Academy at Seattle University School of Law for IDEA Administrative Law Judges and Impartial Hearing Officers

In conjunction with

Law Texts

Individuals with Disabilities Education Act (Parts A & B), 20 U.S.C. §§1400, et seq. including text of IDEA Fairness Restoration Act, S.613 and H.R. 1208

Regulations Implementing IDEA
34 CFR Part 300 (A-H) & Appendix

Duke University School of Law, Durham, NC March 6-8, 2012
INDIVIDUALS WITH DISABILITIES EDUCATION ACT

[As amended by the Individuals with Disabilities Education Improvement Act of 2004, and
as likely to be codified at 20 U.S.C. §§1400 et seq.]

>>> The text of IDEA Fairness Restoration Act bill is on page 66. <<<

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

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

(A) the children did not receive appropriate educational services;
(B) the children were excluded entirely from the public school system and from being educated with their peers;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(9) Teachers, schools, local educational agencies, and States should be relieved of irrelevant and unnecessary paperwork burdens that do not lead to improved educational outcomes.
(10)(A) The Federal Government must be responsive to the growing needs of an increasingly diverse society.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 1401. DEFINITIONS.
Except as otherwise provided, in this title:

(1) ASSISTIVE TECHNOLOGY DEVICE. —

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

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

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

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

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

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

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

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

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

(3) CHILD WITH A DISABILITY. —

(A) IN GENERAL. —The term “child with a disability” means a child —

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

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

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

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

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

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

(5) EDUCATIONAL SERVICE AGENCY. —The term “educational service agency” —

(A) means a regional public multiservice agency —

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

(ii) recognized as an administrative agency for purposes of the provision of special education and related services provided within public elementary schools and secondary schools of the State; and

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

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

(7) EQUIPMENT. —The term “equipment” includes —

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

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

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

(A) amounts received —

(i) under part B;

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

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

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

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

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

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

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

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

(10) HIGHLY QUALIFIED. —

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

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

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

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

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

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

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

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

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

(ii) meet the requirements of subparagraph (B) or (C) of section 9101(23) of such Act as applied to an elementary school teacher, or, in the case of instruction above the elementary level, has subject matter knowledge appropriate to the level of instruction being provided, as
(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 evaluation covering multiple subjects; or

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

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

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

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

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

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

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

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

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

(17) INSTITUTION OF HIGHER EDUCATION. —The term “institution of higher education” —

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

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

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

(19) LOCAL EDUCATIONAL AGENCY. —

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

(i) an educational service agency; and

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

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

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

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

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

(23) PARENT. —The term “parent” means —

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

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

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

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

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

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

(26) RELATED SERVICES. —

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

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

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

(28) SECRETARY. —The term “Secretary” means the Secretary of Education.

(29) SPECIAL EDUCATION. —The term “special education” means specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability, including —
(A) instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and

(B) instruction in physical education.

(30) SPECIFIC LEARNING DISABILITY. —

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

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

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

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

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

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

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

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

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

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

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

(36) WARD OF THE STATE. —

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

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

SEC. 1403. OFFICE OF SPECIAL EDUCATION PROGRAMS.

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

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

(c) VOLUNTARY AND UNCOMPENSATED SERVICES. — Notwithstanding section 1342 of title 31, United States Code, the Secretary is authorized to accept voluntary and uncompensated services in furtherance of the purposes of this title.
SEC. 1404. ABROGATION OF STATE SOVEREIGN IMMUNITY.

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

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

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

SEC. 1404. ACQUISITION OF EQUIPMENT; CONSTRUCTION OR ALTERATION OF FACILITIES.

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

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

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


SEC. 1405. EMPLOYMENT OF INDIVIDUALS WITH DISABILITIES.

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

SEC. 1406. REQUIREMENTS FOR PRESCRIBING REGULATIONS.

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

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

1. violates or contradicts any provision of this title; or

2. procedurally or substantively lessens the protections provided to children with disabilities under this title, as embodied in regulations in effect on July 20, 1983 (particularly as such protections related to parental consent to initial evaluation or initial placement in special education, least restrictive environment, related services, timelines, attendance of evaluation personnel at individualized education program meetings, or qualifications of personnel), except to the extent that such regulation reflects the clear and unequivocal intent of Congress in legislation.

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

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

1. violate or contradict any provision of this title; or

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

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

1. such response is provided as informal guidance and is not legally binding;
(2) when required, such response is issued in compliance with the requirements of section 553 of title 5, United States Code; and

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

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

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

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

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

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

SEC. 1407. STATE ADMINISTRATION.

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

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

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

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

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

SEC. 1408. PAPERWORK REDUCTION.

(a) PILOT PROGRAM. —

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

(2) AUTHORIZATION. —

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

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

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

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

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

(3) PROPOSAL. —

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

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

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

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

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

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

(C) failed to appropriately implement its waiver.

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

(1) reducing —

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

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

(2) enhancing longer-term educational planning;

(3) improving positive outcomes for children with disabilities;

(4) promoting collaboration between IEP Team members; and

(5) ensuring satisfaction of family members.

SEC. 1409. FREELY ASSOCIATED STATES.

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

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

SEC. 1411. AUTHORIZATION; ALLOTMENT; USE OF FUNDS; AUTHORIZATION OF APPROPRIATIONS.

(a) GRANTS TO STATES. —

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

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

(A) for fiscal years 2005 and 2006 is —

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

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

(II) aged 6 through 21; multiplied by

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

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

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

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

(II) aged 6 through 21; multiplied by

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

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

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

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

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

(1) OUTLYING AREAS AND FREELY ASSOCIATED STATES. —

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

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

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

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

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

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

(c) TECHNICAL ASSISTANCE. —

(1) IN GENERAL. — The Secretary may reserve not more than 1/2 of 1 percent of the amounts appropriated under this part for each fiscal year to provide technical assistance activities authorized under section 616(i).

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

(d) ALLOCATIONS TO STATES. —

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

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

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

(A) ALLOCATION OF INCREASE. —

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

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

(II) 85 percent of any remaining funds to States on the basis of the States’ relative populations of children aged 3 through 5.
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 for 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 619, and the coordination of activities under this part with, and providing technical assistance to, other programs that provide services to children with disabilities —

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

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

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

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

(ii) $800,000,

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

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

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

(2) OTHER STATE-LEVEL ACTIVITIES. —

(A) STATE-LEVEL ACTIVITIES. —

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

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

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

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

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

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

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

(ii) To establish and implement the mediation process required by section 615(e), including providing for the cost of mediators and support personnel.
(C) AUTHORIZED ACTIVITIES. — Funds reserved under subparagraph (A) may be used to carry out the following activities:

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

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

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

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

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

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

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

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

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

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

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

(3) LOCAL EDUCATIONAL AGENCY RISK POOL. —

(A) IN GENERAL. —

(i) RESERVATION OF FUNDS. — For the purpose of assisting local educational agencies (including a 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 9101 of the Elementary and Secondary Education Act of 1965) in that State;

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

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

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

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

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

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

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

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

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

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

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

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

(G) **SPECIAL RULE FOR RISK POOL AND HIGH NEED ASSISTANCE PROGRAMS IN EFFECT AS OF JANUARY 1, 2004.** — Notwithstanding the provisions of subparagraphs (A) through (F), a State may use funds reserved pursuant to this paragraph for implementing a placement neutral cost sharing and reimbursement program of high need, low incidence, catastrophic, or extraordinary aid to local educational agencies that provides services to high need students based on eligibility criteria for such programs that were
created not later than January 1, 2004, and are currently in operation, if such program serves children that meet the requirement of the definition of a high need child with a disability as described in subparagraph (C)(ii)(I).

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

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

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

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

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

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

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

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

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

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

(f) SUBGRANTS TO LOCAL EDUCATIONAL AGENCIES. —

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

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

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

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

(g) DEFINITIONS. — In this section:

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

(A) without regard to the source of funds —

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

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

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

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

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

(1) PROVISION OF AMOUNTS FOR
ASSISTANCE. —

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

subsection (b)(2) for that fiscal year. Of the amount
described in the preceding sentence —

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

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

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

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

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

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

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

(C) includes an assurance that there are public hearings,
adequate notice of such hearings, and an opportunity for
comment afforded to members of tribes, tribal governing
bodies, and affected local school boards before the
adoption of the policies, programs, and procedures related
to the requirements described in subparagraph (A);
(D) includes an assurance that the Secretary of the Interior will provide such information as the Secretary of Education may require to comply with section 618;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) ANNUAL REPORTS. —

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

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

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

(1) $12,358,376,571 for fiscal year 2005;

(2) $14,648,647,143 for fiscal year 2006;

(3) $16,938,917,714 for fiscal year 2007;

(4) $19,229,188,286 for fiscal year 2008;

(5) $21,519,458,857 for fiscal year 2009;

(6) $23,809,729,429 for fiscal year 2010;

(7) $26,100,000,000 for fiscal year 2011; and

(8) such sums as may be necessary for fiscal year 2012 and each succeeding fiscal year.

SEC. 1412. STATE ELIGIBILITY. (a) IN GENERAL. — A State is eligible for assistance under this part for a fiscal year if the State submits a plan that provides assurances to the Secretary that the State has in effect policies and procedures to ensure that the State meets each of the following conditions:

(1) FREE APPROPRIATE PUBLIC EDUCATION. —

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

(B) LIMITATION. — The obligation to make a free appropriate public education available to all children with disabilities does not apply with respect to children —
(i) aged 3 through 5 and 18 through 21 in a State to the extent that its application to those children would be inconsistent with State law or practice, or the order of any court, respecting the provision of public education to children in those age ranges; and

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

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

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

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

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

(3) CHILD FIND. —

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

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

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

(5) LEAST RESTRICTIVE ENVIRONMENT. —

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

(B) ADDITIONAL REQUIREMENT. —

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

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

(6) PROCEDURAL SAFEGUARDS. —

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

(B) ADDITIONAL PROCEDURAL SAFEGUARDS. — Procedures to ensure that testing and evaluation materials and procedures utilized for the purposes of evaluation and placement of children with disabilities for services under this title will be selected and administered so as not to be racially or culturally discriminatory. Such materials or procedures shall be provided and administered in the child’s native language or mode of communication, unless it clearly is not feasible to do so, and no single procedure shall be the sole criterion for determining an appropriate educational program for a child.
(7) EVALUATION. — Children with disabilities are evaluated in accordance with subsections (a) through (c) of section 614.

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

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

(10) CHILDREN IN PRIVATE SCHOOLS. —

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

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

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

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

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

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

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

(ii) CHILD FIND REQUIREMENT. —

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

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

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

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

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

(iii) CONSULTATION. — To ensure timely and meaningful consultation, a local educational agency, or where appropriate, a State educational agency, shall consult with private school representatives and representatives of parents of parentally placed private school children with disabilities during the design and development of special education and related services for the children, including regarding —
(I) the child find process and how parentally placed private school children suspected of having a disability can participate equitably, including how parents, teachers, and private school officials will be informed of the process;

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

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

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

(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.

