. State Application and Assurances
- 20 U. S. C. § 1438. Uses of Funds
- 20 U. S. C. § 1439. Procedural Safeguards
- 20 U. S. C. § 1440. Payor of Last Resort
- 20 U. S. C. § 1441. State Interagency Coordinating Council
- 20 U. S. C. § 1442. Federal Administration
- 20 U. S. C. § 1443. Allocation of Funds
- 20 U. S. C. § 1444. Authorization of Appropriations

20 U. S. C. § 1431. Findings and Policy.

WRIGHTSLAW OVERVIEW: Congress made significant changes to Findings and Policy in Part C by adding language about the need “to recognize the significant brain development that occurs during a child’s first 3 years of life.” The language about the need “to minimize the likelihood of institutionalization” was replaced by the need “to maximize the potential for individuals with disabilities to live independently in society.”

(a) Findings - Congress finds that there is an urgent and substantial need –

(1) to enhance the development of infants and toddlers with disabilities, to **minimize their potential for developmental delay**, and to recognize the **significant brain development that occurs during a child’s first 3 years of life**;

(2) to reduce the educational costs to our society, including our Nation’s schools, **by minimizing the need for special education and related services** after infants and toddlers with disabilities reach school age;

(3) to **maximize the potential for individuals with disabilities to live independently in society**.

(4) to enhance the capacity of families to meet the special needs of their infants and toddlers with disabilities; and

(5) to enhance the capacity of State and local agencies and service providers to **identify, evaluate, and meet the needs of all children, particularly minority, low-income, inner city, and rural children**, and infants and toddlers in foster care.

(b) Policy - It is the policy of the United States to provide financial assistance to States –

(1) to develop and implement a **statewide, comprehensive, coordinated, multidisciplinary, interagency system that provides early intervention services** for infants and toddlers with disabilities and their families;

(2) to facilitate the coordination of payment for early intervention services from Federal, State, local, and private sources (including public and private insurance coverage);

¹ According to the Office of Special Education Program (OSEP), “The Department intends to publish the NPRM in the Federal Register in early 2007, hold public meetings in the spring, and publish the final regulations in early 2008.” This is a general timeline and is subject to change.

(3) to enhance State capacity to **provide quality early intervention services** and **expand and improve existing early intervention services** being provided to infants and toddlers with disabilities and their families; and

(4) to encourage States to **expand opportunities for children under 3 years of age who would be at risk of having substantial developmental delay** if they did not receive early intervention services.

20 U. S. C. § 1432. Definitions.

WRIGHTSLAW OVERVIEW: Section 1432 is similar to 20 U. S. C. § 1401 in Part A, and provides key definitions of early intervention services to infants and toddlers with disabilities in Part C of IDEA.

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 1441.

(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 1435(a)(1).

(4) **Early Intervention Services** - The term ‘**early intervention services**’² means developmental services that

(A) are provided under public supervision;

(B) are provided at no cost except where Federal or State law provides for a system of payments by families, including a schedule of sliding fees;

(C) are designed to meet the developmental needs of an infant or toddler with a disability, as identified by the individualized family service plan team, in any 1 or more of the following areas:

(i) physical development;

(ii) cognitive development;

(iii) communication development;

(iv) social or emotional development; or

(v) adaptive development;

(D) meet the standards of the State in which the services are provided, including the requirements of this part;

(E) include -

(i) family training, counseling, and home visits;

(ii) special instruction;

(iii) speech-language pathology and audiology services, and sign language and cued language services;

(iv) occupational therapy;

(v) physical therapy;

(vi) psychological services;

(vii) service coordination services;

(viii) medical services only for diagnostic or evaluation purposes;

² Early intervention services must be designed to meet the child’s developmental needs, including needs in the physical, cognitive, communication, social and emotional, and adaptive areas. Many school districts offer one-size-fits-all school based programs that are not “designed to meet the developmental needs” of a particular infant or toddler.

- (ix) early identification, screening, and assessment services;
- (x) health services necessary to enable the infant or toddler to benefit from the other early intervention services;
- (xi) social work services;
- (xii) vision services;
- (xiii) assistive technology devices and assistive technology services; and
- (xiv) transportation and related costs that are necessary to enable an infant or toddler and the infant's or toddler's family to receive another service described in this paragraph;

(F) are **provided by qualified personnel**, including—

- (i) special educators;
- (ii) speech-language pathologists and audiologists;
- (iii) occupational therapists;
- (iv) physical therapists;
- (v) psychologists;
- (vi) social workers;
- (vii) nurses;
- (viii) registered dietitians;
- (ix) family therapists;
- (x) vision specialists, including ophthalmologists and optometrists;
- (xi) orientation and mobility specialists; and
- (xii) pediatricians and other physicians;³

(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 plan⁴ adopted in accordance with Section 1436.

(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 that has a high probability of resulting in developmental delay; and

(B) **may** also include, at a State's discretion -

(i) at-risk infants and toddlers; and

(ii) children with disabilities who are eligible for services under Section 1419 and who previously received services under this part until such children enter, or are eligible under State law to enter, kindergarten or elementary school, as appropriate, provided that any programs under this part serving such

³ IDEA authorizes early intervention services from professional providers. An issue may arise as to whether service providers are “qualified” or whether services are provided by inadequately trained staff, including aides and paraprofessionals. Children may receive services from physicians for diagnostic and evaluation purposes, if necessary.

⁴ For the legal requirements for Individualized Family Service Plans, see 20 U. S. C. § 1436.

children shall include -

- (I) an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills; and
- (II) a written notification to parents of their rights and responsibilities in determining whether their child will continue to receive services under this part or participate in preschool programs under Section 1419.

20 U. S. C. § 1433. General Authority.

WRIGHTSLAW OVERVIEW: Section 1433 describes the authority of the U. S. Department of Education to make grants to States.

The Secretary shall, in accordance with this part, make grants to States (from their allotments under Section 1443) 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.

20 U. S. C. § 1434. Eligibility.

WRIGHTSLAW OVERVIEW: Section 1434 describes assurances States must provide in order to receive federal funds for early intervention programs.

In order to be eligible for a grant under Section 1433, a State shall provide assurances to the Secretary that the State –

- (1) has adopted a policy that **appropriate early intervention services are available to all infants and toddlers with disabilities** in the State and their families, including Indian infants and toddlers with disabilities and their families residing on a reservation geographically located in the State, infants and toddlers with disabilities who are homeless children and their families, and infants and toddlers with disabilities who are wards of the State; and
- (2) has in effect a statewide system that meets the requirements of Section 1435.

20 U. S. C. § 1435. Requirements for Statewide System.

WRIGHTSLAW OVERVIEW: This section describes the minimum requirements for early intervention programs. States must ensure that early intervention services are based on scientifically based research. Evaluations must be timely, comprehensive, multidisciplinary and must include a “family-directed identification of the needs of each family.” The state must have a comprehensive child find system and public awareness programs and must maintain a central directory of information about early intervention services and resources. States must have personnel development systems that include training for paraprofessionals and primary referral sources, and procedures to ensure that personnel are adequately trained. States must ensure that early intervention services are provided in natural environments. Subsection (c) about “Flexibility to Serve Children 3 Years of Age Until Entrance into Elementary School” is new in IDEA 2004.

(a) **In General** - A statewide system described in Section 1433 shall include, at a minimum, the following components:

- (1) A **rigorous definition** of the term ‘**developmental delay**’ that will be used by the State in carrying out programs under this part in order to appropriately identify infants and toddlers with disabilities that are in need of services under this part.
- (2) A State policy that is in effect and that ensures that appropriate **early intervention services based on scientifically based research**, to the extent practicable, are available to all infants and toddlers with disabilities and their families, including Indian infants and toddlers with disabilities and their families residing on a reservation geographically located in the State and infants and toddlers with disabilities who are homeless children and their families.
- (3) A **timely, comprehensive, multidisciplinary evaluation** of the functioning of each infant or toddler with a disability in the State, and a **family-directed identification of the needs of each family** of such an infant or

toddler, to assist appropriately in the development of the infant or toddler.

(4) For each infant or toddler with a disability in the State, an **individualized family service plan** in accordance with Section 1436, including service coordination services in accordance with such service plan.

(5) A **comprehensive child find system**, consistent with part B, including a system for making referrals to service providers that includes timelines and provides for participation by primary referral sources and that ensures **rigorous standards for appropriately identifying infants and toddlers with disabilities** for services under this part that will reduce the need for future services.

(6) A **public awareness program focusing on early identification** of infants and toddlers with disabilities, including the preparation and dissemination by the lead agency designated or established under paragraph (10) to all primary referral sources, especially hospitals and physicians, of information to be given to parents, especially to inform parents with premature infants, or infants with other physical risk factors associated with learning or developmental complications, on the availability of early intervention services under this part and of services under Section 1419, and procedures for assisting such sources in disseminating such information to parents of infants and toddlers with disabilities.

(7) A **central directory that includes information on early intervention services, resources, and experts** available in the State and research and demonstration projects being conducted in the State.

(8) A **comprehensive system of personnel development**, including the **training of paraprofessionals** and the **training of primary referral sources** with respect to the basic components of early intervention services available in the State that -

(A) **shall include** -

(i) implementing innovative strategies and activities for the recruitment and retention of early education service providers;

(ii) promoting the preparation of early intervention providers who are fully and appropriately qualified to provide early intervention services under this part; and

(iii) training personnel to coordinate transition services for infants and toddlers served under this part from a program providing early intervention services under this part and under part B (other than Section 1419), to a preschool program receiving funds under Section 1419, or another appropriate program; and

(B) **may include** -

(i) training personnel to work in rural and inner-city areas; and

(ii) training personnel in the emotional and social development of young children.

(9) Policies and procedures relating to the establishment and maintenance of **qualifications to ensure that personnel** necessary to carry out this part **are appropriately and adequately prepared and trained**, including the establishment and maintenance of qualifications that are consistent with any State-approved or recognized certification, licensing, registration, or other comparable requirements that apply to the area in which such personnel are providing early intervention services, except that nothing in this part (including this paragraph) shall be construed to prohibit the use of paraprofessionals and assistants who are appropriately trained and supervised in accordance with State law, regulation, or written policy, to assist in the provision of early intervention services under this part to infants and toddlers with disabilities.

(10) A **single line of responsibility in a lead agency** designated or established by the Governor for carrying out -

(A) the general administration and supervision of programs and activities receiving assistance under Section 1433, 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 1433, to ensure that the State complies with this part;

(B) the identification and coordination of all available resources within the State from Federal, State, lo-

cal, and private sources;

(C) the assignment of financial responsibility in accordance with Section 1437(a)(2) to the appropriate agencies;

(D) the development of procedures to ensure that services are provided to infants and toddlers with disabilities and their families under this part in a timely manner pending the resolution of any disputes among public agencies or service providers;

(E) the resolution of intra- and interagency disputes; and

(F) the entry into formal interagency agreements that define the financial responsibility of each agency for paying for early intervention services (consistent with State law) and procedures for resolving disputes and that include all additional components necessary to ensure meaningful cooperation and coordination.

(11) A policy pertaining to the contracting or making of other arrangements with service providers to provide early intervention services in the State, consistent with the provisions of this part, including the contents of the application used and the conditions of the contract or other arrangements.

(12) A procedure for securing timely reimbursements of funds used under this part in accordance with Section 1440(a).

(13) Procedural safeguards with respect to programs under this part, as required by Section 1439.

(14) A system for compiling data requested by the Secretary under Section 1418 that relates to this part.

(15) A State interagency coordinating council that meets the requirements of Section 1441.

(16) Policies and procedures to ensure that, consistent with Section 1436(d)(5) -

(A) to the maximum extent appropriate, early intervention services are **provided in natural environments**; and

(B) the provision of early intervention services for any infant or toddler with a disability occurs in a setting other than a natural environment that is most appropriate, as determined by the parent and the individualized family service plan team, only when early intervention cannot be achieved satisfactorily for the infant or toddler in a natural environment.

(b) Policy - In implementing subsection (a)(9), a State may adopt a policy that includes making ongoing good-faith efforts to recruit and hire appropriately and adequately trained personnel to provide early intervention services to infants and toddlers with disabilities, including, in a geographic area of the State where there is a shortage of such personnel, the most qualified individuals available who are making satisfactory progress toward completing applicable course work necessary to meet the standards described in subsection (a)(9).

(c) Flexibility To Serve Children 3 Years of Age Until Entrance Into Elementary School

(1) In General - A statewide system described in Section 1433 may include a State policy, developed and implemented jointly by the lead agency and the State educational agency, under which parents of children with disabilities who are eligible for services under Section 1419 and previously received services under this part, may choose the continuation of early intervention services (which shall include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills) for such children under this part until such children enter, or are eligible under State law to enter, kindergarten.

(2) Requirements - If a statewide system includes a State policy described in paragraph (1), the statewide system shall ensure that -

(A) parents of children with disabilities served pursuant to this subsection are provided annual notice that contains -

(i) a description of the rights of such parents to elect to receive services pursuant to this subsection or under part B; and

(ii) an explanation of the differences between services provided pursuant to this subsection and ser-

vices provided under part B, including—

- (I) types of services and the locations at which the services are provided;
 - (II) applicable procedural safeguards; and
 - (III) possible costs (including any fees to be charged to families as described in Section 1432(4)(B)), if any, to parents of infants or toddlers with disabilities;
- (B) **services** provided pursuant to this subsection include an educational component that **promotes school readiness** and incorporates **preliteracy, language, and numeracy skills**;
- (C) the State policy will not affect the right of any child served pursuant to this subsection to instead receive a free appropriate public education under part B;
- (D) all early intervention services outlined in the child’s individualized family service plan under Section 1436 are continued while any eligibility determination is being made for services under this subsection;
- (E) the **parents** of infants or toddlers with disabilities (as defined in Section 1432(5)(A)) **provide informed written consent** to the State, before such infants or toddlers reach 3 years of age, as to **whether such parents intend to choose the continuation of early intervention services** pursuant to this subsection for such infants or toddlers;
- (F) the requirements under Section 1437(a)(9) shall not apply with respect to a child who is receiving services in accordance with this subsection until not less than 90 days (and at the discretion of the parties to the conference, not more than 9 months) before the time the child will no longer receive those services; and
- (G) there will be a **referral for evaluation** for early intervention services **of a child who experiences a substantiated case of trauma due to exposure to family violence** (as defined in Section 320 of the Family Violence Prevention and Services Act).

(3) Reporting Requirement - If a statewide system includes a State policy described in paragraph (1), the State shall submit to the Secretary, in the State’s report under Section 1437(b)(4)(A), a report on the number and percentage of children with disabilities who are eligible for services under Section 1419 but whose parents choose for such children to continue to receive early intervention services under this part.

(4) Available Funds - If a statewide system includes a State policy described in paragraph (1), the policy shall describe the funds (including an identification as Federal, State, or local funds) that will be used to ensure that the option described in paragraph (1) is available to eligible children and families who provide the consent described in paragraph (2)(E), including fees (if any) to be charged to families as described in Section 1432(4)(B).

(5) Rules of Construction -

(A) Services Under Part B - If a statewide system includes a State policy described in paragraph (1), a State that provides services in accordance with this subsection to a child with a disability who is eligible for services under Section 1419 shall not be required to provide the child with a free appropriate public education under part B for the period of time in which the child is receiving services under this part.

(B) Services Under This Part - Nothing in this subsection **shall be construed** to require a provider of services under this part to provide a child served under this part with a **free appropriate public education**.

20 U. S. C. § 1436. Individualized Family Service Plan.

WRIGHTSLAW OVERVIEW: Section 1436 describes the legal requirements for Individualized Family Service Plans (IFSPs) which are similar to the requirements for Individualized Education Plans in Section 1414(d). Subsection (a) describes the assessment and program development process, including a “family-directed assessment” of the resources, priorities, and concerns of the family. Subsection (d) describes the required components of Individualized Family Service Plans. The requirements for “measurable results or outcomes expected to be achieved . . . including pre-literacy and language skills” and the “criteria, procedures, and timelines” that will be used to measure the child’s progress are new, as are the requirements that early intervention services be “based on peer-reviewed research” in subsection (d)(4).