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

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

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

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

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

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

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

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

(I) if —

(aa) at the most recent IEP meeting that the parents attended prior to removal of the child from the public school, the parents did not give written notice to the public agency of the information described in item (aa);

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) the requirements of this part are met;

(ii) all educational programs for children with disabilities in the State, including all such programs administered by any other State agency or local agency —
(I) are under the general supervision of individuals in the State who are responsible for educational programs for children with disabilities; and

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

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

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

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

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

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

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

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

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

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

(B) OBLIGATION OF PUBLIC AGENCY. —

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

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

(i) State statute or regulation;

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

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

(13) **PROCEDURAL REQUIREMENTS RELATING TO LOCAL EDUCATIONAL AGENCY ELIGIBILITY.** — The State educational agency will not make a final determination that a local educational agency is not eligible for assistance under this part without first affording that agency reasonable notice and an opportunity for a hearing.

(14) **PERSONNEL QUALIFICATIONS.** —

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(C) ALTERNATE ASSESSMENTS. —

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(21) STATE ADVISORY PANEL. —

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

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

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

(ii) individuals with disabilities;

(iii) teachers;

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

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

(vi) administrators of programs for children with
disabilities;

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

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

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

(x) a representative from the State child welfare agency
responsible for foster care; and
(xi) representatives from the State juvenile and adult corrections agencies.

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

(D) DUTIES. — The advisory panel shall —

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

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

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

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

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

(22) SUSPENSION AND EXPULSION RATES. —

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

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

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

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

(23) ACCESS TO INSTRUCTIONAL MATERIALS. —

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

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

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

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

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

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

(E) DEFINITIONS. — In this paragraph:

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

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

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

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

(25) PROHIBITION ON MANDATORY MEDICATION. —

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

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

(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 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 618.

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

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

(3) NOTICE AND HEARING. —

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

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

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

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

SEC. 1413. LOCAL EDUCATIONAL AGENCY ELIGIBILITY.

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

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

(2) USE OF AMOUNTS. —

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

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

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

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

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

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

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

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

(I) has left the jurisdiction of the agency;

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

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

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

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

(i) AMOUNTS IN EXCESS. — Notwithstanding
clauses (ii) and (iii) of subparagraph (A), for any fiscal
year for which the allocation received by a local
educational agency under section 611(f) exceeds the
amount the local educational agency received for the
previous fiscal year, the local educational agency may
reduce the level of expenditures otherwise required by
subparagraph (A)(iii) by no more than 50 percent of the
amount of such excess.

(ii) USE OF AMOUNTS TO CARRY OUT
ACTIVITIES UNDER ESEA. — If a local educational
agency exercises the authority under clause (i), the agency
shall use an amount of local funds equal to the reduction
in expenditures under clause (i) to carry out activities
authorized under the Elementary and Secondary
Education Act of 1965.

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

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

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

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

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

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

(4) PERMISSIVE USE OF FUNDS. —

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

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

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

(iii) HIGH COST EDUCATION AND RELATED SERVICES. — To establish and implement cost or risk sharing funds, consortia, or cooperatives for the local educational agency itself, or for local educational agencies working in a consortium of which the local educational agency is a part, to pay for high cost special education and related services.

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

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

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

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

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

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

(6) PURCHASE OF INSTRUCTIONAL MATERIALS. —

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

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

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

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

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

(b) EXCEPTION FOR PRIOR LOCAL PLANS. —

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

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

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

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

(d) LOCAL EDUCATIONAL AGENCY COMPLIANCE. —

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

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

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

(e) JOINT ESTABLISHMENT OF ELIGIBILITY. —

(1) JOINT ESTABLISHMENT. —

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

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

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

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

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

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

(4) REQUIREMENTS FOR EDUCATIONAL SERVICE AGENCIES. —

(A) IN GENERAL. — If an educational service agency is required by State law to carry out programs under this part, the joint responsibilities given to local educational agencies under this subsection shall —

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

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

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

(f) EARLY INTERVENING SERVICES. —

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

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

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

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

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

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

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

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

(5) COORDINATION WITH ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965. — Funds made available to carry out this subsection may be used to
carry out coordinated, early 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 611(f) shall demonstrate to the satisfaction of the State educational agency that —

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

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

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

(j) STATE AGENCY FLEXIBILITY. —

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

(2) PROHIBITION. — Notwithstanding paragraph (1), if the Secretary determines that a State educational agency is unable to establish, maintain, or oversee programs of free appropriate public education that meet the requirements of this part, or that the State needs assistance, intervention, or substantial intervention under section 616(d)(2)(A), the Secretary shall prohibit the State educational agency from exercising the authority in paragraph (1).
(3) EDUCATION ACTIVITIES. — If a State educational agency exercises the authority under paragraph (1), the agency shall use funds from State sources, in an amount equal to the amount of the reduction under paragraph (1), to support activities authorized under the Elementary and Secondary Education Act of 1965 or to support need based student or teacher higher education programs.

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

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

SEC. 1414. EVALUATIONS, ELIGIBILITY DETERMINATIONS, INDIVIDUALIZED EDUCATION PROGRAMS, AND EDUCATIONAL PLACEMENTS.

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

(1) INITIAL EVALUATIONS. —

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

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

(C) PROCEDURES. —

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

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

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

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

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

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

(D) PARENTAL CONSENT. —

(i) IN GENERAL. —

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

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

(ii) ABSENCE OF CONSENT. —

(I) FOR INITIAL EVALUATION. — If the parent of such child does not provide consent for an initial evaluation under clause (i)(I), or the parent fails to
respond to a request to provide the consent, the local educational agency may pursue the initial evaluation of the child by utilizing the procedures described in section 615, except to the extent inconsistent with State law relating to such parental consent.

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

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

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

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

(iii) CONSENT FOR WARDS OF THE STATE. —

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

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

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

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

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

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

(2) REEVALUATIONS. —

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

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

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

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

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

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

(b) EVALUATION PROCEDURES. —

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) lack of instruction in math; or

(C) limited English proficiency.

(6) SPECIFIC LEARNING DISABILITIES. —

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) REQUIREMENTS IF ADDITIONAL DATA ARE NOT NEEDED. — If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability and to determine the child’s educational needs, the local educational agency —

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

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

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

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

(5) EVALUATIONS BEFORE CHANGE IN ELIGIBILITY. —

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

(B) EXCEPTION. —

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

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

(d) INDIVIDUALIZED EDUCATION PROGRAMS.
(1) DEFINITIONS. — In this title:

(A) INDIVIDUALIZED EDUCATION PROGRAM. —

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(cc) beginning not later than 1 year before the child reaches the age of majority under State law, a statement that the child has been informed of the child’s rights under this title, if any, that will transfer to the child on reaching the age of majority under section 615(m).
(ii) **RULE OF CONSTRUCTION.** — Nothing in this section shall be construed to require —

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

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

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

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

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

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

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

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

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

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

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

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

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

(C) **IEP TEAM ATTENDANCE.** —

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

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

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

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

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

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

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

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

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

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

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

(i) IN GENERAL. —

(I) TRANSFER WITHIN THE SAME STATE. — In the case of a child with a disability who transfers school districts within the same academic year, who enrolls in a new school, and who had an IEP that was in effect in the same State, the local educational agency shall provide such child with a free appropriate public education, including services comparable to those described in the previously held IEP, in consultation with the parents until such time as the local educational agency adopts the previously held IEP or develops, adopts, and implements a new IEP that is consistent with Federal and State law.

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

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

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

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

(3) DEVELOPMENT OF IEP. —

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

(i) the strengths of the child;

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

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

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

(B) CONSIDERATION OF SPECIAL FACTORS. —

The IEP Team shall —

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

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

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

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

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

(C) REQUIREMENT WITH RESPECT TO REGULAR EDUCATION TEACHER. — A regular education teacher of the child, as a member of the IEP Team, shall, to the extent appropriate, participate in the development of the IEP of the child, including the determination of appropriate positive behavioral interventions and supports, and other strategies, and the determination of supplementary aids and services, program modifications, and support for school personnel consistent with paragraph (1)(A)(i)(IV).
(D) AGREEMENT. — In making changes to a child’s IEP after the annual IEP meeting for a school year, the parent of a child with a disability and the local educational agency may agree not to convene an IEP meeting for the purposes of making such changes, and instead may develop a written document to amend or modify the child’s current IEP.

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

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

(4) REVIEW AND REVISION OF IEP. —

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

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

(ii) revises the IEP as appropriate to address —

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

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

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

(IV) the child’s anticipated needs; or

(V) other matters.

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

(5) MULTI-YEAR IEP DEMONSTRATION. —

(A) PILOT PROGRAM. —

(i) PURPOSE. — The purpose of this paragraph is to provide an opportunity for States to allow parents and local educational agencies the opportunity for long-term planning by offering the option of developing a comprehensive multi-year IEP, not to exceed 3 years, that is designed to coincide with the natural transition points for the child.

(ii) AUTHORIZATION. — In order to carry out the purpose of this paragraph, the Secretary is authorized to approve not more than 15 proposals from States to carry out the activity described in clause (i).

(iii) PROPOSAL. —

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

(II) CONTENT. — The proposal shall include —

(aa) assurances that the development of a multi-year IEP under this paragraph is optional for parents;

(bb) assurances that the parent is required to provide informed consent before a comprehensive multi-year IEP is developed;

(cc) a list of required elements for each multi-year IEP, including —

( AA) measurable goals pursuant to paragraph (1)(A)(i)(II), coinciding with natural transition points for the child, that will enable the child to be involved in and make progress in the general education curriculum and that will meet the child’s other needs that result from the child’s disability; and

(BB) measurable annual goals for determining progress toward meeting the goals described in subitem (AA); and

(dd) a description of the process for the review and revision of each multi-year IEP, including —

( AA) a review by the IEP Team of the child’s multi-year IEP at each of the child’s natural transition points;
(BB) in years other than a child’s natural transition points, an annual review of the child’s IEP to determine the child’s current levels of progress and whether the annual goals for the child are being achieved, and a requirement to amend the IEP, as appropriate, to enable the child to continue to meet the measurable goals set out in the IEP;

(CC) if the IEP Team determines on the basis of a review that the child is not making sufficient progress toward the goals described in the multi-year IEP, a requirement that the local educational agency shall ensure that the IEP Team carries out a more thorough review of the IEP in accordance with paragraph (4) within 30 calendar days; and

(DD) at the request of the parent, a requirement that the IEP Team shall conduct a review of the child’s multi-year IEP rather than or subsequent to an annual review.

(B) REPORT. — Beginning 2 years after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2004, the Secretary shall submit an annual report to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate regarding the effectiveness of the program under this paragraph and any specific recommendations for broader implementation of such program, including —

(i) reducing —

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

(II) noninstructional time spent by teachers in complying with this part;

(ii) enhancing longer-term educational planning;

(iii) improving positive outcomes for children with disabilities;

(iv) promoting collaboration between IEP Team members; and

(v) ensuring satisfaction of family members.

(C) DEFINITION. — In this paragraph, the term “natural transition points” means those periods that are close in time to the transition of a child with a disability from preschool to elementary grades, from elementary grades to middle or junior high school grades, from middle or junior high school grades to secondary school grades, and from secondary school grades to post-secondary activities, but in no case a period longer than 3 years.

(6) FAILURE TO MEET TRANSITION OBJECTIVES. — If a participating agency, other than the local educational agency, fails to provide the transition services described in the IEP in accordance with paragraph (1)(A)(i)(VIII), the local educational agency shall reconvene the IEP Team to identify alternative strategies to meet the transition objectives for the child set out in the IEP.

(7) CHILDREN WITH DISABILITIES IN ADULT PRISONS. —

(A) IN GENERAL. — The following requirements shall not apply to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons:

(i) The requirements contained in section 612(a)(16) and paragraph (1)(A)(i)(VI) (relating to participation of children with disabilities in general assessments).

(ii) The requirements of items (aa) and (bb) of paragraph (1)(A)(i)(VIII) (relating to transition planning and transition services), do not apply with respect to such children whose eligibility under this part will end, because of such children’s age, before such children will be released from prison.

(B) ADDITIONAL REQUIREMENT. — If a child with a disability is convicted as an adult under State law and incarcerated in an adult prison, the child’s IEP Team may modify the child’s IEP or placement notwithstanding the requirements of sections 612(a)(5)(A) and paragraph (1)(A) if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

(e) EDUCATIONAL PLACEMENTS. — Each local educational agency or State educational agency shall ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child.

(f) ALTERNATIVE MEANS OF MEETING PARTICIPATION. — When conducting IEP team meetings and placement meetings pursuant to this section, section 615(e), and section 615(f)(1)(B), and carrying out administrative matters under section 615 (such as scheduling, exchange of witness lists, and status
conferences), the parent of a child with a disability and a local educational agency may agree to use alternative means of meeting participation, such as video conferences and conference calls.

SEC. 1415. PROCEDURAL SAFEGUARDS.

(a) ESTABLISHMENT OF PROCEDURES. — Any State educational agency, State agency, or local educational agency that receives assistance under this part shall establish and maintain procedures in accordance with this section to ensure that children with disabilities and their parents are guaranteed procedural safeguards with respect to the provision of a free appropriate public education by such agencies.

(b) TYPES OF PROCEDURES. — The procedures required by this section shall include the following:

(1) An opportunity for the parents of a child with a disability to examine all records relating to such child and to participate in meetings 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.

(2)(A) Procedures to protect the rights of the child whenever the parents of the child are not known, the agency cannot, after reasonable efforts, locate the parents, or the child is a ward of the State, including the assignment of an individual to act as a surrogate for the parents, which surrogate shall not be an employee of the State educational agency, the local educational agency, or any other agency that is involved in the education or care of the child. In the case of —

(i) a child who is a ward of the State, such surrogate may alternatively be appointed by the judge overseeing the child’s care provided that the surrogate meets the requirements of this paragraph; and

(ii) an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(6)), the local educational agency shall appoint a surrogate in accordance with this paragraph.

(B) The State shall make reasonable efforts to ensure the assignment of a surrogate not more than 30 days after there is a determination by the agency that the child needs a surrogate.

(3) Written prior notice to the parents of the child, in accordance with subsection (c)(1), whenever the local educational agency —

(A) proposes to initiate or change; or

(B) refuses to initiate or change,

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

(4) Procedures designed to ensure that the notice required by paragraph (3) is in the native language of the parents, unless it clearly is not feasible to do so.

(5) An opportunity for mediation, in accordance with subsection (e).

(6) An opportunity for any party to present a complaint —

(A) with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child; and

(B) which sets forth an alleged violation that occurred not more than 2 years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the complaint, or, if the State has an explicit time limitation for presenting such a complaint under this part, in such time as the State law allows, except that the exceptions to the timeline described in subsection (f)(3)(D) shall apply to the timeline described in this subparagraph.

(7)(A) Procedures that require either party, or the attorney representing a party, to provide due process complaint notice in accordance with subsection (c)(2) (which shall remain confidential) —

(i) to the other party, in the complaint filed under paragraph (6), and forward a copy of such notice to the State educational agency; and

(ii) that shall include —

(I) the name of the child, the address of the residence of the child (or available contact information in the case of a homeless child), and the name of the school the child is attending;
(II) in the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the child and the name of the school the child is attending;

(III) a description of the nature of the problem of the child relating to such proposed initiation or change, including facts relating to such problem; and

(IV) a proposed resolution of the problem to the extent known and available to the party at the time.

(B) A requirement that a party may not have a due process hearing until the party, or the attorney representing the party, files a notice that meets the requirements of subparagraph (A)(ii).

(8) Procedures that require the State educational agency to develop a model form to assist parents in filing a complaint and due process complaint notice in accordance with paragraphs (6) and (7), respectively.

(c) NOTIFICATION REQUIREMENTS. —

(1) CONTENT OF PRIOR WRITTEN NOTICE. —
The notice required by subsection (b)(3) shall include —

(A) a description of the action proposed or refused by the agency;

(B) an explanation of why the agency proposes or refuses to take the action and a description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action;

(C) a statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;

(D) sources for parents to contact to obtain assistance in understanding the provisions of this part;

(E) a description of other options considered by the IEP Team and the reason why those options were rejected; and

(F) a description of the factors that are relevant to the agency’s proposal or refusal.

(2) DUE PROCESS COMPLAINT NOTICE. —

(A) COMPLAINT. — The due process complaint notice required under subsection (b)(7)(A) shall be deemed to be sufficient unless the party receiving the notice notifies the hearing officer and the other party in writing that the receiving party believes the notice has not met the requirements of subsection (b)(7)(A).

(B) RESPONSE TO COMPLAINT. —

(i) LOCAL EDUCATIONAL AGENCY RESPONSE. —

(I) IN GENERAL. — If the local educational agency has not sent a prior written notice to the parent regarding the subject matter contained in the parent’s due process complaint notice, such local educational agency shall, within 10 days of receiving the complaint, send to the parent a response that shall include —

(aa) an explanation of why the agency proposed or refused to take the action raised in the complaint;

(bb) a description of other options that the IEP Team considered and the reasons why those options were rejected;

(cc) a description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and

(dd) a description of the factors that are relevant to the agency’s proposal or refusal.

(ii) OTHER PARTY RESPONSE. — Except as provided in clause (i), the non-complaining party shall, within 10 days of receiving the complaint, send to the complaint a response that specifically addresses the issues raised in the complaint.

(C) TIMING. — The party providing a hearing officer notification under subparagraph (A) shall provide the notification within 15 days of receiving the complaint.

(D) DETERMINATION. — Within 5 days of receipt of the notification provided under subparagraph (C), the hearing officer shall make a determination on the face of the notice of whether the notification meets the
requirements of subsection (b)(7)(A), and shall immediately notify the parties in writing of such determination.

(E) AMENDED COMPLAINT NOTICE. —

(i) IN GENERAL. — A party may amend its due process complaint notice only if —

(I) the other party consents in writing to such amendment and is given the opportunity to resolve the complaint through a meeting held pursuant to subsection (f)(1)(B); or

(II) the hearing officer grants permission, except that the hearing officer may only grant such permission at any time not later than 5 days before a due process hearing occurs.

(ii) APPLICABLE TIMELINE. — The applicable timeline for a due process hearing under this part shall recommence at the time the party files an amended notice, including the timeline under subsection (f)(1)(B).

(d) PROCEDURAL SAFEGUARDS NOTICE. —

(1) IN GENERAL. —

(A) COPY TO PARENTS. — A copy of the procedural safeguards available to the parents of a child with a disability shall be given to the parents only 1 time a year, except that a copy also shall be given to the parents —

(i) upon initial referral or parental request for evaluation;

(ii) upon the first occurrence of the filing of a complaint under subsection (b)(6); and

(iii) upon request by a parent.

(B) INTERNET WEBSITE. — A local educational agency may place a current copy of the procedural safeguards notice on its Internet website if such website exists.

(2) CONTENTS. — The procedural safeguards notice shall include a full explanation of the procedural safeguards, written in the native language of the parents (unless it clearly is not feasible to do so) and written in an easily understandable manner, available under this section and under regulations promulgated by the Secretary relating to —

(A) independent educational evaluation;

(B) prior written notice;

(C) parental consent;

(D) access to educational records;

(E) the opportunity to present and resolve complaints, including —

(i) the time period in which to make a complaint;

(ii) the opportunity for the agency to resolve the complaint; and

(iii) the availability of mediation;

(F) the child’s placement during pendency of due process proceedings;

(G) procedures for students who are subject to placement in an interim alternative educational setting;

(H) requirements for unilateral placement by parents of children in private schools at public expense;

(I) due process hearings, including requirements for disclosure of evaluation results and recommendations;

(J) State-level appeals (if applicable in that State);

(K) civil actions, including the time period in which to file such actions; and

(L) Attorneys’ fees.

(e) MEDIATION. —

(1) IN GENERAL. — Any State educational agency or local educational agency that receives assistance under this part shall ensure that procedures are established and implemented to allow parties to disputes involving any matter, including matters arising prior to the filing of a complaint pursuant to subsection (b)(6), to resolve such disputes through a mediation process.

(2) REQUIREMENTS. — Such procedures shall meet the following requirements:
(A) The procedures shall ensure that the mediation process —

(i) is voluntary on the part of the parties;

(ii) is not used to deny or delay a parent’s right to a due process hearing under subsection (f), or to deny any other rights afforded under this part; and

(iii) is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

(B) OPPORTUNITY TO MEET WITH A DISINTERESTED PARTY. — A local educational agency or a State agency may establish procedures to offer to parents and schools that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to the parents, with a disinterested party who is under contract with —

(i) a parent training and information center or community parent resource center in the State established under section 671 or 672; or

(ii) an appropriate alternative dispute resolution entity,

to encourage the use, and explain the benefits, of the mediation process to the parents.

(C) LIST OF QUALIFIED MEDIATORS. — The State shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.

(D) COSTS. — The State shall bear the cost of the mediation process, including the costs of meetings described in subparagraph (B).

(E) SCHEDULING AND LOCATION. — Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute.

(F) WRITTEN AGREEMENT. — In the case that a resolution is reached to resolve the complaint through the mediation process, the parties shall execute a legally binding agreement that sets forth such resolution and that —

(i) states that all discussions that occurred during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding;

(ii) is signed by both the parent and a representative of the agency who has the authority to bind such agency; and

(iii) is enforceable in any State court of competent jurisdiction or in a district court of the United States.

(G) MEDIATION DISCUSSIONS. — Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding.

(f) IMPARTIAL DUE PROCESS HEARING. —

(1) IN GENERAL. —

(A) HEARING. — Whenever a complaint has been received under subsection (b)(6) or (k), the parents or the local educational agency involved in such complaint shall have an opportunity for an impartial due process hearing, which shall be conducted by the State educational agency or by the local educational agency, as determined by State law or by the State educational agency.

(B) RESOLUTION SESSION. —

(i) PRELIMINARY MEETING. — Prior to the opportunity for an impartial due process hearing under subparagraph (A), the local educational agency shall convene a meeting with the parents and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the complaint —

(I) within 15 days of receiving notice of the parents’ complaint;

(II) which shall include a representative of the agency who has decisionmaking authority on behalf of such agency;

(III) which may not include an attorney of the local educational agency unless the parent is accompanied by an attorney; and

(IV) where the parents of the child discuss their complaint, and the facts that form the basis of the complaint, and the local educational agency is provided the opportunity to resolve the complaint,
unless the parents and the local educational agency agree in writing to waive such meeting, or agree to use the mediation process described in subsection (e).

(ii) **HEARING.** — If the local educational agency has not resolved the complaint to the satisfaction of the parents within 30 days of the receipt of the complaint, the due process hearing may occur, and all of the applicable timelines for a due process hearing under this part shall commence.