(a) Assessment and Program Development - A statewide system described in Section 1433 **shall provide, at a minimum**, for each infant or toddler with a disability, and the infant's or toddler's family, to receive -

(1) a **multidisciplinary assessment** of the **unique strengths and needs** of the infant or toddler and the identification of **services** appropriate to meet such needs;

(2) a **family-directed assessment** of the resources, priorities, and concerns of the family and the identification of the supports and services necessary to enhance the family's capacity to meet the developmental needs of the infant or toddler; and

(3) a **written individualized family service plan** developed by a multidisciplinary team, including the parents, as required by subsection (e), including a description of the appropriate transition services for the infant or toddler.

(b) Periodic Review - The individualized family service plan shall be evaluated once a year and the family shall be provided a review of the plan at 6-month intervals (or more often where appropriate based on infant or toddler and family needs).

(c) Promptness After Assessment - The individualized family service plan shall be developed within a reasonable time after the assessment required by subsection (a)(1) is completed. With the parents' consent, early intervention services may commence prior to the completion of the assessment.

(d) Content of Plan - The individualized family service plan shall be in writing and contain -

(1) a statement of the infant's or toddler's **present levels of physical development, cognitive development, communication development, social or emotional development, and adaptive development, based on objective criteria**;

(2) a statement of the **family's resources, priorities, and concerns** relating to enhancing the development of the family's infant or toddler with a disability;

(3) a statement of the **measurable results or outcomes** expected to be achieved for the infant or toddler and the family, including **pre-literacy and language skills**, as developmentally appropriate for the child, and the **criteria**, procedures, and timelines used to **determine** the degree to which **progress toward achieving the results or outcomes** is being made and whether modifications or revisions of the results or outcomes or services are necessary;

(4) a statement of specific **early intervention services based on peer-reviewed research**, to the extent practicable, necessary to meet the unique needs of the infant or toddler and the family, including the frequency, intensity, and method of delivering services;

(5) a statement of the **natural environments** in which early intervention services will appropriately be provided, including a justification of the extent, if any, to which the services will not be provided in a natural environment;

(6) the projected **dates for initiation of services** and the anticipated **length, duration, and frequency of the services**;

(7) the identification of the **service coordinator** from the profession most immediately relevant to the infant's or toddler's or family's needs (or who is otherwise qualified to carry out all applicable responsibilities under this part) who will be responsible for the implementation of the plan and coordination with other agencies and persons, including transition services; and

(8) the **steps to be taken to support the transition** of the toddler with a disability to preschool or other appropriate services.

(e) Parental Consent - The contents of the individualized family service plan shall be fully explained to the parents and **informed written consent from the parents shall be obtained prior to the provision of early intervention services** described in such plan. If the parents do not provide consent with respect to a particular early intervention service, then only the early intervention services to which consent is obtained shall be provided.

20 U. S. C. § 1437. State Application and Assurances.

WRIGHTSLAW OVERVIEW: This section describes the state grant application process, policies and procedures that must be used to ensure a smooth transition from early intervention, and assurances that States must provide about early intervention services for infants and toddlers with disabilities and their families.

(a) **Application** - A State desiring to receive a grant under Section 1433 shall submit an application to the Secretary at such time and in such manner as the Secretary may reasonably require. The application shall contain-

(1) a designation of the lead agency in the State that will be responsible for the administration of funds provided under Section 1433;

(2) a certification to the Secretary that the arrangements to establish financial responsibility for services provided under this part pursuant to Section 1440(b) are current as of the date of submission of the certification;

(3) information demonstrating eligibility of the State under Section 1434, including -

(A) information demonstrating to the Secretary's satisfaction that the State has in effect the statewide system required by Section 1433; and

(B) a description of services to be provided to infants and toddlers with disabilities and their families through the system;

(4) if the State provides services to at-risk infants and toddlers through the statewide system, a description of such services;

(5) a description of the uses for which funds will be expended in accordance with this part;

(6) a description of the State policies and procedures that require the referral for early intervention services under this part of a child under the age of 3 who -

(A) is involved in a substantiated case of child abuse or neglect; or

(B) is identified as affected by illegal substance abuse, or withdrawal symptoms resulting from prenatal drug exposure;

(7) a description of the procedure used to ensure that resources are made available under this part for all geographic areas within the State;

(8) a description of State policies and procedures that ensure that, prior to the adoption by the State of any other policy or procedure necessary to meet the requirements of this part, there are public hearings, adequate notice of the hearings, and an opportunity for comment available to the general public, including individuals with disabilities and parents of infants and toddlers with disabilities;

(9) a description of the **policies and procedures** to be used -

(A) to ensure a **smooth transition for toddlers receiving early intervention services** under this part (and children receiving those services under Section 1435(c)) **to preschool, school, other appropriate services, or exiting the program**, including a description of how -

(i) the families of such toddlers and children will be included in the transition plans required by subparagraph (c); and

(ii) the lead agency designated or established under Section 1435(a)(10) will -

(I) notify the local educational agency for the area in which such a child resides that the child will shortly reach the age of eligibility for preschool services under part B, as determined in accordance with State law;

(II) in the case of a child who may be eligible for such preschool services, with the approval of the family of the child, convene a conference among the lead agency, the family, and the local educational agency not less than 90 days (and at the discretion of all such parties, not more than 9 months) before the child is eligible for the preschool services, to discuss any such services that the child may receive; and

(III) in the case of a child who may not be eligible for such preschool services, with the approval of the family, make reasonable efforts to convene a conference among the lead agency, the family, and providers of other appropriate services for children who are not eligible for preschool services under part B, to discuss the appropriate services that the child may receive;

(B) to review the child's program options for the period from the child's third birthday through the remainder of the school year; and

(C) to establish a transition plan, including, as appropriate, steps to exit from the program;

(10) a description of State efforts to promote collaboration among Early Head Start programs under Section 1445A of the Head Start Act, early education and child care programs, and services under part C; and

(11) such other information and assurances as the Secretary may reasonably require.

(b) Assurances - The application described in subsection (a) -

(1) shall provide satisfactory assurance that Federal funds made available under Section 1443 to the State will be expended in accordance with this part;

(2) shall contain an assurance that the State will comply with the requirements of Section 1440;

(3) shall provide satisfactory assurance that the control of funds provided under Section 1443, and title to property derived from those funds, will be in a public agency for the uses and purposes provided in this part and that a public agency will administer such funds and property;

(4) shall provide for -

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

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

(5) provide satisfactory assurance that Federal funds made available under Section 1443 to the State -

(A) will not be commingled with State funds; and

(B) will be used so as **to supplement** the level of **State and local funds** expended for infants and toddlers with disabilities and their families and **in no case to supplant those State and local funds**;

(6) shall provide satisfactory assurance that such fiscal control and fund accounting procedures will be adopted as may be necessary to ensure proper disbursement of, and accounting for, Federal funds paid under Section 1443 to the State;

(7) shall provide satisfactory **assurance that policies and procedures have been adopted to ensure meaningful involvement of underserved groups**, including minority, low-income, homeless, and rural families and children with disabilities who are wards of the State, in the planning and implementation of all the requirements of this part; and

(8) shall contain such other information and assurances as the Secretary may reasonably require by regulation.

(c) Standard for Disapproval of Application - The Secretary may not disapprove such an application unless the Secretary determines, after notice and opportunity for a hearing, that the application fails to comply with the requirements of this section.

(d) Subsequent State Application - If a State has on file with the Secretary a policy, procedure, or assurance that demonstrates that the State meets a requirement of this section, including any policy or procedure filed under this part (as in effect before the date of enactment of the Individuals with Disabilities Education Improvement Act of 2004), the Secretary shall consider the State to have met the requirement for purposes of receiving a grant under this part.

(e) **Modification of Application** - An application submitted by a State in accordance with this section shall remain in effect until the State submits to the Secretary such modifications as the State determines necessary. This section shall apply to a modification of an application to the same extent and in the same manner as this section applies to the original application.

(f) **Modifications Required by the Secretary** - The Secretary may require a State to modify its application under this section, but only to the extent necessary to ensure the State's compliance with this part, if—

- (1) an amendment is made to this title, or a Federal regulation issued under this title;
- (2) a new interpretation of this title is made by a Federal court or the State's highest court; or
- (3) an official finding of noncompliance with Federal law or regulations is made with respect to the State.

20 U. S. C. § 1438. Uses of Funds.

WRIGHTSLAW OVERVIEW: This section describes how States may use funds, and includes direct early intervention services to infants and toddlers with disabilities.

In addition to using funds provided under Section 1433 to maintain and implement the statewide system required by such section, a State may use such funds—

(1) for **direct early intervention services** for infants and toddlers with disabilities, and their families, under this part that are not otherwise funded through other public or private sources;

(2) to **expand and improve on services** for infants and toddlers and their families under this part that are otherwise available;

(3) to provide a free appropriate public education, in accordance with Part B, to **children with disabilities from their third birthday to the beginning of the following school year;**

(4) with the written consent of the parents, to continue to **provide early intervention services** under this part to **children with disabilities from their 3rd birthday until such children enter**, or are eligible under State law to enter, **kindergarten**, in lieu of a free appropriate public education provided in accordance with part B; and

(5) in any State that does not provide services for at-risk infants and toddlers under Section 1437(a)(4), to strengthen the statewide system by initiating, expanding, or improving collaborative efforts related to at-risk infants and toddlers, including establishing linkages with appropriate public or private community-based organizations, services, and personnel for the purposes of—

(A) identifying and evaluating at-risk infants and toddlers;

(B) making referrals of the infants and toddlers identified and evaluated under subparagraph (A); and

(C) conducting periodic follow-up on each such referral to determine if the status of the infant or toddler involved has changed with respect to the eligibility of the infant or toddler for services under this part.

20 U. S. C. § 1439. Procedural Safeguards.

WRIGHTSLAW OVERVIEW: Section 1439 describes the protections and safeguards for young children with disabilities and their parents. The wording in Section 1439 is similar to Section 1415 in Part B. Unlike Part B, parents have a right to accept or decline any early intervention service without jeopardizing their right to other early intervention services. Subsection (a)(5) describes procedures to protect the rights of the child when the parents are not known or cannot be found. Caselaw referencing Section 1415 will be used to resolve disputes about appropriate early intervention services.

(a) **Minimum Procedures** - The procedural safeguards required to be included in a statewide system under Section 1435(a)(13) shall provide, at a minimum, the following:

(1) **The timely administrative resolution of complaints by parents.** Any party aggrieved by the findings and decision regarding an administrative complaint shall have the right to bring a civil action with respect to the complaint in any State court of competent jurisdiction or in a district court of the United States without regard

to the amount in controversy. In any action brought under this paragraph, the court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and, basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.

(2) The **right to confidentiality of personally identifiable information**, including the right of parents to written notice of and written consent to the exchange of such information among agencies consistent with Federal and State law.

(3) The **right of the parents to** determine whether they, their infant or toddler, or other family members will **accept or decline any early intervention service** under this part in accordance with State law **without jeopardizing other early intervention services** under this part.

(4) The opportunity for parents **to examine records** relating to assessment, screening, eligibility determinations, and the development and implementation of the individualized family service plan.

(5) **Procedures to protect the rights of the infant or toddler whenever the parents** of the infant or toddler **are not known or cannot be found** or the infant or toddler is a ward of the State, including the assignment of an individual (who shall not be an employee of the State lead agency, or other State agency, and who shall not be any person, or any employee of a person, providing early intervention services to the infant or toddler or any family member of the infant or toddler) **to act as a surrogate for the parents**.

(6) **Written prior notice** to the parents of the infant or toddler with a disability whenever the State agency or service provider **proposes to initiate or change, or refuses to initiate or change, the identification, evaluation, or placement** of the infant or toddler with a disability, **or the provision of appropriate early intervention services** to the infant or toddler.

(7) Procedures designed to ensure that the notice required by paragraph (6) **fully informs the parents**, in the parents' native language, unless it clearly is not feasible to do so, of all procedures available pursuant to this section.

(8) The right of parents to **use mediation** in accordance with Section 1415, except that—

(A) any reference in the section to a State educational agency shall be considered to be a reference to a State's lead agency established or designated under Section 1435(a)(10);

(B) any reference in the section to a local educational agency shall be considered to be a reference to a local service provider or the State's lead agency under this part, as the case may be; and

(C) any reference in the section to the provision of a free appropriate public education to children with disabilities shall be considered to be a reference to the provision of appropriate early intervention services to infants and toddlers with disabilities.

(b) Services During Pendency of Proceedings - During the pendency of any proceeding or action involving a complaint by the parents of an infant or toddler with a disability, unless the State agency and the parents otherwise agree, the infant or toddler **shall continue to receive the appropriate early intervention services currently being provided or**, if applying for initial services, shall receive the **services not in dispute**.

20 U. S. C. § 1440. Payor of Last Resort.

WRIGHTSLAW OVERVIEW: This section clarifies that schools cannot require parents to use the child's health insurance benefits to pay for a free appropriate public education.

(a) **Nonsubstitution** - Funds provided under Section 1443 may not be used to satisfy a financial commitment for services that would have been paid for from another public or private source, including any medical program administered by the Secretary of Defense, but for the enactment of this part, except that whenever considered necessary to prevent a delay in the receipt of appropriate early intervention services by an infant, toddler, or family in a timely fashion, funds provided under Section 1443 may be used to pay the provider of services pending reimbursement from the agency that has ultimate responsibility for the payment.

(b) Obligations Related to and Methods of Ensuring Services -

(1) Establishing Financial Responsibility for Services -

(A) In General - The Chief Executive Officer of a State or designee of the officer shall ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each public agency and the designated lead agency, in order to ensure—

(i) the provision of, and financial responsibility for, services provided under this part; and

(ii) such services are consistent with the requirements of Section 1435 and the State’s application pursuant to Section 1437, including the provision of such services during the pendency of any such dispute.

(B) Consistency Between Agreements or Mechanisms Under Part B - The Chief Executive Officer of a State or designee of the officer shall ensure that the terms and conditions of such agreement or mechanism are consistent with the terms and conditions of the State’s agreement or mechanism under Section 1412(a)(12), where appropriate.

(2) Reimbursement for Services by Public Agency -

(A) In General - If a public agency other than an educational agency fails to provide or pay for the services pursuant to an agreement required under paragraph (1), the local educational agency or State agency (as determined by the Chief Executive Officer or designee) shall provide or pay for the provision of such services to the child.

(B) Reimbursement - Such local educational agency or State agency is authorized to claim reimbursement for the services from the public agency that failed to provide or pay for such services and such public agency shall reimburse the local educational agency or State agency pursuant to the terms of the interagency agreement or other mechanism required under paragraph (1).

(3) Special Rule - The requirements of paragraph (1) may be met through—

(A) State statute or regulation;

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

(C) other appropriate written methods as determined by the Chief Executive Officer of the State or designee of the officer and approved by the Secretary through the review and approval of the State’s application pursuant to Section 1437.

(c) Reduction of Other Benefits - Nothing in this part shall be construed to permit the State to reduce medical or other assistance available or to alter eligibility under title V of the Social Security Act (relating to maternal and child health) or title XIX of the Social Security Act (relating to Medicaid for infants or toddlers with disabilities) within the State.

20 U. S. C. § 1441. State Interagency Coordinating Council.

WRIGHTSLAW OVERVIEW: This section requires States to establish interagency coordinating councils to coordinate early intervention services, and is similar to 20 U. S. C. § 1412(21).

(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 1435(a)(10) may not serve as the chairperson of the council.