(iii) **WRITTEN SETTLEMENT AGREEMENT.** — In the case that a resolution is reached to resolve the complaint at a meeting described in clause (i), the parties shall execute a legally binding agreement that is —

(I) signed by both the parent and a representative of the agency who has the authority to bind such agency; and

(II) enforceable in any State court of competent jurisdiction or in a district court of the United States.

(iv) **REVIEW PERIOD.** — If the parties execute an agreement pursuant to clause (iii), the parties may void such agreement within 3 business days of the agreement’s execution.

(2) **DISCLOSURE OF EVALUATIONS AND RECOMMENDATIONS.** —

(A) **IN GENERAL.** — Not less than 5 business days prior to a hearing conducted pursuant to paragraph (1), each party shall disclose to all other parties all evaluations completed by that date, and recommendations based on the offering party’s evaluations, that the party intends to use at the hearing.

(B) **FAILURE TO DISCLOSE.** — A hearing officer may bar any party that fails to comply with subparagraph (A) from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

(3) **LIMITATIONS ON HEARING.** —

(A) **PERSON CONDUCTING HEARING.** — A hearing officer conducting a hearing pursuant to paragraph (1)(A) shall, at a minimum —

(i) not be —

(I) an employee of the State educational agency or the local educational agency involved in the education or care of the child; or

(II) a person having a personal or professional interest that conflicts with the person’s objectivity in the hearing;

(ii) possess knowledge of, and the ability to understand, the provisions of this title, Federal and State regulations pertaining to this title, and legal interpretations of this title by Federal and State courts;

(iii) possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and

(iv) possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

(B) **SUBJECT MATTER OF HEARING.** — The party requesting the due process hearing shall not be allowed to raise issues at the due process hearing that were not raised in the notice filed under subsection (b)(7), unless the other party agrees otherwise.

(C) **TIMELINE FOR REQUESTING HEARING.** — A parent or agency shall request an impartial due process hearing within 2 years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the complaint, or, if the State has an explicit time limitation for requesting such a hearing under this part, in such time as the State law allows.

(D) **EXCEPTIONS TO THE TIMELINE.** — The timeline described in subparagraph (C) shall not apply to a parent if the parent was prevented from requesting the hearing due to —

(i) specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint; or

(ii) the local educational agency’s withholding of information from the parent that was required under this part to be provided to the parent.

(E) **DECISION OF HEARING OFFICER.** —

(i) **IN GENERAL.** — Subject to clause (ii), a decision made by a hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education.
(ii) **PROCEDURAL ISSUES.** — In matters alleging a 
procedural violation, a hearing officer may find that a 
child did not receive a free appropriate public education 
only if the procedural inadequacies —

(I) impeded the child’s right to a free appropriate public 
education;

(II) significantly impeded the parents’ opportunity to 
participate in the decisionmaking process regarding the 
provision of a free appropriate public education to the 
parents’ child; or

(III) caused a deprivation of educational benefits.

(iii) **RULE OF CONSTRUCTION.** — Nothing in this 
subparagraph shall be construed to preclude a hearing 
officer from ordering a local educational agency to 
comply with procedural requirements under this section.

(F) **RULE OF CONSTRUCTION.** — Nothing in this 
paragraph shall be construed to affect the right of a parent 
to file a complaint with the State educational agency.

(g) **APPEAL.** —

(1) **IN GENERAL.** — If the hearing required by 
subsection (f) is conducted by a local educational agency, 
any party aggrieved by the findings and decision rendered 
in such a hearing may appeal such findings and decision 
to the State educational agency.

(2) **IMPARTIAL REVIEW AND INDEPENDENT 
DECISION.** — The State educational agency shall 
conduct an impartial review of the findings and decision 
appealed under paragraph (1). The officer conducting 
such review shall make an independent decision upon 
completion of such review.

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

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

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

(3) the right to a written, or, at the option of the parents, 
electronic verbatim record of such hearing; and

(4) the right to written, or, at the option of the parents, 
electronic findings of fact and decisions, which findings 
and decisions —

(A) shall be made available to the public consistent with 
the requirements of section 617(b) (relating to the 
confidentiality of data, information, and records); and

(B) shall be transmitted to the advisory panel established 
pursuant to section 612(a)(21).

(i) **ADMINISTRATIVE PROCEDURES.** —

(1) **IN GENERAL.** —

(A) **DECISION MADE IN HEARING.** — A decision 
made in a hearing conducted pursuant to subsection (f) or 
(k) shall be final, except that any party involved in such 
hearing may appeal such decision under the provisions of 
subsection (g) and paragraph (2).

(B) **DECISION MADE AT APPEAL.** — A decision 
made under subsection (g) shall be final, except that any 
party may bring an action under paragraph (2).

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

(A) **IN GENERAL.** — Any party aggrieved by the 
findings and decision made under subsection (f) or (k) 
who does not have the right to an appeal under subsection 
(g), and any party aggrieved by the findings and decision 
made under this subsection, shall have the right to bring a 
civil action with respect to the complaint presented 
pursuant to this section, which action may be brought in 
any State court of competent jurisdiction or in a district 
court of the United States, without regard to the amount in 
controversy.

(B) **LIMITATION.** — The party bringing the action 
shall have 90 days from the date of the decision of the 
hearing officer to bring such an action, or, if the State has 
an explicit time limitation for bringing such action under 
this part, in such time as the State law allows.

(C) **ADDITIONAL REQUIREMENTS.** — In any 
action brought under this paragraph, the court —

(i) shall receive the records of the administrative 
proceedings;

(ii) shall hear additional evidence at the request of a 
party; and
(iii) basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.

(3) JURISDICTION OF DISTRICT COURTS; ATTORNEYS’ FEES. —

(A) IN GENERAL. — The district courts of the United States shall have jurisdiction of actions brought under this section without regard to the amount in controversy.

(B) AWARD OF ATTORNEYS’ FEES. —

(i) IN GENERAL. — In any action or proceeding brought under this section, the court, in its discretion, may award reasonable Attorneys’ fees as part of the costs —

(I) to a prevailing party who is the parent of a child with a disability;

(II) to a prevailing party who is a State educational agency or local educational agency against the attorney of a parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or

(III) to a prevailing State educational agency or local educational agency against the attorney of a parent, or against the parent, if the parent’s complaint or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

(ii) RULE OF CONSTRUCTION. —Nothing in this subparagraph shall be construed to affect section 327 of the District of Columbia Appropriations Act, 2005.

(C) DETERMINATION OF AMOUNT OF ATTORNEYS’ FEES. — Fees awarded under this paragraph shall be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this subsection.

(E) EXCEPTION TO PROHIBITION ON ATTORNEYS’ FEES AND RELATED COSTS. — Notwithstanding subparagraph (D), an award of attorneys’ fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.

(F) REDUCTION IN AMOUNT OF ATTORNEYS’ FEES. — Except as provided in subparagraph (G), whenever the court finds that —

(i) the parent, or the parent’s attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;

(ii) the amount of the attorneys’ fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;
(iii) the time spent and legal services furnished were excessive considering the nature of the action or proceeding; or

(iv) the attorney representing the parent did not provide to the local educational agency the appropriate information in the notice of the complaint described in subsection (b)(7)(A),

the court shall reduce, accordingly, the amount of the attorneys’ fees awarded under this section.

(G) EXCEPTION TO REDUCTION IN AMOUNT OF ATTORNEYS’ FEES. — The provisions of subparagraph (F) shall not apply in any action or proceeding if the court finds that the State or local educational agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of this section.

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

(k) PLACEMENT IN ALTERNATIVE EDUCATIONAL SETTING. —

(1) AUTHORITY OF SCHOOL PERSONNEL. —

(A) CASE-BY-CASE DETERMINATION. — School personnel may consider any unique circumstances on a case-by-case basis when determining whether to order a change in placement for a child with a disability who violates a code of student conduct.

(B) AUTHORITY. — School personnel under this subsection may remove a child with a disability who violates a code of student conduct from their current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 school days (to the extent such alternatives are applied to children without disabilities).

(C) ADDITIONAL AUTHORITY. — If school personnel seek to order a change in placement that would exceed 10 school days and the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child’s disability pursuant to subparagraph (E), the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner and for the same duration in which the procedures would be applied to children without disabilities, except as provided in section 612(a)(1) although it may be provided in an interim alternative educational setting.

(D) SERVICES. — A child with a disability who is removed from the child’s current placement under subparagraph (G) (irrespective of whether the behavior is determined to be a manifestation of the child’s disability) or subparagraph (C) shall —

(i) continue to receive educational services, as provided in section 612(a)(1), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child’s IEP; and

(ii) receive, as appropriate, a functional behavioral assessment, behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

(E) MANIFESTATION DETERMINATION. —

(i) IN GENERAL. — Except as provided in subparagraph (B), within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the local educational agency, the parent, and relevant members of the IEP Team (as determined by the parent and the local educational agency) shall review all relevant information in the student’s file, including the child’s IEP, any teacher observations, and any relevant information provided by the parents to determine —

(I) if the conduct in question was caused by, or had a direct and substantial relationship to, the child’s disability; or

(II) if the conduct in question was the direct result of the local educational agency’s failure to implement the IEP.

(ii) MANIFESTATION. — If the local educational agency, the parent, and relevant members of the IEP Team determine that either subclause (I) or (II) of clause (i) is applicable for the child, the conduct shall be determined to be a manifestation of the child’s disability.

(F) DETERMINATION THAT BEHAVIOR WAS A MANIFESTATION. — If the local educational agency,
the parent, and relevant members of the IEP Team make
the determination that the conduct was a manifestation of
the child’s disability, the IEP Team shall —

(i) conduct a functional behavioral assessment, and
implement a behavioral intervention plan for such child,
provided that the local educational agency had not
conducted such assessment prior to such determination
before the behavior that resulted in a change in placement
described in subparagraph (C) or (G);

(ii) in the situation where a behavioral intervention plan
has been developed, review the behavioral intervention
plan if the child already has such a behavioral
intervention plan, and modify it, as necessary, to address
the behavior; and

(iii) except as provided in subparagraph (G), return the
child to the placement from which the child was removed,
unless the parent and the local educational agency agree
to a change of placement as part of the modification of the
behavioral intervention plan.

(G) SPECIAL CIRCUMSTANCES. — School
personnel may remove a student to an interim alternative
educational setting for not more than 45 school days
without regard to whether the behavior is determined to
be a manifestation of the child’s disability, in cases where
a child —

(i) carries or possesses a weapon to or at school, on
school premises, or to or at a school function under the
jurisdiction of a State or local educational agency;

(ii) knowingly possesses or uses illegal drugs, or sells or
solicits the sale of a controlled substance, while at school,
on school premises, or at a school function under the
jurisdiction of a State or local educational agency; or

(iii) has inflicted serious bodily injury upon another
person while at school, on school premises, or at a school
function under the jurisdiction of a State or local
educational agency.

(H) NOTIFICATION. — Not later than the date on
which the decision to take disciplinary action is made, the
local educational agency shall notify the parents of that
decision, and of all procedural safeguards accorded under
this section.

(2) DETERMINATION OF SETTING. — The interim
alternative educational setting in subparagraphs (C) and

(G) of paragraph (1) shall be determined by the IEP
Team.

(3) APPEAL. —

(A) IN GENERAL. — The parent of a child with a
disability who disagrees with any decision regarding
placement, or the manifestation determination under this
subsection, or a local educational agency that believes
that maintaining the current placement of the child is
substantially likely to result in injury to the child or to
others, may request a hearing.