(b) Composition -

(1) In General - The council shall be composed as follows:

(A) Parents - Not less than 20 percent of the members shall be parents of infants or toddlers with disabilities or children with disabilities aged 12 or younger, with knowledge of, or experience with, programs for infants and toddlers with disabilities. Not less than 1 such member shall be a parent of an infant or toddler with a disability or a child with a disability aged 6 or younger.

(B) Service Providers - Not less than 20 percent of the members shall be public or private providers of early intervention services.

(C) State Legislature - Not less than 1 member shall be from the State legislature.

(D) Personnel Preparation - Not less than 1 member shall be involved in personnel preparation.

(E) Agency for Early Intervention Services - Not less than 1 member shall be from each of the State agencies involved in the provision of, or payment for, early intervention services to infants and toddlers with disabilities and their families and shall have sufficient authority to engage in policy planning and implementation on behalf of such agencies.

(F) Agency for Preschool Services - Not less than 1 member shall be from the State educational agency responsible for preschool services to children with disabilities and shall have sufficient authority to engage in policy planning and implementation on behalf of such agency.

(G) State Medicaid Agency - Not less than 1 member shall be from the agency responsible for the State Medicaid program.

(H) Head Start Agency - Not less than 1 member shall be a representative from a Head Start agency or program in the State.

(I) Child Care Agency - Not less than 1 member shall be a representative from a State agency responsible for child care.

(J) Agency for Health Insurance - Not less than 1 member shall be from the agency responsible for the State regulation of health insurance.

(K) Office of the Coordinator of Education of Homeless Children and Youth - Not less than 1 member shall be a representative designated by the Office of Coordinator for Education of Homeless Children and Youths.

(L) State Foster Care Representative - Not less than 1 member shall be a representative from the State child welfare agency responsible for foster care.

(M) Mental Health Agency - Not less than 1 member shall be a representative from the State agency responsible for children's mental health.

(2) Other Members - The council may include other members selected by the Governor, including a representative from the Bureau of Indian Affairs (BIA), or where there is no BIA-operated or BIA-funded school, from the Indian Health Service or the tribe or tribal council.

(c) Meetings - The council shall meet, at a minimum, on a quarterly basis, and in such places as the council determines necessary. The meetings shall be publicly announced, and, to the extent appropriate, open and accessible to the general public.

(d) Management Authority - Subject to the approval of the Governor, the council may prepare and approve a budget using funds under this part to conduct hearings and forums, to reimburse members of the council for reasonable and necessary expenses for attending council meetings and performing council duties (including child care for parent representatives), to pay compensation to a member of the council if the member is not employed or must forfeit wages from other employment when performing official council business, to hire staff, and to obtain the

services of such professional, technical, and clerical personnel as may be necessary to carry out its functions under this part.

(e) Functions of Council -

(1) Duties - The council shall -

(A) advise and assist the lead agency designated or established under Section 1435(a)(10) in the performance of the responsibilities set forth in such section, particularly the identification of the sources of fiscal and other support for services for early intervention programs, assignment of financial responsibility to the appropriate agency, and the promotion of the interagency agreements;

(B) advise and assist the lead agency in the preparation of applications and amendments thereto;

(C) advise and assist the State educational agency regarding the transition of toddlers with disabilities to preschool and other appropriate services; and

(D) prepare and submit an annual report to the Governor and to the Secretary on the status of early intervention programs for infants and toddlers with disabilities and their families operated within the State.

(2) Authorized Activity - The council may advise and assist the lead agency and the State educational agency regarding the provision of appropriate services for children from birth through age 5. The council may advise appropriate agencies in the State with respect to the integration of services for infants and toddlers with disabilities and at-risk infants and toddlers and their families, regardless of whether at-risk infants and toddlers are eligible for early intervention services in the State.

(f) Conflict of Interest - No member of the council shall cast a vote on any matter that is likely to provide a direct financial benefit to that member or otherwise give the appearance of a conflict of interest under State law.

20 U. S. C. § 1442. Federal Administration.

WRIGHTSLAW OVERVIEW: Much of the language in Part B applies to this section. If the "lead agency" is not the State Education Agency (SEA), these requirements shall apply to the state and local mental health, social service, early intervention, health department, or other such agency that is appointed as the "lead agency."

Sections 1416, 1417, and 1418 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 1435(a)(10);

(2) any reference in such sections to a local educational agency, educational service agency, or a State agency shall be considered to be a reference to an early intervention service provider under this part; and

(3) any reference to the education of children with disabilities or the education of all children with disabilities shall be considered to be a reference to the provision of appropriate early intervention services to infants and toddlers with disabilities.

20 U. S. C. § 1443. Allocation of Funds.

WRIGHTSLAW OVERVIEW: This section describes the formulas and percentages related to the allocation and distribution of funds.

(a) Reservation of Funds for Outlying Areas -

(1) In General - From the sums appropriated to carry out this part for any fiscal year, the Secretary may reserve not more than 1 percent for payments to Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands in accordance with their respective needs for assistance under this part.

(2) Consolidation of Funds - The provisions of Public Law 95-134, permitting the consolidation of grants to the outlying areas, shall not apply to funds those areas receive under this part.

(b) Payments to Indians -

(1) In General - The Secretary shall, subject to this subsection, make payments to the Secretary of the Interior to be distributed to tribes, tribal organizations (as defined under Section 4 of the Indian Self-Determination and Education Assistance Act), or consortia of the above entities for the coordination of assistance in the provision of early intervention services by the States to infants and toddlers with disabilities and their families on reservations served by elementary schools and secondary schools for Indian children operated or funded by the Department of the Interior. The amount of such payment for any fiscal year shall be 1.25 percent of the aggregate of the amount available to all States under this part for such fiscal year.

(2) Allocation - For each fiscal year, the Secretary of the Interior shall distribute the entire payment received under paragraph (1) by providing to each tribe, tribal organization, or consortium an amount based on the number of infants and toddlers residing on the reservation, as determined annually, divided by the total of such children served by all tribes, tribal organizations, or consortia.

(3) Information - To receive a payment under this subsection, the tribe, tribal organization, or consortium shall submit such information to the Secretary of the Interior as is needed to determine the amounts to be distributed under paragraph (2).

(4) Use of Funds - The funds received by a tribe, tribal organization, or consortium shall be used to assist States in child find, screening, and other procedures for the early identification of Indian children under 3 years of age and for parent training. Such funds may also be used to provide early intervention services in accordance with this part. Such activities may be carried out directly or through contracts or cooperative agreements with the Bureau of Indian Affairs, local educational agencies, and other public or private nonprofit organizations. The tribe, tribal organization, or consortium is encouraged to involve Indian parents in the development and implementation of these activities. The above entities shall, as appropriate, make referrals to local, State, or Federal entities for the provision of services or further diagnosis.

(5) Reports - To be eligible to receive a payment under paragraph (2), a tribe, tribal organization, or consortium shall make a biennial report to the Secretary of the Interior of activities undertaken under this subsection, including the number of contracts and cooperative agreements entered into, the number of infants and toddlers contacted and receiving services for each year, and the estimated number of infants and toddlers needing services during the 2 years following the year in which the report is made. The Secretary of the Interior shall include a summary of this information on a biennial basis to the Secretary of Education along with such other information as required under Section 1411(h)(3)(E). The Secretary of Education may require any additional information from the Secretary of the Interior.

(6) Prohibited Uses of Funds - None of the funds under this subsection may be used by the Secretary of the Interior for administrative purposes, including child count, and the provision of technical assistance.

(c) State Allotments -

(1) In General - Except as provided in paragraphs (2) and (3), from the funds remaining for each fiscal year after the reservation and payments under subsections (a), (b), and (e), the Secretary shall first allot to each State an amount that bears the same ratio to the amount of such remainder as the number of infants and toddlers in the State bears to the number of infants and toddlers in all States.

(2) Minimum Allotments - Except as provided in paragraph (3), no State shall receive an amount under this section for any fiscal year that is less than the greater of –

- (A) 1/2 of 1 percent of the remaining amount described in paragraph (1); or
- (B) \$500,000.

(3) Ratable Reduction -

(A) In General - If the sums made available under this part for any fiscal year are insufficient to pay the full amounts that all States are eligible to receive under this subsection for such year, the Secretary shall ratably reduce the allotments to such States for such year.

(B) **Additional Funds** - If additional funds become available for making payments under this subsection for a fiscal year, allotments that were reduced under subparagraph (A) shall be increased on the same basis the allotments were reduced.

(4) **Definitions** - In this subsection—

(A) the terms ‘**infants and toddlers**’ mean children under 3 years of age; and

(B) the term ‘State’ means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(d) **Reallotment of Funds** - If a State elects not to receive its allotment under subsection (c), the Secretary shall reallocate, among the remaining States, amounts from such State in accordance with such subsection.

(e) **Reservation for State Incentive Grants** -

(1) **In General** - For any fiscal year for which the amount appropriated pursuant to the authorization of appropriations under Section 1444 exceeds \$460,000,000, the Secretary shall reserve 15 percent of such appropriated amount to provide grants to States that are carrying out the policy described in Section 1435(c) in order to facilitate the implementation of such policy.

(2) **Amount of Grant** -

(A) **In General** - Notwithstanding paragraphs (2) and (3) of subsection (c), the Secretary shall provide a grant to each State under paragraph (1) in an amount that bears the same ratio to the amount reserved under such paragraph as the number of infants and toddlers in the State bears to the number of infants and toddlers in all States receiving grants under such paragraph.

(B) **Maximum Amount** - No State shall receive a grant under paragraph (1) for any fiscal year in an amount that is greater than 20 percent of the amount reserved under such paragraph for the fiscal year.

(3) **Carryover of Amounts** -

(A) **First Succeeding Fiscal Year** - Pursuant to Section 421(b) of the General Education Provisions Act, amounts under a grant provided under paragraph (1) that are not obligated and expended prior to the beginning of the first fiscal year succeeding the fiscal year for which such amounts were appropriated shall remain available for obligation and expenditure during such first succeeding fiscal year.

(B) **Second Succeeding Fiscal Year** - Amounts under a grant provided under paragraph (1) that are not obligated and expended prior to the beginning of the second fiscal year succeeding the fiscal year for which such amounts were appropriated shall be returned to the Secretary and used to make grants to States under Section 1433 (from their allotments under this section) during such second succeeding fiscal year.

20 U. S. C. § 1444. Authorization of Appropriations.

WRIGHTSLAW OVERVIEW: This section authorizes funds for fiscal years 2005 through 2010.

For the purpose of carrying out this part, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2005 through 2010.

End of Part C

Part D – National Activities to Improve Education of Children with Disabilities

WRIGHTSLAW OVERVIEW: Part D was revised and reorganized into four subparts. This Part authorizes and provides funding for activities to improve the educational outcomes for children with disabilities. Findings is in Section 1450. Subpart 1 about State Personnel Development Grants includes purpose, definition of personnel, eligibility, applications, and how funds may be used. Subpart 2 about Personnel Preparation focuses improving educational outcomes and results by improving teacher training and professional development. Subpart 3 describes requirements for Parent Training and Information Centers and Community Resource Centers. Subpart 4 is General Provisions.

20 U. S. C. § 1450. Findings

Subpart 1 – State Personnel Development Grants

20 U. S. C. § 1451. Purpose; Definition of Personnel; Program Authority

20 U. S. C. § 1452. Eligibility and Collaborative Process

20 U. S. C. § 1453. Applications

20 U. S. C. § 1454. Use of Funds

20 U. S. C. § 1455. Authorization of Appropriations

Subpart 2 – Personnel Preparation, Technical Assistance, Model Demonstration Projects, and Dissemination of Information

20 U. S. C. § 1461. Purpose; Definition of Eligible Entity

20 U. S. C. § 1462. Personnel Development to Improve Services and Results for Children with Disabilities

20 U. S. C. § 1463. Technical Assistance, Demonstration Projects, Dissemination of Information, and Implementation of Scientifically Based Research

20 U. S. C. § 1464. Studies and Evaluations

20 U. S. C. § 1465. Interim Alternative Educational Settings, Behavioral Supports, and Systematic School Interventions

20 U. S. C. § 1466. Authorization of Appropriations

Subpart 3 – Supports to Improve Results for Children with Disabilities

20 U. S. C. § 1470. Purposes

20 U. S. C. § 1471. Parent Training and Information Centers

20 U. S. C. § 1472. Community Parent Resource Centers

20 U. S. C. § 1473. Technical Assistance for Parent Training and Information Centers

20 U. S. C. § 1474. Technology Development, Demonstration and Utilization; Media Services; and Instructional Materials

20 U. S. C. § 1475. Authorization of Appropriations

Subpart 4 – General Provisions

20 U. S. C. § 1481. Comprehensive Plan for Subparts 2 and 3

20 U. S. C. § 1482. Administrative Provisions

20 U. S. C. § 1450. Findings.

WRIGHTSLAW OVERVIEW: Congress made changes to “Findings.” Section 1450 describes the critical need for adequately trained personnel and for “high quality, comprehensive professional development programs” so individuals who teach children with disabilities have the necessary knowledge and skills. Congress also emphasized the needs of parents for information and training to deal with the “multiple pressures of parenting,” to build constructive working relationships with school personnel, and to be involved in planning and decision-making about early intervention, educational, and transition services for their children.

Congress finds the following:

(1) The Federal Government has an ongoing obligation to support activities that contribute to positive results for children with disabilities, enabling those children to lead productive and independent adult lives.

(2) Systemic change benefiting all students, including children with disabilities, requires the involvement of States, local educational agencies, parents, individuals with disabilities and their families, teachers and other service providers, and other interested individuals and organizations to develop and implement comprehensive strategies that improve educational results for children with disabilities.

(3) State educational agencies, in partnership with local educational agencies, parents of children with disabilities, and other individuals and organizations, are in the best position to improve education for children with disabilities and to address their special needs.

(4) **An effective educational system serving students with disabilities should -**

(A) **maintain high academic achievement standards** and clear performance goals for children with disabilities, consistent with the standards and expectations for all students in the educational system, and provide for appropriate and effective strategies and methods to ensure that all children with disabilities have the opportunity to achieve those standards and goals;

(B) clearly **define, in objective, measurable terms, the school and post-school results** that children with disabilities are expected to achieve; and

(C) **promote transition services** and coordinate State and local education, social, health, mental health, and other services, in addressing the full range of student needs, particularly the needs of children with disabilities who need significant levels of support to participate and learn in school and the community.

(5) The availability of an adequate number of qualified personnel is critical -

(A) to serve effectively children with disabilities;

(B) to assume leadership positions in administration and direct services;

(C) to provide teacher training; and

(D) to conduct high quality research to improve special education.

(6) High quality, comprehensive professional development programs are essential to ensure that the persons responsible for the education or transition of children with disabilities possess the skills and knowledge necessary to address the educational and related needs of those children.

(7) Models of professional development should be scientifically based and reflect successful practices, including strategies for recruiting, preparing, and retaining personnel.

(8) Continued support is essential for the development and maintenance of a coordinated and high quality program of research to inform successful teaching practices and model curricula for educating children with disabilities.

(9) Training, technical assistance, support, and dissemination activities are necessary to ensure that Parts B and C are fully implemented and achieve high quality early intervention, educational, and transitional results for children with disabilities and their families.

(10) Parents, teachers, administrators, and related services personnel need technical assistance and information in a timely, coordinated, and accessible manner in order to improve early intervention, educational, and

transitional services and results at the State and local levels for children with disabilities and their families.