(B) AUTHORITY OF HEARING OFFICER. —

(i) IN GENERAL. — A hearing officer shall hear, and
make a determination regarding, an appeal requested
under subparagraph (A).

(ii) CHANGE OF PLACEMENT ORDER. — In
making the determination under clause (i), the hearing
officer may order a change in placement of a child with a
disability. In such situations, the hearing officer may —

(I) return a child with a disability to the placement from
which the child was removed; or

(II) order a change in placement of a child with a
disability to an appropriate interim alternative educational
setting for not more than 45 school days if the hearing
officer determines that maintaining the current placement
of such child is substantially likely to result in injury to
the child or to others.

(4) PLACEMENT DURING APPEALS. — When an
appeal under paragraph (3) has been requested by either
the parent or the local educational agency —

(A) the child shall remain in the interim alternative
educational setting pending the decision of the hearing
officer or until the expiration of the time period provided
for in paragraph (1)(C), whichever occurs first, unless the
parent and the State or local educational agency agree
otherwise; and

(B) the State or local educational agency shall arrange for
an expedited hearing, which shall occur within 20 school
days of the date the hearing is requested and shall result in
a determination within 10 school days after the hearing.

(5) PROTECTIONS FOR CHILDREN NOT YET
ELIGIBLE FOR SPECIAL EDUCATION AND
RELATED SERVICES. —
(A) IN GENERAL. — A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violates a code of student conduct, may assert any of the protections provided for in this part if the local educational agency had knowledge (as determined in accordance with this paragraph) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

(B) BASIS OF KNOWLEDGE. — A local educational agency shall be deemed to have knowledge that a child is a child with a disability if, before the behavior that precipitated the disciplinary action occurred —

(i) the parent of the child has expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services;

(ii) the parent of the child has requested an evaluation of the child pursuant to section 614(a)(1)(B); or

(iii) the teacher of the child, or other personnel of the local educational agency, has expressed specific concerns about a pattern of behavior demonstrated by the child, directly to the director of special education of such agency or to other supervisory personnel of the agency.

(C) EXCEPTION. — A local educational agency shall not be deemed to have knowledge that the child is a child with a disability if the parent of the child has not allowed an evaluation of the child pursuant to section 614 or has refused services under this part or the child has been evaluated and it was determined that the child was not a child with a disability under this part.

(D) CONDITIONS THAT APPLY IF NO BASIS OF KNOWLEDGE. —

(i) IN GENERAL. — If a local educational agency does not have knowledge that a child is a child with a disability (in accordance with subparagraph (B) or (C)) prior to taking disciplinary measures against the child, the child may be subjected to disciplinary measures applied to children without disabilities who engaged in comparable behaviors consistent with clause (ii).

(ii) LIMITATIONS. — If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under this subsection, the evaluation shall be conducted in an expedited manner. If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency shall provide special education and related services in accordance with this part, except that, pending the results of the evaluation, the child shall remain in the educational placement determined by school authorities.

(6) REFERRAL TO AND ACTION BY LAW ENFORCEMENT AND JUDICIAL AUTHORITIES. —

(A) RULE OF CONSTRUCTION. — Nothing in this part shall be construed to prohibit an agency from reporting a crime committed by a child with a disability to appropriate authorities or to prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.

(B) TRANSMITTAL OF RECORDS. — An agency reporting a crime committed by a child with a disability shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime.

(7) DEFINITIONS. — In this subsection:

(A) CONTROLLED SUBSTANCE. — The term “controlled substance” means a drug or other substance identified under schedule I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

(B) ILLEGAL DRUG. — The term “illegal drug” means a controlled substance but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.

(C) WEAPON. — The term “weapon” has the meaning given the term “dangerous weapon” under section 930(g)(2) of title 18, United States Code.

(D) SERIOUS BODILY INJURY. — The term “serious bodily injury” has the meaning given the term “serious bodily injury” under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code.
(l) RULE OF CONSTRUCTION. — Nothing in this title shall be construed to restrict or limit the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under such laws seeking relief that is also available under this part, the procedures under subsections (f) and (g) shall be exhausted to the same extent as would be required had the action been brought under this part.

(m) TRANSFER OF PARENTAL RIGHTS AT AGE OF MAJORITY. —

(1) IN GENERAL. — A State that receives amounts from a grant under this part may provide that, when a child with a disability reaches the age of majority under State law (except for a child with a disability who has been determined to be incompetent under State law) —

(A) the agency shall provide any notice required by this section to both the individual and the parents;

(B) all other rights accorded to parents under this part transfer to the child;

(C) the agency shall notify the individual and the parents of the transfer of rights; and

(D) all rights accorded to parents under this part transfer to children who are incarcerated in an adult or juvenile Federal, State, or local correctional institution.

(2) SPECIAL RULE. — If, under State law, a child with a disability who has reached the age of majority under State law, who has not been determined to be incompetent, but who is determined not to have the ability to provide informed consent with respect to the educational program of the child, the State shall establish procedures for appointing the parent of the child, or if the parent is not available, another appropriate individual, to represent the educational interests of the child throughout the period of eligibility of the child under this part.

(n) ELECTRONIC MAIL. — A parent of a child with a disability may elect to receive notices required under this section by an electronic mail (e-mail) communication, if the agency makes such option available.

(o) SEPARATE COMPLAINT. — Nothing in this section shall be construed to preclude a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed.

SEC. 1416. MONITORING, TECHNICAL ASSISTANCE, AND ENFORCEMENT.

(a) FEDERAL AND STATE MONITORING. —

(1) IN GENERAL. — The Secretary shall —

(A) monitor implementation of this part through —

(i) oversight of the exercise of general supervision by the States, as required in section 612(a)(11); and

(ii) the State performance plans, described in subsection (b);

(B) enforce this part in accordance with subsection (e); and

(C) require States to —

(i) monitor implementation of this part by local educational agencies; and

(ii) enforce this part in accordance with paragraph (3) and subsection (e).

(2) FOCUSED MONITORING. — The primary focus of Federal and State monitoring activities described in paragraph (1) shall be on —

(A) improving educational results and functional outcomes for all children with disabilities; and

(B) ensuring that States meet the program requirements under this part, with a particular emphasis on those requirements that are most closely related to improving educational results for children with disabilities.

(3) MONITORING PRIORITIES. — The Secretary shall monitor the States, and shall require each State to monitor the local educational agencies located in the State (except the State exercise of general supervisory responsibility), using quantifiable 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 602(34) and 637(a)(9).

(C) Disproportionate representation of racial and ethnic groups in special education and related services, to the extent the representation is the result of inappropriate identification.

(4) PERMISSIVE AREAS OF REVIEW. — The Secretary shall consider other relevant information and data, including data provided by States under section 618.

(b) STATE PERFORMANCE PLANS. —

(1) PLAN. —

(A) IN GENERAL. — Not later than 1 year after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2004, each State shall have in place a performance plan that evaluates that State’s efforts to implement the requirements and purposes of this part and describes how the State will improve such implementation.

(B) SUBMISSION FOR APPROVAL. — Each State shall submit the State’s performance plan to the Secretary for approval in accordance with the approval process described in subsection (c).

(C) REVIEW. — Each State shall review its State performance plan at least once every 6 years and submit any amendments to the Secretary.

(2) TARGETS. —

(A) IN GENERAL. — As a part of the State performance plan described under paragraph (1), each State shall establish measurable and rigorous targets for the indicators established under the priority areas described in subsection (a)(3).

(B) DATA COLLECTION. —

(i) IN GENERAL. — Each State shall collect valid and reliable information as needed to report annually to the Secretary on the priority areas described in subsection (a)(3).

(ii) RULE OF CONSTRUCTION. — Nothing in this title shall be construed to authorize the development of a nationwide database of personally identifiable information on individuals involved in studies or other collections of data under this part.

(C) PUBLIC REPORTING AND PRIVACY. —

(i) IN GENERAL. — The State shall use the targets established in the plan and priority areas described in subsection (a)(3) to analyze the performance of each local educational agency in the State in implementing this part.

(ii) REPORT. —

(I) PUBLIC REPORT. — The State shall report annually to the public on the performance of each local educational agency located in the State on the targets in the State’s performance plan. The State shall make the State’s performance plan available through public means, including by posting on the website of the State educational agency, distribution to the media, and distribution through public agencies.

(II) STATE PERFORMANCE REPORT. — The State shall report annually to the Secretary on the performance of the State under the State’s performance plan.

(iii) PRIVACY. — The State shall not report to the public or the Secretary any information on performance that would result in the disclosure of personally identifiable information about individual children or where the available data is insufficient to yield statistically reliable information.

(c) APPROVAL PROCESS. —

(1) DEEMED APPROVAL. — The Secretary shall review (including the specific provisions described in subsection (b)) each performance plan submitted by a State pursuant to subsection (b)(1)(B) and the plan shall be deemed to be approved by the Secretary unless the Secretary makes a written determination, prior to the expiration of the 120-day period beginning on the date on which the Secretary received the plan, that the plan does not meet the requirements of this section, including the specific provisions described in subsection (b).

(2) DISAPPROVAL. — The Secretary shall not finally disapprove a performance plan, except after giving the State notice and an opportunity for a hearing.

(3) NOTIFICATION. — If the Secretary finds that the plan does not meet the requirements, in whole or in part, of this section, the Secretary shall —
(A) give the State notice and an opportunity for a hearing; and

(B) notify the State of the finding, and in such notification shall —

(i) cite the specific provisions in the plan that do not meet the requirements; and

(ii) request additional information, only as to the provisions not meeting the requirements, needed for the plan to meet the requirements of this section.

(4) RESPONSE. — If the State responds to the Secretary’s notification described in paragraph (3)(B) during the 30-day period beginning on the date on which the State received the notification, and resubmits the plan with the requested information described in paragraph (3)(B)(ii), the Secretary shall approve or disapprove such plan prior to the later of —

(A) the expiration of the 30-day period beginning on the date on which the plan is resubmitted; or

(B) the expiration of the 120-day period described in paragraph (1).

(5) FAILURE TO Respond. — If the State does not respond to the Secretary’s notification described in paragraph (3)(B) during the 30-day period beginning on the date on which the State received the notification, such plan shall be deemed to be disapproved.

(d) SECRETARY’S REVIEW AND DETERMINATION. —

(1) REVIEW. — The Secretary shall annually review the State performance report submitted pursuant to subsection (b)(2)(C)(ii)(II) in accordance with this section.

(2) DETERMINATION. —

(A) IN GENERAL. — Based on the information provided by the State in the State performance report, information obtained through monitoring visits, and any other public information made available, the Secretary shall determine if the State —

(i) meets the requirements and purposes of this part;

(ii) needs assistance in implementing the requirements of this part;

(iii) needs intervention in implementing the requirements of this part; or

(iv) needs substantial intervention in implementing the requirements of this part.

(B) NOTICE AND OPPORTUNITY FOR A HEARING. — For determinations made under clause (iii) or (iv) of subparagraph (A), the Secretary shall provide reasonable notice and an opportunity for a hearing on such determination.

(e) ENFORCEMENT. —

(1) NEEDS ASSISTANCE. — If the Secretary determines, for 2 consecutive years, that a State needs assistance under subsection (d)(2)(A)(ii) in implementing the requirements of this part, the Secretary shall take 1 or more of the following actions:

(A) Advise the State of available sources of technical assistance that may help the State address the areas in which the State needs assistance, which may include assistance from the Office of Special Education Programs, other offices of the Department of Education, other Federal agencies, technical assistance providers approved by the Secretary, and other federally funded nonprofit agencies, and require the State to work with appropriate entities. Such technical assistance may include —

(i) the provision of advice by experts to address the areas in which the State needs assistance, including explicit plans for addressing the area for concern within a specified period of time;

(ii) assistance in identifying and implementing professional development, instructional strategies, and methods of instruction that are based on scientifically based research;

(iii) designating and using distinguished superintendents, principals, special education administrators, special education teachers, and other teachers to provide advice, technical assistance, and support; and

(iv) devising additional approaches to providing technical assistance, such as collaborating with institutions of higher education, educational service agencies, national centers of technical assistance supported under part D,
and private providers of scientifically based technical assistance.

(B) Direct the use of State-level funds under section 611(e) on the area or areas in which the State needs assistance.

(C) Identify the State as a high-risk grantee and impose special conditions on the State’s grant under this part.

(2) NEEDS INTERVENTION. — If the Secretary determines, for 3 or more consecutive years, that a State needs intervention under subsection (d)(2)(A)(iii) in implementing the requirements of this part, the following shall apply:

(A) The Secretary may take any of the actions described in paragraph (1).

(B) The Secretary shall take 1 or more of the following actions:

(i) Require the State to prepare a corrective action plan or improvement plan if the Secretary determines that the State should be able to correct the problem within 1 year.

(ii) Require the State to enter into a compliance agreement under section 457 of the General Education Provisions Act, if the Secretary has reason to believe that the State cannot correct the problem within 1 year.

(iii) For each year of the determination, withhold not less than 20 percent and not more than 50 percent of the State’s funds under section 611(e), until the Secretary determines the State has sufficiently addressed the areas in which the State needs intervention.


(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:


(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 for a hearing to show cause why future payments or authority to obligate funds under this part should not be suspended.

(5) REPORT TO CONGRESS. — The Secretary shall report to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate within 30 days of taking enforcement action pursuant to paragraph (1), (2), or (3), on the specific action taken and the reasons why enforcement action was taken.

(6) NATURE OF WITHHOLDING. —

(A) LIMITATION. — If the Secretary withholds further payments pursuant to paragraph (2) or (3), the Secretary may determine —

(i) that such withholding will be limited to programs or projects, or portions of programs or projects, that affected the Secretary’s determination under subsection (d)(2); or

(ii) that the State educational agency shall not make further payments under this part to specified State agencies or local educational agencies that caused or were
involved in the Secretary’s determination under subsection (d)(2).

(B) WITHHOLDING UNTIL RECTIFIED. — Until the Secretary is satisfied that the condition that caused the initial withholding has been substantially rectified —

(i) payments to the State under this part shall be withheld in whole or in part; and

(ii) payments by the State educational agency under this part shall be limited to State agencies and local educational agencies whose actions did not cause or were not involved in the Secretary’s determination under subsection (d)(2), as the case may be.

(7) PUBLIC ATTENTION. — Any State that has received notice under subsection (d)(2) shall, by means of a public notice, take such measures as may be necessary to bring the pendency of an action pursuant to this subsection to the attention of the public within the State.

(8) JUDICIAL REVIEW. —

(A) IN GENERAL. — If any State is dissatisfied with the Secretary’s action with respect to the eligibility of the State under section 612, such State may, not later than 60 days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be transmitted by the clerk of the court to the 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 613(a)(2)(C) for any fiscal year.

(g) RULE OF CONSTRUCTION. — Nothing in this section shall be construed to restrict the Secretary from utilizing any authority under the General Education Provisions Act to monitor and enforce the requirements of this title.

(h) DIVIDED STATE AGENCY RESPONSIBILITY. — For purposes of this section, where responsibility for ensuring that the requirements of this part are met with respect to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons is assigned to a public agency other than the State educational agency pursuant to section 612(a)(11)(C), the Secretary, in instances where the Secretary finds that the failure to comply substantially with the provisions of this part are related to a failure by the public agency, shall take appropriate corrective action to ensure compliance with this part, except that —

(1) any reduction or withholding of payments to the State shall be proportionate to the total funds allotted under section 611 to the State as the number of eligible children with disabilities in adult prisons under the supervision of the other public agency is proportionate to the number of eligible individuals with disabilities in the State under the supervision of the State educational agency; and

(2) any withholding of funds under paragraph (1) shall be limited to the specific agency responsible for the failure to comply with this part.

(i) DATA CAPACITY AND TECHNICAL ASSISTANCE REVIEW. — The Secretary shall —

(1) review the data collection and analysis capacity of States to ensure that data and information determined 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 611(c)), where needed, to improve the
capacity of States to meet the data collection requirements.

SEC. 1417. ADMINISTRATION.

(a) RESPONSIBILITIES OF SECRETARY. — The Secretary shall —

(1) cooperate with, and (directly or by grant or contract) furnish technical assistance necessary to, a State in matters relating to —

(A) the education of children with disabilities; and

(B) carrying out this part; and

(2) provide short-term training programs and institutes.

(b) PROHIBITION AGAINST FEDERAL MANDATES, DIRECTION, OR CONTROL. — Nothing in this title shall be construed to authorize an officer or employee of the Federal Government to mandate, direct, or control a State, local educational agency, or school’s specific instructional content, academic achievement standards and assessments, curriculum, or program of instruction.

(c) CONFIDENTIALITY. — The Secretary shall take appropriate action, in accordance with section 444 of the General Education Provisions Act, to ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by the Secretary and by State educational agencies and local educational agencies pursuant to this part.

(d) PERSONNEL. — The Secretary is authorized to hire qualified personnel necessary to carry out the Secretary’s duties under subsection (a), under section 618, and under subpart 4 of part D, without regard to the provisions of title 5, United States Code, relating to appointments in the competitive service and without regard to chapter 51 and subchapter III of chapter 53 of such title relating to classification and general schedule pay rates, except that no more than 20 such personnel shall be employed at any time.

(e) MODEL FORMS. — Not later than the date that the Secretary publishes final regulations under this title, to implement amendments made by the Individuals with Disabilities Education Improvement Act of 2004, the Secretary shall publish and disseminate widely to States, local educational agencies, and parent and community training and information centers —

(1) a model IEP form;

(2) a model individualized family service plan (IFSP) form;

(3) a model form of the notice of procedural safeguards described in section 615(d); and

(4) a model form of the prior written notice described in subsections (b)(3) and (c)(1) of section 615 that is consistent with the requirements of this part and is sufficient to meet such requirements.

SEC. 1418. PROGRAM INFORMATION.

(a) IN GENERAL. — Each State that receives assistance under this part, and the Secretary of the Interior, shall provide data each year to the Secretary of Education and the public on the following:

(i) Receiving a free appropriate public education.

(ii) Participating in regular education.

(iii) In separate classes, separate schools or facilities, or public or private residential facilities.

(iv) For each year of age from age 14 through 21, stopped receiving special education and related services because of program completion (including graduation with a regular secondary school diploma), or other reasons, and the reasons why those children stopped receiving special education and related services.

(v)(I) Removed to an interim alternative educational setting under section 615(k)(1).

(II) The acts or items precipitating those removals.

(III) The number of children with disabilities who are subject to long-term suspensions or expulsions.

(B) The number and percentage of children with disabilities, by race, gender, and ethnicity, who are receiving early intervention services.

(C) The number and percentage of children with disabilities, by race, gender, and ethnicity, who, from
birth through age 2, stopped receiving early intervention services because of program completion or for other reasons.

(D) The incidence and duration of disciplinary actions by race, ethnicity, limited English proficiency status, gender, and disability category, of children with disabilities, including suspensions of 1 day or more.

(E) The number and percentage of children with disabilities who are removed to alternative educational settings or expelled as compared to children without disabilities who are removed to alternative educational settings or expelled.

(F) The number of due process complaints filed under section 615 and the number of hearings conducted.

(G) The number of hearings requested under section 615(k) and the number of changes in placements ordered as a result of those hearings.

(H) The number of mediations held and the number of settlement agreements reached through such mediations.

(2) The number and percentage of infants and toddlers, by race, and ethnicity, who are at risk of having substantial developmental delays (as defined in section 632), and who are receiving early intervention services under part C.

(3) Any other information that may be required by the Secretary.

(b) DATA REPORTING. —

(1) PROTECTION OF IDENTIFIABLE DATA. — The data described in subsection (a) shall be publicly reported by each State in a manner that does not result in the disclosure of data identifiable to individual children.

(2) SAMPLING. — The Secretary may permit States and the Secretary of the Interior to obtain the data described in subsection (a) through sampling.

(c) TECHNICAL ASSISTANCE. — The Secretary may provide technical assistance to States to ensure compliance with the data collection and reporting requirements under this title.

(d) DISPROPORTIONALITY. —

(1) IN GENERAL. — Each State that receives assistance under this part, and the Secretary of the Interior, shall provide for the collection and examination of data to determine if significant disproportionality based on race and ethnicity is occurring in the State and the local educational agencies of the State with respect to —

(A) the identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment described in section 602(3);

(B) the placement in particular educational settings of such children; and

(C) the incidence, duration, and type of disciplinary actions, including suspensions and expulsions.

(2) REVIEW AND REVISION OF POLICIES, PRACTICES, AND PROCEDURES. — In the case of a determination of significant disproportionality with respect to the identification of children as children with disabilities, or the placement in particular educational settings of such children, in accordance with paragraph (1), the State or the Secretary of the Interior, as the case may be, shall —

(A) provide for the review and, if appropriate, revision of the policies, procedures, and practices used in such identification or placement to ensure that such policies, procedures, and practices comply with the requirements of this title;

(B) require any local educational agency identified under paragraph (1) to reserve the maximum amount of funds under section 613(f) to provide comprehensive coordinated early intervening services to serve children in the local educational agency, particularly children in those groups that were significantly overidentified under paragraph (1); and

(C) require the local educational agency to publicly report on the revision of policies, practices, and procedures described under subparagraph (A).

SEC. 1419. PRESCHOOL GRANTS.

(a) IN GENERAL. — The Secretary shall provide grants under this section to assist States to provide special education and related services, in accordance with this part —
(1) to children with disabilities aged 3 through 5, inclusive; and

(2) at the State’s discretion, to 2-year-old children with disabilities who will turn 3 during the school year.

(b) ELIGIBILITY. — A State shall be eligible for a grant under this section if such State —

(1) is eligible under section 612 to receive a grant under this part; and

(2) makes a free appropriate public education available to all children with disabilities, aged 3 through 5, residing in the State.

(c) ALLOCATIONS TO STATES. —

(1) IN GENERAL. — The Secretary shall allocate the amount made available to carry out this section for a fiscal year among the States in accordance with paragraph (2) or (3), as the case may be.

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

(A) ALLOCATION. —

(i) IN GENERAL. — Except as provided in subparagraph (B), the Secretary shall —

(I) allocate to each State the amount the State received under this section for fiscal year 1997;

(II) allocate 85 percent of any remaining funds to States on the basis of the States’ relative populations of children aged 3 through 5; and

(III) allocate 15 percent of those remaining funds to States on the basis of the States’ relative populations of all children aged 3 through 5 who are living in poverty.