(11) Parent training and information activities assist parents of a child with a disability in dealing with the multiple pressures of parenting such a child and are of particular importance in -

(A) playing a vital role in creating and preserving constructive relationships between parents of children with disabilities and schools by facilitating open communication between the parents and schools; encouraging dispute resolution at the earliest possible point in time; and discouraging the escalation of an adversarial process between the parents and schools;

(B) ensuring the involvement of parents in planning and decisionmaking with respect to early intervention, educational, and transitional services;

(C) achieving high quality early intervention, educational, and transitional results for children with disabilities;

(D) providing such parents information on their rights, protections, and responsibilities under this title to ensure improved early intervention, educational, and transitional results for children with disabilities;

(E) assisting such parents in the development of skills to participate effectively in the education and development of their children and in the transitions described in Section 1473(b)(6);

(F) supporting the roles of such parents as participants within partnerships seeking to improve early intervention, educational, and transitional services and results for children with disabilities and their families; and

(G) supporting such parents who may have limited access to services and supports, due to economic, cultural, or linguistic barriers.

(12) Support is needed to improve technological resources and integrate technology, including universally designed technologies, into the lives of children with disabilities, parents of children with disabilities, school personnel, and others through curricula, services, and assistive technologies.

Subpart 1 – State Personnel Development Grants

WRIGHTSLAW OVERVIEW: Subpart 1 about State Personnel Development Grants (Sections 1451 to 1455) includes purpose, definition of personnel, eligibility, applications, and how funds may be used.

20 U. S. C. § 1451. Purpose; Definition of Personnel; Program Authority.

WRIGHTSLAW OVERVIEW: Section 1451(a) describes the need to reform and improve personnel preparation and professional development programs to improve results for children with disabilities. The definition of “personnel” is in Section 1451(b). This section includes information about competitive grants, formula grants and continuation awards.

(a) Purpose. The purpose of this subpart is to assist State educational agencies in reforming and improving their systems for personnel preparation and professional development in early intervention, educational, and transition services in order to improve results for children with disabilities.

(b) Definition of Personnel. In this subpart the term ‘personnel’ means special education teachers, regular education teachers, principals, administrators, related services personnel, paraprofessionals, and early intervention personnel serving infants, toddlers, preschoolers, or children with disabilities, except where a particular category of personnel, such as related services personnel, is identified.

(c) Competitive Grants.

(1) In General. Except as provided in subsection (d), for any fiscal year for which the amount appropriated under Section 1455, that remains after the Secretary reserves funds under subsection (e) for the fiscal year, is less than \$100,000,000, the Secretary shall award grants, on a competitive basis, to State educational agencies to carry out the activities described in the State plan submitted under Section 1453.

(2) **Priority.** In awarding grants under paragraph (1), the Secretary may give priority to State educational agencies that -

- (A) are in States with the greatest personnel shortages; or
- (B) demonstrate the greatest difficulty meeting the requirements of Section 1412(a)(14).

(3) **Minimum Amount.** The Secretary shall make a grant to each State educational agency selected under paragraph (1) in an amount for each fiscal year that is -

- (A) not less than \$500,000, nor more than \$4,000,000, in the case of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico; and
- (B) not less than \$80,000 in the case of an outlying area.

(4) **Increase in Amount.** The Secretary may increase the amounts of grants under paragraph (4) to account for inflation.

(5) **Factors.** The Secretary shall determine the amount of a grant under paragraph (1) after considering -

- (A) the amount of funds available for making the grants;
- (B) the relative population of the State or outlying area;
- (C) the types of activities proposed by the State or outlying area;
- (D) the alignment of proposed activities with Section 1412(a)(14);
- (E) the alignment of proposed activities with the State plans and applications submitted under Sections 1111 and 2112, respectively, of the Elementary and Secondary Education Act of 1965; and
- (F) the use, as appropriate, of scientifically based research activities.

(d) Formula Grants.

(1) **In General.** Except as provided in paragraphs (2) and (3), for the first fiscal year for which the amount appropriated under Section 1455, that remains after the Secretary reserves funds under subsection (e) for the fiscal year, is equal to or greater than \$100,000,000, and for each fiscal year thereafter, the Secretary shall allot to each State educational agency, whose application meets the requirements of this subpart, an amount that bears the same relation to the amount remaining as the amount the State received under Section 1411(d) for that fiscal year bears to the amount of funds received by all States (whose applications meet the requirements of this subpart) under Section 1411(d) for that fiscal year.

(2) Minimum Allotments for States That Received Competitive Grants.

(A) **In General.** The amount allotted under this subsection to any State educational agency that received a competitive multi-year grant under subsection (c) for which the grant period has not expired shall be not less than the amount specified for that fiscal year in the State educational agency's grant award document under that subsection.

(B) **Special Rule.** Each such State educational agency shall use the minimum amount described in subparagraph (A) for the activities described in the State educational agency's competitive grant award document for that year, unless the Secretary approves a request from the State educational agency to spend the funds on other activities.

(3) **Minimum Allotment.** The amount of any State educational agency's allotment under this subsection for any fiscal year shall not be less than -

- (A) the greater of \$500,000 or 1/2 of 1 percent of the total amount available under this subsection for that year, in the case of each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico; and
- (B) \$80,000, in the case of an outlying area.

(4) **Direct Benefit.** In using grant funds allotted under paragraph (1), a State educational agency shall, through grants, contracts, or cooperative agreements, undertake activities that significantly and directly benefit the local educational agencies in the State.

(e) Continuation Awards.

(1) **In General.** Notwithstanding any other provision of this subpart, from funds appropriated under Section 1455 for each fiscal year, the Secretary shall reserve the amount that is necessary to make a continuation award to any State educational agency (at the request of the State educational agency) that received a multi-year award under this part (as this part was in effect on the day before the date of enactment of the Individuals with Disabilities Education Improvement Act of 2004), to enable the State educational agency to carry out activities in accordance with the terms of the multi-year award.

(2) **Prohibition.** A State educational agency that receives a continuation award under paragraph (1) for any fiscal year may not receive any other award under this Subpart for that fiscal year.

20 U. S. C. § 1452. Eligibility and Collaborative Process.

WRIGHTSLAW OVERVIEW: To receive grants under this section, state education agencies (SEAs) are required to develop partnerships with institutions of higher learning, state agencies that provide early intervention services, and other partners, including community-based and nonprofit organizations and organizations that represent the interests of individuals with disabilities and their parents.

(a) **Eligible Applicants.** A State educational agency may apply for a grant under this subpart for a grant period of not less than 1 year and not more than 5 years.

(b) Partners.

(1) **In General.** In order to be considered for a grant under this subpart, a State educational agency shall establish a partnership with local educational agencies and other State agencies involved in, or concerned with, the education of children with disabilities, including -

(A) not less than 1 institution of higher education; and

(B) the State agencies responsible for administering Part C, early education, child care, and vocational rehabilitation programs.

(2) **Other Partners.** In order to be considered for a grant under this subpart, a State educational agency shall work **in partnership with other persons and organizations** involved in, and concerned with, the education of children with disabilities, which may include -

(A) the Governor;

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

(C) parents of nondisabled children ages birth through 26;

(D) individuals with disabilities;

(E) parent training and information centers or community parent resource centers funded under Sections 1471 and 1472, respectively;

(F) **community based and other nonprofit organizations** involved in the education and employment of individuals with disabilities;

(G) personnel as defined in Section 1451(b);

(H) the State advisory panel established under Part B;

(I) the State interagency coordinating council established under Part C;

(J) individuals knowledgeable about vocational education;

(K) the State agency for higher education;

(L) public agencies with jurisdiction in the areas of health, mental health, social services, and juvenile justice;

(M) other providers of professional development that work with infants, toddlers, preschoolers, and children with disabilities; and

(N) other individuals.

(3) Required Partner. If State law assigns responsibility for teacher preparation and certification to an individual, entity, or agency other than the State educational agency, the State educational agency shall -

(A) include that individual, entity, or agency as a partner in the partnership under this subsection; and

(B) ensure that any activities the State educational agency will carry out under this subpart that are within that partner's jurisdiction (which may include activities described in Section 1454(b)) are carried out by that partner.

20 U. S. C. § 1453. Applications.

WRIGHTSLAW OVERVIEW: Section 1453 describes the application process that state departments of education must complete before they can receive grants under Part D. The state plan shall include a plan that identifies and addresses state and local needs for personnel preparation and professional development. Section 1453(b) describes required elements of the state personnel development plan. Section 1453(c) describes requirements for using experts as peer reviewers of state plans.

(a) In General.

(1) Submission. A State educational agency that desires to receive a grant under this subpart shall submit to the Secretary an application at such time, in such manner, and including such information as the Secretary may require.

(2) State Plan. The application **shall include a plan** that identifies and addresses the State and local needs for the personnel preparation and professional development of personnel, as well as individuals who provide direct supplementary aids and services to children with disabilities, and that -

(A) is designed to enable the State to meet the requirements of Section 1412(a)(14) and Section 1435(a)(8) and (9);

(B) is based on an assessment of State and local needs that identifies critical aspects and areas in need of improvement related to the preparation, ongoing training, and professional development of personnel who serve infants, toddlers, preschoolers, and children with disabilities within the State, including -

(i) current and anticipated personnel vacancies and shortages; and

(ii) the number of preservice and inservice programs; and

(C) is integrated and aligned, to the maximum extent possible, with State plans and activities under the Elementary and Secondary Education Act of 1965, the Rehabilitation Act of 1973, and the Higher Education Act of 1965.

(3) Requirement. The State application shall contain an assurance that the State educational agency will carry out each of the strategies described in subsection (b)(4).

(b) Elements of State Personnel Development Plan. Each **State personnel development plan** under subsection (a)(2) shall-

(1) describe a partnership agreement that is in effect for the period of the grant, which agreement shall specify-

(A) the nature and extent of the partnership described in Section 1452(b) and the respective roles of each

member of the partnership, including the partner described in Section 1452(b)(3) if applicable; and

(B) how the State educational agency will work with other persons and organizations involved in, and concerned with, the education of children with disabilities, including the respective roles of each of the persons and organizations;

(2) describe how the strategies and activities described in paragraph (4) will be coordinated with activities supported with other public resources (including Part B and Part C funds retained for use at the State level for personnel and professional development purposes) and private resources;

(3) describe how the State educational agency will align its personnel development plan under this subpart with the plan and application submitted under Sections 1111 and 2112, respectively, of the Elementary and Secondary Education Act of 1965;

(4) describe those strategies the State educational agency will use to address the professional development and personnel needs identified under subsection (a)(2) and how such strategies will be implemented, including

(A) a description of the programs and activities to be supported under this subpart that will provide personnel with the knowledge and skills to meet the needs of, and improve the performance and achievement of, infants, toddlers, preschoolers, and children with disabilities; and

(B) how such strategies will be integrated, to the maximum extent possible, with other activities supported by grants funded under Section 1462;

(5) provide an assurance that the State educational agency will provide technical assistance to local educational agencies to improve the quality of professional development available to meet the needs of personnel who serve children with disabilities;

(6) provide an assurance that the State educational agency will provide technical assistance to entities that provide services to infants and toddlers with disabilities to improve the quality of professional development available to meet the needs of personnel serving such children;

(7) describe how the State educational agency will recruit and retain highly qualified teachers and other qualified personnel in geographic areas of greatest need;

(8) describe the steps the State educational agency will take to ensure that poor and minority children are not taught at higher rates by teachers who are not highly qualified; and

(9) describe how the State educational agency will assess, on a regular basis, the extent to which the strategies implemented under this subpart have been effective in meeting the performance goals described in Section 1412(a)(15).

(c) Peer Review.

(1) **In General.** The Secretary shall use a **panel of experts** who are competent, by virtue of their training, expertise, or experience, to evaluate applications for grants under Section 1451(c)(1).

(2) **Composition of Panel.** A majority of a panel described in paragraph (1) shall be composed of individuals who are not employees of the Federal Government.

(3) **Payment of Fees and Expenses of Certain Members.** The Secretary may use available funds appropriated to carry out this subpart to pay the expenses and fees of panel members who are not employees of the Federal Government.

(d) Reporting Procedures. Each State educational agency that receives a grant under this subpart shall submit annual performance reports to the Secretary. The reports shall -

(1) describe the progress of the State educational agency in implementing its plan;

(2) analyze the effectiveness of the State educational agency's activities under this subpart and of the State educational agency's strategies for meeting its goals under Section 1412(a)(15); and

(3) identify changes in the strategies used by the State educational agency and described in subsection (b)(4), if any, to improve the State educational agency's performance.

20 U. S. C. § 1454. Use of Funds.

WRIGHTSLAW OVERVIEW: Section 1454 describes how states may use funds under Part D. Funds may be used for professional development to improve teaching practices by using effective instructional strategies, methods and skills. Funds may be used to train administrators and other school personnel to conduct effective IEP and IFSP meetings. Funds may be used to recruit and retain highly qualified special education teachers, reform tenure systems, test the subject matter knowledge of teachers, and reform certification and licensing requirements so teachers have subject matter knowledge and teaching skills.

(a) Professional Development Activities. A State educational agency that receives a grant under this subpart shall use the grant funds to support activities in accordance with the State's plan described in Section 1453, including 1 or more of the following:

(1) Carrying out programs that provide support to both special education and regular education teachers of children with disabilities and principals, such as programs that -

(A) provide teacher mentoring, team teaching, reduced class schedules and case loads, and intensive professional development;

(B) use standards or assessments for guiding beginning teachers that are consistent with challenging State student academic achievement and functional standards and with the requirements for professional development, as defined in Section 9101 of the Elementary and Secondary Education Act of 1965; and

(C) encourage collaborative and consultative models of providing early intervention, special education, and related services.

(2) Encouraging and supporting the training of special education and regular education teachers and administrators to effectively use and integrate technology -

(A) into curricula and instruction, including training to improve the ability to collect, manage, and analyze data to improve teaching, decision-making, school improvement efforts, and accountability;

(B) to enhance learning by children with disabilities; and

(C) to effectively communicate with parents.

(3) Providing professional development activities that -

(A) improve the knowledge of special education and regular education teachers concerning -

(i) the academic and developmental or functional needs of students with disabilities; or

(ii) effective instructional strategies, methods, and skills, and the use of State academic content standards and student academic achievement and functional standards, and State assessments, to improve teaching practices and student academic achievement;

(B) improve the **knowledge of special education and regular education teachers and principals** and, in appropriate cases, paraprofessionals, **concerning effective instructional practices**, and that -

(i) provide training in how to teach and address the needs of children with different learning styles and children who are limited English proficient;

(ii) involve collaborative groups of teachers, administrators, and, in appropriate cases, related services personnel;

(iii) provide **training in methods of** -

(I) **positive behavioral interventions** and supports to improve student behavior in the classroom;

(II) **scientifically based reading instruction**, including early literacy instruction;

(III) early and appropriate interventions to identify and help children with disabilities;

(IV) effective instruction for children with low incidence disabilities;

(V) successful transitioning to postsecondary opportunities; and

(VI) using classroom-based techniques to assist children prior to referral for special education;

(iv) provide training to enable personnel to work with and involve parents in their child's education, including parents of low income and limited English proficient children with disabilities;

(v) provide training for **special education personnel and regular education personnel** in planning, developing, and implementing effective and appropriate IEPs; and

(vi) provide training to meet the needs of students with significant health, mobility, or behavioral needs prior to serving such students;

(C) train administrators, principals, and other relevant school personnel in conducting effective IEP meetings; and

(D) train early intervention, preschool, and related services providers, and other relevant school personnel, in conducting effective individualized family service plan (IFSP) meetings.

(4) Developing and implementing initiatives to promote the recruitment and retention of highly qualified special education teachers, particularly initiatives that have been proven effective in recruiting and retaining highly qualified teachers, including programs that provide -

(A) teacher mentoring from exemplary special education teachers, principals, or superintendents;

(B) induction and support for special education teachers during their first 3 years of employment as teachers; or

(C) incentives, including financial incentives, to retain special education teachers who have a record of success in helping students with disabilities.

(5) Carrying out programs and activities that are designed to improve the quality of personnel who serve children with disabilities, such as -

(A) innovative professional development programs (which may be provided through partnerships that include institutions of higher education), including programs that train teachers and principals to integrate technology into curricula and instruction to improve teaching, learning, and technology literacy, which professional development shall be consistent with the definition of professional development in Section 9101 of the Elementary and Secondary Education Act of 1965; and

(B) the development and use of proven, cost effective strategies for the implementation of professional development activities, such as through the use of technology and distance learning.

(6) Carrying out programs and activities that are designed to improve the quality of early intervention personnel, including paraprofessionals and primary referral sources, such as -

(A) professional development programs to improve the delivery of early intervention services;

(B) initiatives to promote the recruitment and retention of early intervention personnel; and

(C) interagency activities to ensure that early intervention personnel are adequately prepared and trained.

(b) Other Activities. A State educational agency that receives a grant under this subpart shall use the grant funds to support activities in accordance with the State's plan described in Section 1453, including 1 or more of the following

(1) **Reforming special education and regular education teacher certification** (including recertification) or licensing requirements **to ensure that -**

(A) **special education and regular education teachers** have -

(i) the training and information necessary to address the full range of needs of children with disabilities

across disability categories; and

(ii) the necessary subject matter knowledge and teaching skills in the academic subjects that the teachers teach;

(B) special education and regular education teacher certification (including recertification) or licensing requirements are aligned with challenging State academic content standards; and

(C) special education and regular education teachers have the **subject matter knowledge and teaching skills**, including technology literacy, necessary to help students with disabilities meet challenging State student academic achievement and functional standards.

(2) Programs that establish, expand, or improve alternative routes for State certification of special education teachers for highly qualified individuals with a baccalaureate or master's degree, including mid-career professionals from other occupations, paraprofessionals, and recent college or university graduates with records of academic distinction who demonstrate the potential to become highly effective special education teachers.

(3) Teacher advancement initiatives for special education teachers that promote professional growth and emphasize multiple career paths (such as paths to becoming a career teacher, mentor teacher, or exemplary teacher) and pay differentiation.

(4) Developing and implementing mechanisms to assist local educational agencies and schools in effectively recruiting and retaining highly qualified special education teachers.

(5) Reforming tenure systems, **implementing teacher testing for subject matter knowledge**, and implementing teacher testing for State certification or licensing, consistent with title II of the Higher Education Act of 1965.

(6) Funding projects to promote reciprocity of teacher certification or licensing between or among States for special education teachers, except that no reciprocity agreement developed under this paragraph or developed using funds provided under this subpart may lead to the weakening of any State teaching certification or licensing requirement.

(7) Assisting local educational agencies to serve children with disabilities through the development and use of proven, innovative strategies to deliver intensive professional development programs that are both cost effective and easily accessible, such as strategies that involve delivery through the use of technology, peer networks, and distance learning.

(8) Developing, or assisting local educational agencies in developing, merit based performance systems, and strategies that provide differential and bonus pay for special education teachers.

(9) Supporting activities that ensure that teachers are able to use challenging State academic content standards and student academic achievement and functional standards, and State assessments for all children with disabilities, to improve instructional practices and improve the academic achievement of children with disabilities.

(10) When applicable, coordinating with, and expanding centers established under, Section 2113(c)(18) of the Elementary and Secondary Education Act of 1965 to benefit special education teachers.

(c) Contracts and Subgrants. A State educational agency that receives a grant under this subpart -

(1) shall award contracts or subgrants to local educational agencies, institutions of higher education, parent training and information centers, or community parent resource centers, as appropriate, to carry out its State plan under this subpart; and

(2) may award contracts and subgrants to other public and private entities, including the lead agency under Part C, to carry out the State plan.

(d) Use of Funds for Professional Development. A State educational agency that receives a grant under this subpart shall use -

(1) not less than 90 percent of the funds the State educational agency receives under the grant for any fiscal

year for activities under subsection (a); and

(2) not more than 10 percent of the funds the State educational agency receives under the grant for any fiscal year for activities under subsection (b).

(e) **Grants to Outlying Areas.** Public Law 95-134, permitting the consolidation of grants to the outlying areas, shall not apply to funds received under this subpart.

20 U. S. C. § 1455. Authorization of Appropriations.

There are authorized to be appropriated to carry out this subpart such sums as may be necessary for each of the fiscal years 2005 through 2010.

Subpart 2 – Personnel Preparation, Technical Assistance, Model Demonstration Projects, and Dissemination of Information

WRIGHTSLAW OVERVIEW: Subpart 2 provides federal funds to improve early intervention, special education, and transition for children with disabilities by improving teacher training and professional development programs and helping States to improve their educational systems.

20 U. S. C. § 1461. Purpose; Definition of Eligible Entity.

WRIGHTSLAW OVERVIEW: Section 1461(a) describes the purpose of this statute – to improve early intervention, educational and transitional results for children with disabilities by helping states improve their educational systems.

(a) **Purpose.** The purpose of this subpart is -

(1) to provide **Federal funding for personnel preparation**, technical assistance, model demonstration projects, information dissemination, and studies and evaluations, in order to improve early intervention, educational, and transitional results for children with disabilities; and

(2) to assist State educational agencies and local educational agencies in improving their education systems for children with disabilities.

(b) **Definition of Eligible Entity.**

(1) **In General.** In this subpart, the term ‘**eligible entity**’ means -

(A) a State educational agency;

(B) a local educational agency;

(C) a public charter school that is a local educational agency under State law;

(D) an institution of higher education;

(E) a public agency not described in subparagraphs (A) through (D);

(F) a **private nonprofit organization**;

(G) an outlying area;

(H) an Indian tribe or a tribal organization (as defined under Section 4 of the Indian Self-Determination and Education Assistance Act); or

(I) a **for-profit organization**, if the Secretary finds it appropriate in light of the purposes of a particular competition for a grant, contract, or cooperative agreement under this subpart.

(2) **Special Rule.** The Secretary may limit which eligible entities described in paragraph (1) are eligible for a grant, contract, or cooperative agreement under this subpart to 1 or more of the categories of eligible entities described in paragraph (1).

20 U. S. C. § 1462. Personnel Development to Improve Services and Results for Children with Disabilities.

WRIGHTSLAW OVERVIEW: Section 1462 is new. This section addresses the need to ensure that all teachers have the necessary skills and knowledge of educational practices that have been determined, through scientifically based research, to be successful. To accomplish this goal, states need to shift the focus to academics in special education teacher preparation programs. Section 1462(a)(7) describes professional development for administrators in instructional leadership, behavior support, assessment, accountability, and positive relationships with parents. Section 1462(b) describes personnel development and support for beginning special educators, including an extended clinical learning opportunity or supervised practicum (5th year). Section 1462(c) describes preparation of individuals to work with students with low incidence disabilities. Section 1462(g) and (h) describe scholarships and service obligations.

(a) In General. The Secretary, on a competitive basis, shall award grants to, or enter into contracts or cooperative agreements with, eligible entities to carry out 1 or more of the following objectives:

(1) To help address the needs identified in the State plan described in Section 1453(a)(2) for highly qualified personnel, as defined in Section 1451(b), to work with infants or toddlers with disabilities, or children with disabilities, consistent with the qualifications described in Section 1412(a)(14).

(2) To ensure that those personnel have the necessary skills and knowledge, derived from practices that have been determined, through scientifically based research, to be successful in serving those children.

(3) To encourage **increased focus on academics and core content areas** in special education personnel preparation programs.

(4) To ensure that regular education teachers have the necessary skills and knowledge to provide instruction to students with disabilities in the regular education classroom.

(5) To ensure that all special education teachers are highly qualified.

(6) To ensure that preservice and in-service personnel preparation programs include training in -

- (A) the use of new technologies;
- (B) the area of early intervention, educational, and transition services;
- (C) effectively involving parents; and
- (D) positive behavioral supports.

(7) To provide high-quality professional development for principals, superintendents, and other administrators, including training in -

- (A) instructional leadership;
- (B) behavioral supports in the school and classroom;
- (C) paperwork reduction;
- (D) promoting improved collaboration between special education and general education teachers;
- (E) assessment and accountability;
- (F) ensuring effective learning environments; and
- (G) fostering positive relationships with parents.

(b) Personnel Development; Enhanced Support for Beginning Special Educators.

(1) In General. In carrying out this section, the Secretary shall support activities -

(A) for personnel development, including activities for the preparation of personnel who will serve children with high incidence and low incidence disabilities, to prepare special education and general education teachers, principals, administrators, and related services personnel (and school board members, when appropriate) to meet the diverse and individualized instructional needs of children with disabilities and improve

early intervention, educational, and transitional services and results for children with disabilities, consistent with the objectives described in subsection (a); and

(B) for enhanced support for beginning special educators, consistent with the objectives described in subsection (a).

(2) Personnel Development. In carrying out paragraph (1)(A), the Secretary shall support not less than 1 of the following activities:

(A) Assisting effective existing, improving existing, or developing new, collaborative personnel preparation activities undertaken by institutions of higher education, local educational agencies, and other local entities that incorporate best practices and scientifically based research, where applicable, in providing special education and general education teachers, principals, administrators, and related services personnel with the knowledge and skills to effectively support students with disabilities, including -

(i) working collaboratively in regular classroom settings;

(ii) using appropriate supports, accommodations, and curriculum modifications;

(iii) implementing effective teaching strategies, classroom-based techniques, and interventions to ensure appropriate identification of students who may be eligible for special education services, and to prevent the misidentification, inappropriate overidentification, or under-identification of children as having a disability, especially minority and limited English proficient children;

(iv) effectively working with and involving parents in the education of their children;

(v) utilizing strategies, including positive behavioral interventions, for addressing the conduct of children with disabilities that impedes their learning and that of others in the classroom;

(vi) effectively constructing IEPs, participating in IEP meetings, and implementing IEPs;

(vii) preparing children with disabilities to participate in statewide assessments (with or without accommodations) and alternate assessments, as appropriate, and to ensure that all children with disabilities are a part of all accountability systems under the Elementary and Secondary Education Act of 1965; and

(viii) working in high need elementary schools and secondary schools, including urban schools, rural schools, and schools operated by an entity described in Section 7113(d)(1)(A)(ii) of the Elementary and Secondary Education Act of 1965, and schools that serve high numbers or percentages of limited English proficient children.

(B) Developing, evaluating, and disseminating innovative models for the recruitment, induction, retention, and assessment of new, highly qualified teachers to reduce teacher shortages, especially from groups that are underrepresented in the teaching profession, including individuals with disabilities.

(C) Providing continuous personnel preparation, training, and professional development designed to provide support and ensure retention of special education and general education teachers and personnel who teach and provide related services to children with disabilities.

(D) Developing and improving programs for paraprofessionals to become special education teachers, related services personnel, and early intervention personnel, including interdisciplinary training to enable the paraprofessionals to improve early intervention, educational, and transitional results for children with disabilities.

(E) In the case of principals and superintendents, providing activities to promote instructional leadership and improved collaboration between general educators, special education teachers, and related services personnel.

(F) Supporting institutions of higher education with minority enrollments of not less than 25 percent for the purpose of preparing personnel to work with children with disabilities.

(G) Developing and improving programs to train special education teachers to develop an expertise in autism spectrum disorders.

(H) Providing continuous personnel preparation, training, and professional development designed to provide support and improve the qualifications of personnel who provide related services to children with disabilities, including to enable such personnel to obtain advanced degrees.

(3) Enhanced Support for Beginning Special Educators. In carrying out paragraph (1)(B), the Secretary shall support not less than 1 of the following activities:

(A) Enhancing and restructuring existing programs or developing preservice teacher education programs to prepare special education teachers, at colleges or departments of education within institutions of higher education, by incorporating an extended (such as an additional 5th year) clinical learning opportunity, field experience, or supervised practicum into such programs.

(B) Creating or supporting teacher-faculty partnerships (such as professional development schools) that

(i) consist of not less than -

(I) 1 or more institutions of higher education with special education personnel preparation programs;

(II) 1 or more local educational agencies that serve high numbers or percentages of low-income students; or

(III) 1 or more elementary schools or secondary schools, particularly schools that have failed to make adequate yearly progress on the basis, in whole and in part, of the assessment results of the disaggregated subgroup of students with disabilities;

(ii) may include other entities eligible for assistance under this part; and

(iii) provide -

(I) high-quality mentoring and induction opportunities with ongoing support for beginning special education teachers; or

(II) inservice professional development to beginning and veteran special education teachers through the ongoing exchange of information and instructional strategies with faculty.

(c) Low Incidence Disabilities; Authorized Activities.

(1) In General. In carrying out this section, the Secretary shall support activities, consistent with the objectives described in subsection (a) that benefit children with low incidence disabilities.

(2) Authorized Activities. Activities that may be carried out under this subsection include activities such as the following:

(A) Preparing persons who -

(i) have prior training in educational and other related service fields; and

(ii) are studying to obtain degrees, certificates, or licensure that will enable the persons to assist children with low incidence disabilities to achieve the objectives set out in their individualized education programs described in Section 1414(d), or to assist infants and toddlers with low incidence disabilities to achieve the outcomes described in their individualized family service plans described in Section 1436.

(B) Providing personnel from various disciplines with interdisciplinary training that will contribute to improvement in early intervention, educational, and transitional results for children with low incidence disabilities.

(C) Preparing personnel in the innovative uses and application of technology, including universally designed technologies, assistive technology devices, and assistive technology services -

(i) to enhance learning by children with low incidence disabilities through early intervention, educational, and transitional services; and

(ii) to improve communication with parents.

(D) Preparing personnel who provide services to visually impaired or blind children to teach and use Braille in the provision of services to such children.

(E) Preparing personnel to be qualified educational interpreters, to assist children with low incidence disabilities, particularly deaf and hard of hearing children in school and school related activities, and deaf and hard of hearing infants and toddlers and preschool children in early intervention and preschool programs.

(F) Preparing personnel who provide services to children with significant cognitive disabilities and children with multiple disabilities.

(G) Preparing personnel who provide services to children with low incidence disabilities and limited English proficient children.

(3) Definition. In this section, the term ‘**low incidence**’ means -

(A) a visual or hearing impairment, or simultaneous visual and hearing impairments;

(B) a significant cognitive impairment; or

(C) any impairment for which a small number of personnel with highly specialized skills and knowledge are needed in order for children with that impairment to receive early intervention services or a free appropriate public education.

(4) Selection of Recipients. In selecting eligible entities for assistance under this subsection, the Secretary may give preference to eligible entities submitting applications that include 1 or more of the following:

(A) A proposal to prepare personnel in more than 1 low incidence disability, such as deafness and blindness.

(B) A demonstration of an effective collaboration between an eligible entity and a local educational agency that promotes recruitment and subsequent retention of highly qualified personnel to serve children with low incidence disabilities.

(5) Preparation in Use of Braille. The Secretary shall ensure that all recipients of awards under this subsection who will use that assistance to prepare personnel to provide services to visually impaired or blind children that can appropriately be provided in Braille, will prepare those individuals to provide those services in Braille.

(d) Leadership Preparation; Authorized Activities.

(1) In General. In carrying out this section, the Secretary shall support leadership preparation activities that are consistent with the objectives described in subsection (a).

(2) Authorized Activities. Activities that may be carried out under this subsection include activities such as the following:

(A) Preparing personnel at the graduate, doctoral, and postdoctoral levels of training to administer, enhance, or provide services to improve results for children with disabilities.

(B) Providing interdisciplinary training for various types of leadership personnel, including teacher preparation faculty, related services faculty, administrators, researchers, supervisors, principals, and other persons whose work affects early intervention, educational, and transitional services for children with disabilities, including children with disabilities who are limited English proficient children.

(e) Applications.

(1) In General. An eligible entity that wishes to receive a grant, or enter into a contract or cooperative agreement, under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

(2) Identified State Needs.