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

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

(i) PRECEDING YEARS. — No State’s allocation shall be less than its allocation under this section for the preceding fiscal year.

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

(I) the sum of —

(aa) the amount the State received under this section for fiscal year 1997; and

(bb) 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 also be used for the administration of part C.

(f) OTHER STATE-LEVEL ACTIVITIES. — Each State shall use any funds the State reserves under subsection (d) and does not use for administration under subsection (e) —

(1) for support services (including establishing and implementing the mediation process required by section 615(e)), which may benefit children with disabilities younger than 3 or older than 5 as long as those services also benefit children with disabilities aged 3 through 5;

(2) for direct services for children eligible for services under this section;

(3) for activities at the State and local levels to meet the performance goals established by the State under section 612(a)(15);

(4) to supplement other funds used to develop and implement a statewide coordinated services system designed to improve results for children and families, including children with disabilities and their families, but not more than 1 percent of the amount received by the State under this section for a fiscal year;

(5) to provide early intervention services (which shall include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills) in accordance with part C to children with disabilities who are eligible for services under this section and who previously received services under part C until such children enter, or are eligible under State law to enter, kindergarten; or

(6) at the State’s discretion, to continue service coordination or case management for families who receive services under part C.

(g) SUBGRANTS TO LOCAL EDUCATIONAL AGENCIES. —
(1) **SUBGRANTS REQUIRED.** — Each State that receives a grant under this section for any fiscal year shall distribute all of the grant funds that the State does not reserve under subsection (d) to local educational agencies in the State that have established their eligibility under section 613, as follows:

(A) **BASE PAYMENTS.** — The State shall first award each local educational agency described in paragraph (1) the amount that agency would have received under this section for fiscal year 1997 if the State had distributed 75 percent of its grant for that year under section 619(c)(3), as such section was then in effect.

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

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

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

(2) **REALLOCATION OF FUNDS.** — If a State educational agency determines that a local educational agency is adequately providing a free appropriate public education to all children with disabilities aged 3 through 5 residing in the area served by the local educational agency with State and local funds, the State educational agency may reallocate any portion of the funds under this section that are not needed by that local educational agency to provide a free appropriate public education to other local educational agencies in the State that are not adequately providing special education and related services to all children with disabilities aged 3 through 5 residing in the areas the other local educational agencies serve.

(h) **PART C INAPPLICABLE.** — Part C does not apply to any child with a disability receiving a free appropriate public education, in accordance with this part, with funds received under this section.

(i) **STATE DEFINED.** — In this section, the term “State” means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(j) **AUTHORIZATION OF APPROPRIATIONS.** — There are authorized to be appropriated to carry out this section such sums as may be necessary.
TEXT OF IDEA FAIRNESS RESTORATION ACT BILL

[Bipartisan bill introduced March 17, 2011 in Senate by Senator Tom Harkin, Chair, Health, Education, Labor and Pensions Committee, Senator Barbara Mikulski (D-MD), and Senator Bernie Sanders (I-VT); and in House of Representatives by Congressmen Chris Van Hollen and Pete Sessions.]

S.613 and H.R. 1208

A BILL

To amend the Individuals with Disabilities Education Act to permit a prevailing party in an action or proceeding brought to enforce the Act to be awarded expert witness fees and certain other expenses.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ‘IDEA Fairness Restoration Act.’

SEC. 2. INCLUSION OF EXPERT WITNESS FEES AND OTHER EXPENSES AS ATTORNEYS’ FEES.

(a) In General – Section 615(i)(3) of the Individuals with Disabilities Education Act (20 U.S.C. 1415(i)(3)) is amended by adding at the end the following new subparagraph:

‘(H) INCLUSION OF EXPERT WITNESS FEES AND OTHER EXPENSES AS ATTORNEYS’ FEES- For the purposes of this paragraph, the term ‘attorneys’ fees’ shall include the fees of expert witnesses, including the reasonable costs of any test or evaluation necessary for the preparation of the parent or guardian's case in the action or proceeding.’.

(b) Effective Date – The amendment made by subsection (a) shall apply to any action or proceeding brought under section 615 of the Individuals with Disabilities Education Act (20 U.S.C. 1415) that has not been finally adjudicated as of the date of the enactment of this Act.
PART 300 — ASSISTANCE TO STATES FOR THE EDUCATION OF CHILDREN WITH DISABILITIES

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Subpart A — General

Purpose and Applicability

§ 300.1 Purposes.
The purposes of this part are —
(a) To ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living;
(b) To ensure that the rights of children with disabilities and their parents are protected;
(c) To assist States, localities, educational service agencies, and Federal agencies to provide for the education of all children with disabilities; and
(d) To assess and ensure the effectiveness of efforts to educate children with disabilities.
(Authority: 20 U.S.C. 1400(d))

§ 300.2 Applicability of this part to State and local agencies.
(a) States. This part applies to each State that receives payments under Part B of the Act, as defined in § 300.4.
(b) Public agencies within the State. The provisions of this part —
(1) Apply to all political subdivisions of the State that are involved in the education of children with disabilities, including:
   (i) The State educational agency (SEA).
   (ii) Local educational agencies (LEAs), educational service agencies (ESAs), and public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA.
   (iii) Other State agencies and schools (such as Departments of Mental Health and Welfare and State schools for children with deafness or children with blindness).
   (iv) State and local juvenile and adult correctional facilities; and
(2) Are binding on each public agency in the State that provides special education and related services to children with disabilities, regardless of whether that agency is receiving funds under Part B of the Act.
(c) Private schools and facilities. Each public agency in the State is responsible for ensuring that the rights and protections under Part B of the Act are given to children with disabilities —
(1) Referred to or placed in private schools and facilities by that public agency; or
(2) Placed in private schools by their parents under the provisions of § 300.148.
(Authority: 20 U.S.C. 1412)

Definitions Used in This Part

§ 300.4 Act.
Act means the Individuals with Disabilities Education Act, as amended.
(Authority: 20 U.S.C. 1400(a))

§ 300.5 Assistive technology device.
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 the functional capabilities of a child with a disability. The term does not include a medical device that is surgically implanted, or the replacement of such device.
(Authority: 20 U.S.C. 1401(1))

§ 300.6 Assistive technology service.
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. The term includes —
(a) The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child’s customary environment;
(b) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;
(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 a child with a disability or, if appropriate, that child’s family; and
(f) Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of that child.
(Authority: 20 U.S.C. 1401(2))

§ 300.7 Charter school.
Charter school has the meaning given the term in section 5210(1) of the Elementary and Secondary Education Act of 1965, as amended, 20 U.S.C. 6301 et seq. (ESEA).
(Authority: 20 U.S.C. 7221i(1))

§ 300.8 Child with a disability.
(a) General. (1) Child with a disability means a child evaluated in accordance with §§ 300.304 through 300.311
as having mental retardation, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in this part as “emotional disturbance”), an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services.

(2)(i) Subject to paragraph (a)(2)(ii) of this section, if it is determined, through an appropriate evaluation under §§ 300.304 through 300.311, that a child has one of the disabilities identified in paragraph (a)(1) of this section, but only needs a related service and not special education, the child is not a child with a disability under this part.

(ii) If, consistent with § 300.39(a)(2), the related service required by the child is considered special education rather than a related service under State standards, the child would be determined to be a child with a disability under paragraph (a)(1) of this section.

(b) Children aged three through nine experiencing developmental delays. Child with a disability for children aged three through nine (or any subset of that age range, including ages three through five), may, subject to the conditions described in § 300.111(b), include a child —

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

(2) Who, by reason thereof, needs special education and related services.

(c) Definitions of disability terms. The terms used in this definition of a child with a disability are defined as follows:

(1)(i) Autism means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a child’s educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences.

(ii) Autism does not apply if a child’s educational performance is adversely affected primarily because the child has an emotional disturbance, as defined in paragraph (c)(4) of this section.

(iii) A child who manifests the characteristics of autism after age three could be identified as having autism if the criteria in paragraph (c)(1)(i) of this section are satisfied.

(2) Deaf-blindness means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness.

(3) Deafness means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification that adversely affects a child’s educational performance.

(4)(i) Emotional disturbance means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child’s educational performance:

(A) An inability to learn that cannot be explained by intellectual, sensory, or health factors.

(B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.

(C) Inappropriate types of behavior or feelings under normal circumstances.

(D) A general pervasive mood of unhappiness or depression.

(E) A tendency to develop physical symptoms or fears associated with personal or school problems.

(ii) Emotional disturbance includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance under paragraph (c)(4)(i) of this section.

(5) Hearing impairment means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child’s educational performance but that is not included under the definition of deafness in this section.

(6) Mental retardation means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child’s educational performance.

(7) Multiple disabilities means concomitant impairments (such as mental retardation-blindness or mental retardation-orthopedic impairment), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. Multiple disabilities does not include deaf-blindness.

(8) Orthopedic impairment means a severe orthopedic impairment that adversely affects a child’s educational performance.

References in double brackets [[xxxxxx]] are to original Federal Register page numbers, e.g., 71 F.R. 46540 (No. 156, Aug. 18, 2006)
(i) Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome; and
(ii) Adversely affects a child’s educational performance.

(10) Specific learning disability —
(i) General. Specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.
(ii) Disorders not included. Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

(11) Speech or language impairment means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child’s educational performance.

(12) Traumatic brain injury means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child’s educational performance. Traumatic brain injury applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. Traumatic brain injury does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.

(13) Visual impairment including blindness means an impairment in vision that, even with correction, adversely affects a child’s educational performance. The term includes both partial sight and blindness.

(Authority: 20 U.S.C. 1401(3); 1401(39))

§ 300.9 Consent.
Consent means that —
(a) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;
(b) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and
(c)(1) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at anytime.
(2) If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).
(3) If the parent revokes consent in writing for their child’s receipt of special education services after the child is initially provided special education and related services, the public agency is not required to amend the child’s education records to remove any references to the child’s receipt of special education and related services because of the revocation of consent. [(c)(3) added by 73 F.R. 73027 (Dec. 1, 2008)]

(Authority: 20 U.S.C. 1414(a)(1)(D))

§ 300.10 Core academic subjects.
Core academic subjects means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography.

(Authority: 20 U.S.C. 1401(4))

§ 300.11 Day; business day; school day.
(a) Day means calendar day unless otherwise indicated as business day or school day.
(b) Business day means Monday through Friday, except for Federal and State holidays (unless holidays are specifically included in the designation of business day, as in § 300.148(d)(1)(ii)).
(c)(1) School day means any day, including a partial day that children are in attendance at school for instructional purposes.
(2) School day has the same meaning for all children in school, including children with and without disabilities.

(Authority: 20 U.S.C. 1221e-3)

§ 300.12 Educational service agency.
Educational service agency means —
(a) A regional public multiservice agency —
(1) Authorized by State law to develop, manage, and provide services or programs to LEAs;
(2) 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;
(b) Includes any other public institution or agency having administrative control and direction over a public elementary school or secondary school; and
(c) Includes entities that meet the definition of intermediate educational unit in section 602(23) of the Act as in effect prior to June 4, 1997.

(Authority: 20 U.S.C. 1401(5))
§ 300.13 Elementary school.

Elementary school means a nonprofit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under State law.