(A) Requirement to Address Identified Needs. An application for assistance under subsection (b), (c), or (d) shall include information demonstrating to the satisfaction of the Secretary that the activities described in the application will address needs identified by the State or States the eligible entity proposes to serve.

(B) Cooperation with State Educational Agencies. An eligible entity that is not a local educational agency or a State educational agency shall include in the eligible entity's application information demonstrating to the satisfaction of the Secretary that the eligible entity and 1 or more State educational agencies or local educational agencies will cooperate in carrying out and monitoring the proposed project.

(3) Acceptance by States of Personnel Preparation Requirements. The Secretary may require eligible entities to provide in the eligible entities' applications assurances from 1 or more States that such States intend to accept successful completion of the proposed personnel preparation program as meeting State personnel standards or other requirements in State law or regulation for serving children with disabilities or serving infants and toddlers with disabilities.

(f) Selection of Recipients.

(1) Impact of Project. In selecting eligible entities for assistance under this section, the Secretary shall consider the impact of the proposed project described in the application in meeting the need for personnel identified by the States.

(2) Requirement for Eligible Entities to Meet State and Professional Qualifications. The Secretary shall make grants and enter into contracts and cooperative agreements under this section only to eligible entities that meet State and professionally recognized qualifications for the preparation of special education and related services personnel, if the purpose of the project is to assist personnel in obtaining degrees.

(3) Preferences. In selecting eligible entities for assistance under this section, the Secretary may give preference to eligible entities that are institutions of higher education that are -

(A) educating regular education personnel to meet the needs of children with disabilities in integrated settings;

(B) educating special education personnel to work in collaboration with regular educators in integrated settings; and

(C) successfully recruiting and preparing individuals with disabilities and individuals from groups that are underrepresented in the profession for which the institution of higher education is preparing individuals.

(g) Scholarships. The Secretary may include funds for scholarships, with necessary stipends and allowances, in awards under subsections (b), (c), and (d).

(h) Service Obligation.

(1) In General. Each application for assistance under subsections (b), (c), and (d) shall include an assurance that the eligible entity will ensure that individuals who receive a scholarship under the proposed project agree to subsequently provide special education and related services to children with disabilities, or in the case of leadership personnel to subsequently work in the appropriate field, for a period of **2 years for every year** for which the scholarship was received or repay all or part of the amount of the scholarship, in accordance with regulations issued by the Secretary.

(2) Special Rule. Notwithstanding paragraph (1), the Secretary may reduce or waive the service obligation requirement under paragraph (1) if the Secretary determines that the service obligation is acting as a deterrent to the recruitment of students into special education or a related field.

(3) Secretary's Responsibility. The Secretary -

(A) shall ensure that individuals described in paragraph (1) comply with the requirements of that paragraph; and

(B) may use not more than 0.5 percent of the funds appropriated under subsection (i) for each fiscal year, to carry out subparagraph (A), in addition to any other funds that are available for that purpose.

(i) Authorization of Appropriations. There are authorized to be appropriated to carry out this section such sums as may be necessary for each of the fiscal years 2005 through 2010.

20 U. S. C. § 1463. Technical Assistance, Demonstration Projects, Dissemination of Information, and Implementation of Scientifically Based Research.

WRIGHTSLAW OVERVIEW: The federal government shall award grants and enter into contracts with entities to produce and disseminate research based knowledge that promotes academic achievement and improves results for children with disabilities.

(a) In General. The Secretary shall make competitive grants to, or enter into contracts or cooperative agreements with, eligible entities to provide technical assistance, support model demonstration projects, disseminate useful information, and implement activities that are supported by scientifically based research.

(b) Required Activities. Funds received under this section shall be used to support activities to improve services provided under this title, including the practices of professionals and others involved in providing such services to children with disabilities, that promote academic achievement and improve results for children with disabilities through -

(1) implementing effective strategies for addressing inappropriate behavior of students with disabilities in schools, including strategies to prevent children with emotional and behavioral problems from developing emotional disturbances that require the provision of special education and related services;

(2) improving the alignment, compatibility, and development of valid and reliable assessments and alternate assessments for assessing adequate yearly progress, as described under Section 1111(b)(2)(B) of the Elementary and Secondary Education Act of 1965;

(3) providing training for both regular education teachers and special education teachers to address the needs of students with different learning styles;

(4) disseminating information about innovative, effective, and efficient curricula designs, instructional approaches, and strategies, and identifying positive academic and social learning opportunities, that -

(A) provide effective transitions between educational settings or from school to post school settings; and

(B) improve educational and transitional results at all levels of the educational system in which the activities are carried out and, in particular, that improve the progress of children with disabilities, as measured by assessments within the general education curriculum involved; and

(5) applying scientifically based findings to facilitate systemic changes, related to the provision of services to children with disabilities, in policy, procedure, practice, and the training and use of personnel.

(c) Authorized Activities. Activities that may be carried out under this section include activities to improve services provided under this title, including the practices of professionals and others involved in providing such services to children with disabilities, that promote academic achievement and improve results for children with disabilities through -

(1) applying and testing research findings in typical settings where children with disabilities receive services to determine the usefulness, effectiveness, and general applicability of such research findings in such areas as improving instructional methods, curricula, and tools, such as textbooks and media;

(2) supporting and promoting the coordination of early intervention and educational services for children with disabilities with services provided by health, rehabilitation, and social service agencies;

(3) promoting improved alignment and compatibility of general and special education reforms concerned with curricular and instructional reform, and evaluation of such reforms;

(4) enabling professionals, parents of children with disabilities, and other persons to learn about, and implement, the findings of scientifically based research, and successful practices developed in model demonstration projects, relating to the provision of services to children with disabilities;

(5) conducting outreach, and disseminating information, relating to successful approaches to overcoming systemic barriers to the effective and efficient delivery of early intervention, educational, and transitional ser-

vices to personnel who provide services to children with disabilities;

(6) assisting States and local educational agencies with the process of planning systemic changes that will promote improved early intervention, educational, and transitional results for children with disabilities;

(7) promoting change through a multistate or regional framework that benefits States, local educational agencies, and other participants in partnerships that are in the process of achieving systemic-change outcomes;

(8) focusing on the needs and issues that are specific to a population of children with disabilities, such as providing single-State and multi-State technical assistance and in-service training -

(A) to schools and agencies serving deaf-blind children and their families;

(B) to programs and agencies serving other groups of children with low incidence disabilities and their families;

(C) addressing the postsecondary education needs of individuals who are deaf or hard-of-hearing; and

(D) to schools and personnel providing special education and related services for children with autism spectrum disorders;

(9) demonstrating models of personnel preparation to ensure appropriate placements and services for all students and to reduce disproportionality in eligibility, placement, and disciplinary actions for minority and limited English proficient children; and

(10) disseminating information on how to reduce inappropriate racial and ethnic disproportionalities identified under Section 1418.

(d) Balance Among Activities and Age Ranges. In carrying out this section, the Secretary shall ensure that there is an appropriate balance across all age ranges of children with disabilities.

(e) Linking States to Information Sources. In carrying out this section, the Secretary shall support projects that link States to technical assistance resources, including special education and general education resources, and shall make research and related products available through libraries, electronic networks, parent training projects, and other information sources, including through the activities of the National Center for Education Evaluation and Regional Assistance established under part D of the Education Sciences Reform Act of 2002.

(f) Applications.

(1) In General. An eligible entity that wishes to receive a grant, or enter into a contract or cooperative agreement, under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

(2) Standards. To the maximum extent feasible, each eligible entity shall demonstrate that the project described in the eligible entity's application is supported by scientifically valid research that has been carried out in accordance with the standards for the conduct and evaluation of all relevant research and development established by the National Center for Education Research.

(3) Priority. As appropriate, the Secretary shall give priority to applications that propose to serve teachers and school personnel directly in the school environment.

20 U. S. C. § 1464. Studies and Evaluations.

WRIGHTSLAW OVERVIEW: Section 1464 authorizes assessments, longitudinal studies, and a national assessment to determine if children with disabilities are benefiting from special education. The purpose of the national assessment is to determine if states and school districts are improving results, placing children in the least restrictive environment, reducing dropout rates, and addressing problem behaviors.

(a) Studies and Evaluations.

(1) Delegation. The Secretary shall delegate to the Director of the Institute of Education Sciences responsibility to carry out this section, other than subsections (d) and (f).

(2) **Assessment.** The Secretary shall, directly or through grants, contracts, or cooperative agreements awarded to eligible entities on a competitive basis, assess the progress in the implementation of this title, including the effectiveness of State and local efforts to provide -

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

(B) early intervention services to infants and toddlers with disabilities, and infants and toddlers who would be at risk of having substantial developmental delays if early intervention services were not provided to the infants and toddlers.

(b) Assessment of National Activities.

(1) **In General.** The Secretary shall carry out a national assessment of activities carried out with Federal funds under this title in order -

(A) to determine the effectiveness of this title in achieving the purposes of this title;

(B) to provide timely information to the President, Congress, the States, local educational agencies, and the public on how to implement this title more effectively; and

(C) to provide the President and Congress with information that will be useful in developing legislation to achieve the purposes of this title more effectively.

(2) **Scope of Assessment.** The national assessment shall assess activities supported under this title, including

(A) the implementation of programs assisted under this title and the impact of such programs on addressing the developmental needs of, and improving the academic achievement of, children with disabilities to enable the children to reach challenging developmental goals and challenging State academic content standards based on State academic assessments;

(B) the types of programs and services that have demonstrated the greatest likelihood of helping students reach the challenging State academic content standards and developmental goals;

(C) the implementation of the professional development activities assisted under this title and the impact on instruction, student academic achievement, and teacher qualifications to enhance the ability of special education teachers and regular education teachers to improve results for children with disabilities; and

(D) the effectiveness of schools, local educational agencies, States, other recipients of assistance under this title, and the Secretary in achieving the purposes of this title by -

(i) improving the academic achievement of children with disabilities and their performance on regular statewide assessments as compared to nondisabled children, and the performance of children with disabilities on alternate assessments;

(ii) improving the participation of children with disabilities in the general education curriculum;

(iii) improving the transitions of children with disabilities at natural transition points;

(iv) placing and serving children with disabilities, including minority children, in the least restrictive environment appropriate;

(v) preventing children with disabilities, especially children with emotional disturbances and specific learning disabilities, from dropping out of school;

(vi) addressing the reading and literacy needs of children with disabilities;

(vii) reducing the inappropriate overidentification of children, especially minority and limited English proficient children, as having a disability;

(viii) improving the participation of parents of children with disabilities in the education of their children; and

(ix) resolving disagreements between education personnel and parents through alternate dispute resolution activities, including mediation.

(3) Interim and Final Reports. The Secretary shall submit to the President and Congress -

(A) an interim report that summarizes the preliminary findings of the assessment not later than 3 years after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2004; and

(B) a final report of the findings of the assessment not later than 5 years after the date of enactment of such Act.

(c) Study on Ensuring Accountability for Students Who Are Held to Alternative Achievement Standards. The Secretary shall carry out a national study or studies to examine -

(1) the criteria that States use to determine -

(A) eligibility for alternate assessments; and

(B) the number and type of children who take those assessments and are held accountable to alternative achievement standards;

(2) the validity and reliability of alternate assessment instruments and procedures;

(3) the alignment of alternate assessments and alternative achievement standards to State academic content standards in reading, mathematics, and science; and

(4) the use and effectiveness of alternate assessments in appropriately measuring student progress and outcomes specific to individualized instructional need.

(d) Annual Report. The Secretary shall provide an annual report to Congress that -

(1) summarizes the research conducted under Part E of the Education Sciences Reform Act of 2002;

(2) analyzes and summarizes the data reported by the States and the Secretary of the Interior under Section 1418;

(3) summarizes the studies and evaluations conducted under this section and the timeline for their completion;

(4) describes the extent and progress of the assessment of national activities; and

(5) describes the findings and determinations resulting from reviews of State implementation of this title.

(e) Authorized Activities. In carrying out this section, the Secretary may support objective studies, evaluations, and assessments, including studies that -

(1) analyze measurable impact, outcomes, and results achieved by State educational agencies and local educational agencies through their activities to reform policies, procedures, and practices designed to improve educational and transitional services and results for children with disabilities;

(2) analyze State and local needs for professional development, parent training, and other appropriate activities that can reduce the need for disciplinary actions involving children with disabilities;

(3) assess educational and transitional services and results for children with disabilities from minority backgrounds, including -

(A) data on -

(i) the number of minority children who are referred for special education evaluation;

(ii) the number of minority children who are receiving special education and related services and their educational or other service placement;

(iii) the number of minority children who graduated from secondary programs with a regular diploma in the standard number of years; and

(iv) the number of minority children who drop out of the educational system; and

(B) the performance of children with disabilities from minority backgrounds on State assessments and other performance indicators established for all students;

(4) measure educational and transitional services and results for children with disabilities served under this title, including longitudinal studies that -

(A) examine educational and transitional services and results for children with disabilities who are 3 through 17 years of age and are receiving special education and related services under this title, using a national, representative sample of distinct age cohorts and disability categories; and

(B) examine educational results, transition services, postsecondary placement, and employment status for individuals with disabilities, 18 through 21 years of age, who are receiving or have received special education and related services under this title; and

(5) identify and report on the placement of children with disabilities by disability category.

(f) Study. The Secretary shall study, and report to Congress regarding, the extent to which States adopt policies described in Section 1435(c)(1) and on the effects of those policies.

20 U. S. C. § 1465. Interim Alternative Educational Settings, Behavioral Supports, and Systematic School Interventions.

WRIGHTSLAW OVERVIEW: Section 1465 is new. This section focuses on using effective, research based practices to improve behavioral supports and interim alternative educational settings. Strategies include improved training in behavioral supports and interventions, how to use research-based interventions, curriculum, ensuring that services are consistent with the IEP goals, and providing behavior specialists.

(a) Program Authorized. The Secretary may award grants, and enter into contracts and cooperative agreements, to support safe learning environments that support academic achievement for all students by -

(1) improving the quality of interim alternative educational settings; and

(2) providing increased behavioral supports and research-based, systemic interventions in schools.

(b) Authorized Activities. In carrying out this section, the Secretary may support activities to -

(1) establish, expand, or increase the scope of **behavioral supports and systemic interventions** by providing for **effective, research-based practices**, including -

(A) **training for school staff** on early identification, prereferral, and referral procedures;

(B) **training for** administrators, teachers, related services personnel, behavioral specialists, and other **school staff in positive behavioral interventions** and supports, **behavioral intervention planning**, and **classroom and student management techniques**;

(C) **joint training** for administrators, parents, teachers, related services personnel, behavioral specialists, and other school staff on effective strategies for positive behavioral interventions and behavior management strategies that focus on the **prevention of behavior problems**;

(D) developing or implementing specific curricula, programs, or interventions aimed at addressing behavioral problems;

(E) stronger linkages between school-based services and community-based resources, such as community mental health and primary care providers; or

(F) using behavioral specialists, related services personnel, and other staff necessary to implement behavioral supports; or

(2) **improve interim alternative educational settings** by -

(A) improving the training of administrators, teachers, related services personnel, behavioral specialists, and other school staff (including ongoing mentoring of new teachers) in behavioral supports and interventions;

(B) attracting and retaining a high quality, diverse staff;

(C) providing for referral to counseling services;

(D) utilizing research-based interventions, curriculum, and practices;

(E) allowing students to use instructional technology that provides individualized instruction;

(F) ensuring that the services are fully consistent with the goals of the individual student's IEP;

(G) promoting effective case management and collaboration among parents, teachers, physicians, related services personnel, behavioral specialists, principals, administrators, and other school staff;

(H) promoting interagency coordination and coordinated service delivery among schools, juvenile courts, child welfare agencies, community mental health providers, primary care providers, public recreation agencies, and community-based organizations; or

(I) providing for behavioral specialists to help students transitioning from interim alternative educational settings reintegrate into their regular classrooms.

(c) **Definition of Eligible Entity.** In this section, the term 'eligible entity' means -

(1) a local educational agency; or

(2) a consortium consisting of a local educational agency and 1 or more of the following entities:

(A) Another local educational agency.

(B) A **community-based organization** with a demonstrated record of effectiveness in helping children with disabilities who have behavioral challenges succeed.

(C) An institution of higher education.

(D) A **community mental health provider**.

(E) An educational service agency.

(d) **Applications.** Any eligible entity that wishes to receive a grant, or enter into a contract or cooperative agreement, under this section shall -

(1) submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require; and

(2) **involve parents of participating students** in the design and implementation of the activities funded under this section.

(e) **Report and Evaluation.** Each eligible entity receiving a grant under this section shall prepare and submit annually to the Secretary a report on the outcomes of the activities assisted under the grant.

20 U. S. C. § 1466. Authorization of Appropriations.

(a) **In General.** There are authorized to be appropriated to carry out this subpart (other than Section 1462) such sums as may be necessary for each of the fiscal years 2005 through 2010.

(b) **Reservation.** From amounts appropriated under subsection (a) for fiscal year 2005, the Secretary shall reserve \$1,000,000 to carry out the study authorized in Section 1464(c). From amounts appropriated under subsection (a) for a succeeding fiscal year, the Secretary may reserve an additional amount to carry out such study if the Secretary determines the additional amount is necessary.

Subpart 3 — Supports To Improve Results for Children with Disabilities

WRIGHTSLAW OVERVIEW: Subpart 3 focuses on the need to ensure that children with disabilities and their parents receive information and training. Section 1471 describes Parent Training and Information Centers; Section 1472 describes Community Parent Resource Centers. Section 1474 describes educational media services and the National Instructional Materials Access Center.

20 U. S. C. § 1470. Purposes.

WRIGHTSLAW OVERVIEW: Section 1470 describes the purposes for providing education and training to parents of children with disabilities.

The **purposes** of this subpart are to ensure that -

(1) children with disabilities and their **parents receive training and information** designed to assist the children in meeting **developmental and functional goals** and challenging **academic achievement goals**, and in preparing to **lead productive independent adult lives**;

(2) children with disabilities and their parents receive **training and information on their rights, responsibilities, and protections** under this title, in order to **develop the skills necessary to cooperatively and effectively participate in planning and decision making** relating to early intervention, educational, and transitional services;

(3) parents, teachers, administrators, early intervention personnel, related services personnel, and transition personnel receive coordinated and accessible technical assistance and information to assist such personnel in **improving early intervention, educational, and transitional services and results** for children with disabilities and their families; and

(4) appropriate technology and media are researched, developed, and demonstrated, to improve and implement early intervention, educational, and transitional services and results for children with disabilities and their families.

20 U. S. C. § 1471. Parent Training and Information Centers.

WRIGHTSLAW OVERVIEW: The Department of Education shall award grants to at least one parent organization in each state for a parent training and information center. Parent Training and Information Centers help parents learn about their children's disabilities, educational needs, how to communicate effectively with school personnel, how to participate in education decision-making and about their rights and how to use their rights.

(a) Program Authorized.

(1) **In General.** The Secretary may award grants to, and enter into contracts and cooperative agreements with, parent organizations to support **parent training and information centers** to carry out activities under this section.

(2) **Definition of Parent Organization.** In this section, the term '**parent organization**' means a **private nonprofit organization** (other than an institution of higher education) that -

(A) has a board of directors -

(i) the majority of whom are parents of children with disabilities ages birth through 26;

(ii) that includes -

(I) individuals working in the fields of special education, related services, and early intervention; and

(II) individuals with disabilities; and

(iii) the parent and professional members of which are broadly representative of the population to be served, including low-income parents and parents of limited English proficient children; and

(B) has as its mission serving families of children with disabilities who -

(i) are ages birth through 26; and

(ii) have the full range of disabilities described in Section 1402(3).

(b) Required Activities. Each **parent training and information center** that receives assistance under this section **shall** -

(1) **provide training and information that meets the needs of parents** of children with disabilities living in the area served by the center, particularly underserved parents and parents of children who may be inappropriately identified, to enable their children with disabilities to -

(A) meet developmental and functional goals, and challenging academic achievement goals that have been established for all children; and

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

(2) serve the parents of infants, toddlers, and children with the full range of disabilities described in Section 1402(3);

(3) ensure that the training and information provided meets the needs of low-income parents and parents of limited English proficient children;

(4) assist parents to -

(A) better understand the nature of their children's disabilities and their educational, developmental, and transitional needs;

(B) communicate effectively and work collaboratively with personnel responsible for providing special education, early intervention services, transition services, and related services;

(C) participate in decision-making processes and the development of individualized education programs under part B and individualized family service plans under part C;

(D) obtain appropriate information about the range, type, and quality of -

(i) options, programs, services, technologies, practices and interventions based on scientifically based research, to the extent practicable; and

(ii) resources available to assist children with disabilities and their families in school and at home;

(E) understand the provisions of this title for the education of, and the provision of early intervention services to, children with disabilities;

(F) participate in activities at the school level that benefit their children; and

(G) participate in school reform activities;

(5) in States where the State elects to contract with the parent training and information center, contract with State educational agencies to provide, consistent with subparagraphs (B) and (D) of Section 1415(e)(2), individuals who meet with parents to explain the mediation process to the parents;

(6) assist parents in resolving disputes in the most expeditious and effective way possible, including encouraging the use, and explaining the benefits, of alternative methods of dispute resolution, such as the mediation process described in Section 1415(e);

(7) assist parents and students with disabilities to **understand their rights and responsibilities** under this title, including those under Section 1415(m) upon the student's reaching the age of majority (as appropriate under State law);

(8) assist parents to understand the availability of, and how to effectively use, procedural safeguards under this title, including the resolution session described in Section 1415(e);

(9) assist parents in understanding, preparing for, and participating in, the process described in Section 1415(f)(1)(B);

(10) establish cooperative partnerships with community parent resource centers funded under Section 1472;

(11) network with appropriate clearinghouses, including organizations conducting national dissemination activities under Section 1463 and the Institute of Education Sciences, and with other national, State, and local organizations and agencies, such as protection and advocacy agencies, that serve parents and families of children

with the full range of disabilities described in Section 1402(3); and

(12) annually report to the Secretary on -

(A) the number and demographics of parents to whom the center provided information and training in the most recently concluded fiscal year;

(B) the effectiveness of strategies used to reach and serve parents, including underserved parents of children with disabilities; and

(C) the number of parents served who have resolved disputes through alternative methods of dispute resolution.

(c) **Optional Activities.** A parent training and information center that receives assistance under this section may provide information to teachers and other professionals to assist the teachers and professionals in improving results for children with disabilities.

(d) **Application Requirements.** Each application for assistance under this section shall identify with specificity the special efforts that the parent organization will undertake -

(1) to ensure that the needs for training and information of underserved parents of children with disabilities in the area to be served are effectively met; and

(2) to work with community based organizations, including community based organizations that work with low-income parents and parents of limited English proficient children.

(e) **Distribution of Funds.**

(1) **In General.** The Secretary shall -

(A) make not less than 1 award to a parent organization in each State for a parent training and information center that is designated as the statewide parent training and information center; or

(B) in the case of a large State, make awards to multiple parent training and information centers, but only if the centers demonstrate that coordinated services and supports will occur among the multiple centers.

(2) **Selection Requirement.** The Secretary shall select among applications submitted by parent organizations in a State in a manner that ensures the most effective assistance to parents, including parents in urban and rural areas, in the State.

(f) **Quarterly Review.**

(1) **Meetings.** The board of directors of each parent organization that receives an award under this section shall meet not less than once in each calendar quarter to review the activities for which the award was made.

(2) **Continuation Award.** When a parent organization requests a continuation award under this section, the board of directors shall submit to the Secretary a written review of the parent training and information program conducted by the parent organization during the preceding fiscal year.

20 U. S. C. § 1472. Community Parent Resource Centers.

WRIGHTSLAW OVERVIEW: The Department of Education may award grants to parents organizations that do not meet the criteria for a Parent Training and Information Center but focus on helping under-served parents. For example, centers may focus on helping low-income parents, parents of children with limited English proficiency, and parents with disabilities.

(a) **Program Authorized.**

(1) **In General.** The Secretary may award grants to, and enter into contracts and cooperative agreements with, local parent organizations to support **community parent resource centers** that will help ensure that underserved parents of children with disabilities, including low income parents, parents of limited English proficient children, and parents with disabilities, have the training and information the parents need to enable the parents to participate effectively in helping their children with disabilities -

(A) to meet developmental and functional goals, and challenging academic achievement goals that have been established for all children; and

(B) to be prepared to lead productive independent adult lives, to the maximum extent possible.

(2) **Definition of Local Parent Organization.** In this section, the term ‘local parent organization’ means a parent organization, as defined in Section 1471(a)(2), that -

(A) has a board of directors the majority of whom are parents of children with disabilities ages birth through 26 from the community to be served; and

(B) has as its mission serving parents of children with disabilities who -

(i) are ages birth through 26; and

(ii) have the full range of disabilities described in Section 1402(3).

(b) **Required Activities.** Each **community parent resource center** assisted under this section **shall** -

(1) **provide training and information that meets the training and information needs of parents** of children with disabilities proposed to be served by the grant, contract, or cooperative agreement;

(2) carry out the activities required of parent training and information centers under paragraphs (2) through (9) of Section 1471(b);

(3) establish cooperative partnerships with the parent training and information centers funded under Section 1471; and

(4) be designed to meet the specific needs of families who experience significant isolation from available sources of information and support.

20 U. S. C. § 1473. Technical Assistance for Parent Training and Information Centers.

WRIGHTSLAW OVERVIEW: The Department of Education may provide technical assistance to Parent Training and Information Centers and Community Parent Resource Centers.

(a) **Program Authorized.**

(1) **In General.** The Secretary may, directly or through awards to eligible entities, provide technical assistance for developing, assisting, and coordinating parent training and information programs carried out by parent training and information centers receiving assistance under Section 1471 and community parent resource centers receiving assistance under Section 1472.

(2) **Definition of Eligible Entity.** In this section, the term ‘eligible entity’ has the meaning given the term in Section 1461(b).

(b) **Authorized Activities.** The Secretary may provide technical assistance to a parent training and information center or a community parent resource center under this section in areas such as -

(1) effective coordination of parent training efforts;

(2) dissemination of scientifically based research and information;

(3) promotion of the use of technology, including assistive technology devices and assistive technology services;

(4) reaching underserved populations, including parents of low-income and limited English proficient children with disabilities;

(5) including children with disabilities in general education programs;

(6) facilitation of transitions from -

(A) early intervention services to preschool;

(B) preschool to elementary school;

(C) elementary school to secondary school; and

(D) secondary school to postsecondary environments; and

(7) promotion of alternative methods of dispute resolution, including mediation.

(c) **Collaboration with Resource Centers.** Each eligible entity receiving an award under subsection (a) **shall develop collaborative agreements** with the geographically appropriate regional resource center and, as appropriate, the regional educational laboratory supported under Section 174 of the Education Sciences Reform Act of 2002, to further parent and professional collaboration.

20 U. S. C. § 1474. Technology Development, Demonstration and Utilization; Media Services; and Instructional Materials.

WRIGHTSLAW OVERVIEW: Federal grants are available to promote the development of technology and educational media services. Section 1474(e) authorizes the National Instructional Materials Access Center that provides instructional materials to individuals who are blind or who have print disabilities.

(a) Program Authorized.

(1) **In General.** The Secretary, on a competitive basis, shall award grants to, and enter into contracts and cooperative agreements with, eligible entities to support activities described in subsections (b) and (c).

(2) **Definition of Eligible Entity.** In this section, the term ‘eligible entity’ has the meaning given the term in Section 1461(b).

(b) Technology Development, Demonstration, and Use.

(1) **In General.** In carrying out this section, the Secretary shall support activities to promote the development, demonstration, and use of technology.

(2) **Authorized Activities.** The following activities may be carried out under this subsection:

(A) Conducting research on and promoting the demonstration and use of innovative, emerging, and universally designed technologies for children with disabilities, by improving the transfer of technology from research and development to practice.

(B) Supporting research, development, and dissemination of technology with universal design features, so that the technology is accessible to the broadest range of individuals with disabilities without further modification or adaptation.

(C) Demonstrating the use of systems to provide parents and teachers with information and training concerning **early diagnosis of, intervention for, and effective teaching strategies for, young children with reading disabilities.**

(D) Supporting the use of **Internet-based communications** for students with cognitive disabilities in order to **maximize their academic and functional skills.**

(c) Educational Media Services.

(1) **In General.** In carrying out this section, the Secretary shall support -

(A) **educational media activities** that are designed to be of educational value in the classroom setting to children with disabilities;

(B) providing video description, open captioning, or closed captioning, that is appropriate for use in the classroom setting, of -

(i) television programs;

(ii) videos;

(iii) other materials, including programs and materials associated with new and emerging technologies, such as CDs, DVDs, video streaming, and other forms of multimedia; or

(iv) news (but only until September 30, 2006);

(C) distributing materials described in subparagraphs (A) and (B) through such mechanisms as a loan service; and

(D) providing free educational materials, including textbooks, in accessible media for visually impaired and print disabled students in elementary schools and secondary schools, postsecondary schools, and graduate schools.

(2) **Limitation.** The video description, open captioning, or closed captioning described in paragraph (1)(B) shall be provided only when the description or captioning has not been previously provided by the producer or distributor, or has not been fully funded by other sources.

(d) Applications.

(1) **In General.** Any eligible entity that wishes to receive a grant, or enter into a contract or cooperative agreement, under subsection (b) or (c) shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

(2) **Special Rule.** For the purpose of an application for an award to carry out activities described in subsection (c)(1)(D), such eligible entity shall -

(A) be a national, nonprofit entity with a proven track record of meeting the needs of students with print disabilities through services described in subsection (c)(1)(D);

(B) have the capacity to produce, maintain, and distribute in a timely fashion, up-to-date textbooks in digital audio formats to qualified students; and

(C) have a demonstrated ability to significantly leverage Federal funds through other public and private contributions, as well as through the expansive use of volunteers.

(e) National Instructional Materials Access Center.

(1) **In General.** The Secretary shall establish and support, through the American Printing House for the Blind, a center to be known as the **National Instructional Materials Access Center** not later than 1 year after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2004.

(2) **Duties.** The duties of the National Instructional Materials Access Center are the following:

(A) To receive and **maintain a catalog of print instructional materials** prepared in the National Instructional Materials Accessibility Standard, as established by the Secretary, made available to such center by the textbook publishing industry, State educational agencies, and local educational agencies.

(B) To provide **access to print instructional materials**, including textbooks, in accessible media, free of charge, **to blind or other persons with print disabilities in elementary schools and secondary schools**, in accordance with such terms and procedures as the National Instructional Materials Access Center may prescribe.

(C) To develop, adopt and publish procedures to protect against copyright infringement, with respect to the print instructional materials provided under Sections 1412(a)(23) and 1413(a)(6).

(3) **Definitions.** In this subsection:

(A) **Blind or Other Persons with Print Disabilities.** The term ‘**blind or other persons with print disabilities**’ means children served under this Act and who may qualify in accordance with the Act entitled ‘An Act to provide books for the adult blind’, approved March 3, 1931 (2 U. S. C. 135a; 46 Stat. 1487) to receive books and other publications produced in specialized formats.

(B) **National Instructional Materials Accessibility Standard.** The term ‘**National Instructional Materials Accessibility Standard**’ means the standard established by the Secretary to be used in the preparation of electronic files suitable and used solely for efficient conversion into specialized formats.⁵

⁵ The National Instructional Materials Accessibility Standard (NIMAS) provides a system to produce and distribute digital versions of textbooks and other instructional materials that can be converted to accessible formats. IDEA requires that all textbooks and supplemental curricular materials be provided as NIMAS files by mid-December 2006. The American Printing House for the Blind is the coordinating agency and the Center for Applied Special Technology (CAST) is providing technical support. See also Section 1412(a)(23)

(C) **Print Instructional Materials.** The term ‘**print instructional materials**’ means printed textbooks and related printed core materials that are written and published primarily for use in elementary school and secondary school instruction and are required by a State educational agency or local educational agency for use by students in the classroom.

(D) **Specialized Formats.** The term ‘**specialized formats**’ has the meaning given the term in Section 121(d)(3) of Title 17, United States Code.

(4) **Applicability.** This subsection shall apply to print instructional materials published after the date on which the final rule establishing the National Instructional Materials Accessibility Standard was published in the Federal Register.

(5) **Liability of the Secretary.** Nothing in this subsection shall be construed to establish a private right of action against the Secretary for failure to provide instructional materials directly, or for failure by the National Instructional Materials Access Center to perform the duties of such center, or to otherwise authorize a private right of action related to the performance by such center, including through the application of the rights of children and parents established under this Act.

(6) **Inapplicability.** Subsections (a) through (d) shall not apply to this subsection.

20 U. S. C. § 1475. Authorization of Appropriations.

There are authorized to be appropriated to carry out this subpart such sums as may be necessary for each of the fiscal years 2005 through 2010.

Subpart 4 — General Provisions

20 U. S. C. § 1481. Comprehensive Plan for Subparts 2 and 3.

WRIGHTSLAW OVERVIEW: This section describes the requirements for a comprehensive plan to carry out the activities in Subparts 2 and 3, outreach to special populations, priorities, and eligibility for financial assistance.

(a) Comprehensive Plan.

(1) **In General.** After receiving input from interested individuals with relevant expertise, the Secretary shall develop and implement a comprehensive plan for activities carried out under Subparts 2 and 3 in order to enhance the provision of early intervention services, educational services, related services, and transitional services to children with disabilities under Parts B and C. To the extent practicable, the plan shall be coordinated with the plan developed pursuant to Section 178(c) of the Education Sciences Reform Act of 2002 and shall include mechanisms to address early intervention, educational, related service and transitional needs identified by State educational agencies in applications submitted for State personnel development grants under Subpart 1 and for grants under Subparts 2 and 3.

(2) **Public Comment.** The Secretary shall provide a public comment period of not less than 45 days on the plan.

(3) **Distribution of Funds.** In implementing the plan, the Secretary shall, to the extent appropriate, ensure that funds awarded under subparts 2 and 3 are used to carry out activities that benefit, directly or indirectly, children with the full range of disabilities and of all ages.

(4) **Reports to Congress.** The Secretary shall annually report to Congress on the Secretary’s activities under Subparts 2 and 3, including an initial report not later than 12 months after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2004.

(b) **Assistance Authorized.** The Secretary is authorized to award grants to, or enter into contracts or cooperative agreements with, eligible entities to enable the eligible entities to carry out the purposes of such subparts in accordance with the comprehensive plan described in subsection (a).

(c) Special Populations.

(1) Application Requirement. In making an award of a grant, contract, or cooperative agreement under Subpart 2 or 3, the Secretary shall, as appropriate, require an eligible entity to demonstrate how the eligible entity will address the needs of children with disabilities from minority backgrounds.

(2) Required Outreach and Technical Assistance. Notwithstanding any other provision of this title, the Secretary shall reserve not less than 2 percent of the total amount of funds appropriated to carry out Subparts 2 and 3 for either or both of the following activities:

(A) Providing outreach and technical assistance to historically Black colleges and universities, and to institutions of higher education with minority enrollments of not less than 25 percent, to promote the participation of such colleges, universities, and institutions in activities under this Subpart.

(B) Enabling historically Black colleges and universities, and the institutions described in subparagraph (A), to assist other colleges, universities, institutions, and agencies in improving educational and transitional results for children with disabilities, if the historically Black colleges and universities and the institutions of higher education described in subparagraph (A) meet the criteria established by the Secretary under this subpart.

(d) Priorities. The Secretary, in making an award of a grant, contract, or cooperative agreement under Subpart 2 or 3, may, without regard to the rulemaking procedures under Section 553 of Title 5, United States Code, limit competitions to, or otherwise give priority to -

(1) projects that address 1 or more -

(A) age ranges;

(B) disabilities;

(C) school grades;

(D) types of educational placements or early intervention environments;

(E) types of services;

(F) content areas, such as reading; or

(G) effective strategies for helping children with disabilities learn appropriate behavior in the school and other community based educational settings;

(2) projects that address the needs of children based on the severity or incidence of their disability;

(3) projects that address the needs of -

(A) low achieving students;

(B) underserved populations;

(C) children from low income families;

(D) limited English proficient children;

(E) unserved and underserved areas;

(F) rural or urban areas;

(G) children whose behavior interferes with their learning and socialization;

(H) children with reading difficulties;

(I) children in public charter schools;

(J) children who are gifted and talented; or

(K) children with disabilities served by local educational agencies that receive payments under Title VIII of the Elementary and Secondary Education Act of 1965;

(4) projects to reduce inappropriate identification of children as children with disabilities, particularly among

minority children;

(5) projects that are carried out in particular areas of the country, to ensure broad geographic coverage;

(6) projects that promote the development and use of technologies with universal design, assistive technology devices, and assistive technology services to maximize children with disabilities' access to and participation in the general education curriculum; and

(7) any activity that is authorized in Subpart 2 or 3.

(e) Eligibility for Financial Assistance. No State or local educational agency, or other public institution or agency, may receive a grant or enter into a contract or cooperative agreement under Subpart 2 or 3 that relates exclusively to programs, projects, and activities pertaining to children aged 3 through 5, inclusive, unless the State is eligible to receive a grant under Section 1419(b).

20 U. S. C. § 1482. Administrative Provisions.

(a) Applicant and Recipient Responsibilities.

(1) Development and Assessment of Projects. The Secretary shall require that an applicant for, and a recipient of, a grant, contract, or cooperative agreement for a project under Subpart 2 or 3 -

(A) involve individuals with disabilities or parents of individuals with disabilities ages birth through 26 in planning, implementing, and evaluating the project; and

(B) where appropriate, determine whether the project has any potential for replication and adoption by other entities.

(2) Additional Responsibilities. The Secretary may require a recipient of a grant, contract, or cooperative agreement under Subpart 2 or 3 to -

(A) share in the cost of the project;

(B) prepare any findings and products from the project in formats that are useful for specific audiences, including parents, administrators, teachers, early intervention personnel, related services personnel, and individuals with disabilities;

(C) disseminate such findings and products; and

(D) collaborate with other such recipients in carrying out subparagraphs (B) and (C).

(b) Application Management.

(1) Standing Panel.

(A) In General. The Secretary shall establish and use a **standing panel of experts** who are qualified, by virtue of their training, expertise, or experience, to evaluate each application under Subpart 2 or 3 that requests more than \$75,000 per year in Federal financial assistance.

(B) Membership. The standing panel shall include, at a minimum -

(i) individuals who are representatives of institutions of higher education that plan, develop, and carry out high quality programs of personnel preparation;

(ii) individuals who design and carry out scientifically based research targeted to the improvement of special education programs and services;

(iii) individuals who have recognized experience and knowledge necessary to integrate and apply scientifically based research findings to improve educational and transitional results for children with disabilities;

(iv) individuals who administer programs at the State or local level in which children with disabilities participate;

(v) individuals who prepare parents of children with disabilities to participate in making decisions about the education of their children;

(vi) individuals who establish policies that affect the delivery of services to children with disabilities;

(vii) individuals who are parents of children with disabilities ages birth through 26 who are benefiting, or have benefited, from coordinated research, personnel preparation, and technical assistance; and

(viii) individuals with disabilities.

(C) **Term.** No individual shall serve on the standing panel for more than 3 consecutive years.

(2) Peer-Review Panels for Particular Competitions.

(A) **Composition.** The Secretary shall ensure that **each subpanel selected** from the standing panel that reviews an application under Subpart 2 or 3 includes -

(i) individuals with knowledge and expertise on the issues addressed by the activities described in the application; and

(ii) to the extent practicable, parents of children with disabilities ages birth through 26, individuals with disabilities, and persons from diverse backgrounds.

(B) **Federal Employment Limitation.** A majority of the individuals on each subpanel that reviews an application under Subpart 2 or 3 shall be individuals who are not employees of the Federal Government.

(3) Use of Discretionary Funds for Administrative Purposes.

(A) **Expenses and Fees of Non-Federal Panel Members.** The Secretary may use funds available under subpart 2 or 3 to pay the expenses and fees of the panel members who are not officers or employees of the Federal Government.

(B) **Administrative Support.** The Secretary may use not more than 1 percent of the funds appropriated to carry out Subpart 2 or 3 to pay non-Federal entities for administrative support related to management of applications submitted under Subpart 2 or 3, respectively.

(c) **Program Evaluation.** The Secretary may use funds made available to carry out Subpart 2 or 3 to evaluate activities carried out under Subpart 2 or 3, respectively.

(d) Minimum Funding Required.

(1) **In General.** Subject to paragraph (2), the Secretary shall ensure that, for each fiscal year, not less than the following amounts are provided under subparts 2 and 3 to address the following needs:

(A) \$12,832,000 to address the educational, related services, transitional, and early intervention needs of children with deaf-blindness.

(B) \$4,000,000 to address the postsecondary, vocational, technical, continuing, and adult education needs of individuals with deafness.

(C) \$4,000,000 to address the educational, related services, and transitional needs of children with an emotional disturbance and those who are at risk of developing an emotional disturbance.

(2) **Ratable Reduction.** If the sum of the amount appropriated to carry out Subparts 2 and 3, and Part E of the Education Sciences Reform Act of 2002 for any fiscal year is less than \$130,000,000, the amounts listed in paragraph (1) shall be ratably reduced for the fiscal year.

End of Part D

Part E – National Center for Special Education Research

WRIGHTSLAW OVERVIEW: Part E establishes the National Center for Special Education Research, referred to as The Special Education Research Center. The mission of the Research Center is to sponsor research to improve the developmental, educational and transitional results of special education, and to evaluate the effectiveness of the Individuals with Disabilities Education Act. Duties of the Research Center are to improve special education services, identify scientifically based educational practices that are effective, identify scientifically based related services that promote increased participation in general education settings, examine State standards and alternate assessments, improve reading and literacy skills of children with disabilities, and other issues.

20 U. S. C. § 9567. Establishment.

(a) **Establishment.** There is established in the Institute a **National Center for Special Education Research** (in this part referred to as the “**Special Education Research Center**”).

(b) **Mission.** The **mission** of the Special Education Research Center is-

(1) to **sponsor research** to expand knowledge and understanding of the needs of infants, toddlers, and children with disabilities in order to improve the developmental, educational, and transitional results of such individuals;

(2) to sponsor research to improve services provided under, and support the implementation of, the Individuals with Disabilities Education Act (20 U. S. C. 1400 et seq.); and

(3) to evaluate the implementation and effectiveness of the Individuals with Disabilities Education Act in coordination with the National Center for Education Evaluation and Regional Assistance.

(c) **Applicability of Education Sciences Reform Act of 2002.** Parts A and F, and the standards for peer review of applications and for the conduct and evaluation of research under sections 133(a) and 134, respectively, shall apply to the Secretary, the Director, and the Commissioner in carrying out this part.

20 U. S. C. § 9567a. Commissioner for Special Education Research.

The Special Education Research Center shall be headed by a Commissioner for Special Education Research (in this part referred to as the Special Education Research Commissioner’) who shall have substantial knowledge of the Special Education Research Center’s activities, including a high level of expertise in the fields of research, research management, and the education of children with disabilities.

20 U. S. C. § 9567b. Duties.

(a) **General Duties.** The **Special Education Research Center shall** carry out research activities under this part consistent with the mission described in section 175(b), such as activities that -

(1) improve services provided under the Individuals with Disabilities Education Act in order to **improve--**

(A) **academic achievement, functional outcomes, and educational results** for children with disabilities; and

(B) developmental outcomes for infants or toddlers with disabilities;

(2) **identify scientifically based educational practices** that support learning and improve academic achievement, functional outcomes, and educational results for all students with disabilities;

(3) examine the special needs of preschool aged children, infants, and toddlers with disabilities, including factors that may result in developmental delays;

(4) identify scientifically based related services and interventions that promote participation and progress in the general education curriculum and general education settings;

(5) improve the alignment, compatibility, and development of valid and reliable assessments, including alternate assessments, as required by Section 6311(b) of this title;

(6) examine State content standards and alternate assessments for students with significant cognitive impairment in terms of academic achievement, individualized instructional need, appropriate education settings, and improved post-school results;

(7) examine the educational, developmental, and transitional needs of children with high incidence and low incidence disabilities;

(8) examine the extent to which overidentification and underidentification of children with disabilities occurs, and the causes thereof

(9) improve **reading and literacy skills** of children with disabilities;

(10) examine and improve secondary and postsecondary education and transitional outcomes and results for children with disabilities;

(11) examine methods of early intervention for children with disabilities, including children with multiple or complex developmental delays;

(12) examine and incorporate universal design concepts in the development of standards, assessments, curricula, and instructional methods to improve educational and transitional results for children with disabilities;

(13) improve the preparation of personnel, including early intervention personnel, who provide educational and related services to children with disabilities to increase the academic achievement and functional performance of students with disabilities;

(14) examine the excess costs of educating a child with a disability and expenses associated with high cost special education and related services;

(15) help parents improve educational results for their children, particularly related to transition issues;

(16) address the unique needs of children with significant cognitive disabilities; and

(17) examine the special needs of limited English proficient children with disabilities.

(b) Standards. The Special Education Research Commissioner shall ensure that activities assisted under this section-

(1) conform to high standards of quality, integrity, accuracy, validity, and reliability;

(2) are carried out in accordance with the standards for the conduct and evaluation of all research and development established by the National Center for Education Research; and

(3) are objective, secular, neutral, and nonideological, and are free of partisan political influence, and racial, cultural, gender, regional, or disability bias.

(c) Plan. The Special Education Research Commissioner shall propose to the Director a research plan, developed in collaboration with the Assistant Secretary for Special Education and Rehabilitative Services, that--

(1) is consistent with the priorities and mission of the Institute and the mission of the Special Education Research Center;

(2) is carried out, updated, and modified, as appropriate;

(3) is consistent with the purposes of the Individuals with Disabilities Education Act;

(4) contains an appropriate balance across all age ranges and types of children with disabilities;

(5) provides for research that is objective and uses measurable indicators to assess its progress and results; and

(6) is coordinated with the comprehensive plan developed under Section 1481 of the Individuals with Disabilities Education Act.

(d) Grants, Contracts, and Cooperative Agreements.

(1) **In General.** In carrying out the duties under this section, the Director may award grants to, or enter into contracts or cooperative agreements with, eligible applicants.

(2) **Eligible Applicants.** Activities carried out under this subsection through contracts, grants, or cooperative agreements shall be carried out only by recipients with the ability and capacity to conduct scientifically valid research.

(3) **Applications.** An eligible applicant that wishes to receive a grant, or enter into a contract or cooperative agreement, under this section shall submit an application to the Director at such time, in such manner, and containing such information as the Director may require.

(e) Dissemination. The Special Education Research Center shall--

(1) synthesize and disseminate, through the National Center for Education Evaluation and Regional Assistance, the findings and results of special education research conducted or supported by the Special Education Research Center; and

(2) assist the Director in the preparation of a biennial report, as described in Section 9519 of this title.

(f) Authorization of Appropriations. There are authorized to be appropriated to carry out this part such sums as may be necessary for each of fiscal years 2005 through 2010.

End of Part E