(Authority: 20 U.S.C. 1401(6))

§ 300.14 Equipment.

Equipment means —

(a) Machinery, utilities, and built-in equipment, and any necessary enclosures or structures to house the 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.

(Authority: 20 U.S.C. 1401(7))

§ 300.15 Evaluation.

Evaluation means procedures used in accordance with §§ 300.304 through 300.311 to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs.

(Authority: 20 U.S.C. 1414(a) (c))

§ 300.16 Excess costs.

Excess costs means those costs that are in excess of the average annual per-student expenditure in an LEA during the preceding school year for an elementary school or secondary school student, as may be appropriate, and that must be computed after deducting —

(a) Amounts received —

(1) Under Part B of the Act;

(2) Under Part A of title I of the ESEA; and

(3) Under Parts A and B of title III of the ESEA and;

(b) Any State or local funds expended for programs that would qualify for assistance under any of the parts described in paragraph (a) of this section, but excluding any amounts for capital outlay or debt service. (See Appendix A to part 300 for an example of how excess costs must be calculated.)

(Authority: 20 U.S.C. 1401(8))

§ 300.17 Free appropriate public education.

Free appropriate public education or FAPE means special education and related services that —

(a) Are provided at public expense, under public supervision and direction, and without charge;

(b) Meet the standards of the SEA, including the requirements of this part;

(c) Include an appropriate preschool, elementary school, or secondary school education in the State involved; and

(d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of §§ 300.320 through 300.324.

(Authority: 20 U.S.C. 1401(9))

§ 300.18 Highly qualified special education teachers.

(a) Requirements for special education teachers teaching core academic subjects. For any public elementary or secondary school special education teacher teaching core academic subjects, the term highly qualified has the meaning given the term in section 9101 of the ESEA and 34 CFR 200.56, except that the requirements for highly qualified also —

(1) Include the requirements described in paragraph (b) of this section; and

(2) Include the option for teachers to meet the requirements of section 9101 of the ESEA by meeting the requirements of paragraphs (c) and (d) of this section.

(b) Requirements for special education teachers in general. (1) When used with respect to any public elementary school or secondary school special education teacher teaching in a State, highly qualified requires 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, highly qualified means that the teacher meets the certification or licensing requirements, if any, set forth in the State’s public charter school law;

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

(iii) The teacher holds at least a bachelor’s degree.

(2) A teacher will be considered to meet the standard in paragraph (b)(1)(i) of this section if that teacher is participating in an alternative route to special education certification program under which —

(i) The teacher —

(A) Receives high-quality professional development that is sustained, intensive, and classroom-focused in order to have a positive and lasting impact on classroom instruction, before and while teaching;

(B) Participates in a program of intensive supervision that consists of structured guidance and regular ongoing support for teachers or a teacher mentoring program;

(C) Assumes functions as a teacher only for a specified period of time not to exceed three years; and

(D) Demonstrates satisfactory progress toward full certification as prescribed by the State; and
(ii) The State ensures, through its certification and licensure process, that the provisions in paragraph (b)(2)(i) of this section are met.
(3) Any public elementary school or secondary school special education teacher teaching in a State, who is not teaching a core academic subject, is highly qualified if the teacher meets the requirements in paragraph (b)(1) or the requirements in (b)(1)(iii) and (b)(2) of this section.

(c) Requirements for 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 34 CFR 200.1(d), highly qualified means the teacher, whether new or not new to the profession, may either —

(1) Meet the applicable requirements of section 9101 of the ESEA and 34 CFR 200.56 for any elementary, middle, or secondary school teacher who is new or not new to the profession; or
(2) Meet the requirements of paragraph (B) or (C) of section 9101(23) of the ESEA as applied to an elementary school teacher, or, in the case of instruction above the elementary level, meet the requirements of paragraph (B) or (C) of section 9101(23) of the ESEA as applied to an elementary school teacher and have subject matter knowledge appropriate to the level of instruction being provided and needed to effectively teach to those standards, as determined by the State.

(d) Requirements for special education teachers teaching multiple subjects. Subject to paragraph (e) of this section, when used with respect to a special education teacher who teaches two or more core academic subjects exclusively to children with disabilities, highly qualified means that the teacher may either —

(1) Meet the applicable requirements of section 9101 of the ESEA and 34 CFR 200.56(b) or (c); (2) 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 34 CFR 200.56(c) which may include a single, high objective uniform State standard of evaluation (HOUSSE) covering multiple subjects; or
(3) 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, not later than two years after the date of employment, 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 34 CFR 200.56(c), which may include a single HOUSSE covering multiple subjects.

(e) Separate HOUSSE standards for special education teachers. Provided that any adaptations of the State’s HOUSSE would not establish a lower standard for the content knowledge requirements for special education teachers and meets all the requirements for a HOUSSE for regular education teachers —

(1) A State may develop a separate HOUSSE for special education teachers; and
(2) The standards described in paragraph (e)(1) of this section may include single HOUSSE evaluations that cover multiple subjects.

(f) Rule of construction. Notwithstanding any other individual right of action that a parent or student may maintain under this part, nothing in this 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 SEA or LEA employee to be highly qualified, or to prevent a parent from filing a complaint under §§300.151 through 300.153 about staff qualifications with the SEA as provided for under this part.

(g) Applicability of definition to ESEA; and clarification of new special education teacher. (1) A teacher who is highly qualified under this section is considered highly qualified for purposes of the ESEA.

(2) For purposes of §300.18(d)(3), a fully certified regular education teacher who subsequently becomes fully certified or licensed as a special education teacher is a new special education teacher when first hired as a special education teacher.

(h) Private school teachers not covered. The requirements in this section do not apply to teachers hired by private elementary schools and secondary schools including private school teachers hired or contracted by LEAs to provide equitable services to parentally-placed private school children with disabilities under §300.138.

(Authority: 20 U.S.C. 1401(10))

§ 300.19 Homeless children.

Homeless children has the meaning given the term homeless children and youths in section 725 (42 U.S.C. 11434a) of the McKinney-Vento Homeless Assistance Act, as amended, 42 U.S.C. 11431 et seq.

(Authority: 20 U.S.C. 1401(11))

§ 300.20 Include.

Include means that the items named are not all of the possible items that are covered, whether like or unlike the ones named.

(Authority: 20 U.S.C. 1221e-3)

§ 300.21 Indian and Indian tribe.

(a) Indian means an individual who is a member of an Indian tribe.

(b) 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.).
§ 300.22 Individualized education program.

Individualized education program or IEP means a written statement for a child with a disability that is developed, reviewed, and revised in accordance with §§ 300.320 through 300.324.

§ 300.23 Individualized education program team.

Individualized education program team or IEP Team means a group of individuals described in § 300.321 that is responsible for developing, reviewing, or revising an IEP for a child with a disability.

§ 300.24 Individualized family service plan.

Individualized family service plan or IFSP has the meaning given the term in section 636 of the Act.

§ 300.25 Infant or toddler with a disability.

Infant or toddler with a disability —

(a) Means an individual under three years of age who needs early intervention services because the individual —

(1) 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

(2) 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 —

(1) At-risk infants and toddlers; and

(2) Children with disabilities who are eligible for services under section 619 and who previously received services under Part C of the Act until such children enter, or are eligible under State law to enter, kindergarten or elementary school, as appropriate, provided that any programs under Part C of the Act serving such children shall include —

(i) An educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills; and

(ii) A written notification to parents of their rights and responsibilities in determining whether their child will continue to receive services under Part C of the Act or participate in preschool programs under section 619.

§ 300.26 Institution of higher education.

Institution of higher education —

(a) Has the meaning given the term in section 101 of the Higher Education Act of 1965, as amended, 20 U.S.C. 1021 et seq. (HEA); and

(b) Also includes any community college receiving funds from the Secretary of the Interior under the Tribally Controlled Community College or University Assistance Act of 1978, 25 U.S.C. 1801, et seq.

§ 300.27 Limited English proficient.

Limited English proficient has the meaning given the term in section 9101(25) of the ESEA.

§ 300.28 Local educational agency.

(a) General. Local educational agency or LEA means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for a 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 —

(1) An educational service agency, as defined in § 300.12; and

(2) Any other public institution or agency having administrative control and direction of a public elementary school or secondary school, including a public nonprofit charter school that is established as an LEA under State law.

(c) BIA funded schools. The term includes an elementary school or secondary school funded by the Bureau of Indian Affairs, and not subject to the jurisdiction of any SEA other than the Bureau of Indian Affairs, but only to the extent that the 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 LEA receiving assistance under the Act with the smallest student population.

(Authority: 20 U.S.C. 1401(19))

§ 300.29 Native language.

(a) Native language, when used with respect to an individual who is limited English proficient, means the following:

(1) The language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child, except as provided in paragraph (a)(2) of this section.
§ 300.30 Parent.  
(a) Parent means —
   (1) A biological or adoptive parent of a child;  
   (2) A foster parent, unless State law, regulations, or  
       contractual obligations with a State or local entity  
       prohibit a foster parent from acting as a parent;  
   (3) A guardian generally authorized to act as the  
       child’s parent, or authorized to make educational  
       decisions for the child (but not the State if the child is  
       a ward of the State);  
   (4) An individual acting in the place of a biological  
       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  
   (5) A surrogate parent who has been appointed in  
       accordance with § 300.519 or section 639(a)(5) of the  
       Act.

(b) (1) Except as provided in paragraph (b)(2) of this  
      section, the biological or adoptive parent, when attempting  
      to act as the parent under this part and when more than one  
      party is qualified under paragraph (a) of this section to act  
      as a parent, must be presumed to be the parent for purposes  
      of this section unless the biological or adoptive parent does  
      not have legal authority to make educational decisions for  
      the child.

   (2) If a judicial decree or order identifies a specific  
       person or persons under paragraphs (a)(1) through (4)  
       of this section to act as the “parent” of a child or to  
       make educational decisions on behalf of a child, then  
       such person or persons shall be determined to be the  
       “parent” for purposes of this section.

(Authority: 20 U.S.C. 1401(23))

§ 300.31 Parent training and information center.  
Parent training and information center means a center  
assisted under sections 671 or 672 of the Act.

(Authority: 20 U.S.C. 1401(25))

§ 300.32 Personally identifiable.  
Personally identifiable means information that contains  
—

(a) The name of the child, the child’s parent, or other  
    family member;  
(b) The address of the child;  
(c) A personal identifier, such as the child’s social  
    security number or student number; or  
(d) A list of personal characteristics or other information  
    that would make it possible to identify the child with  
    reasonable certainty.

(Authority: 20 U.S.C. 1415(a))

§ 300.33 Public agency.  
Public agency includes the SEA, LEAs, ESAs, nonprofit  
public charter schools that are not otherwise included as  
LEAs or ESAs and are not a school of an LEA or ESA, and  
any other political subdivisions of the State that are  
responsible for providing education to children with  
disabilities.

(Authority: 20 U.S.C. 1412(a)(11))

§ 300.34 Related services.  
(a) General. Related services means transportation and  
    such developmental, corrective, and other supportive  
    services as are required to assist a child with a disability to  
    benefit from special education, and includes speech-language  
    pathology and audiology services, interpreting services,  
    psychological services, physical and occupational therapy,  
    recreation, including therapeutic recreation, early  
    identification and assessment of disabilities in children,  
    counseling services, including rehabilitation counseling,  
    orientation and mobility services, and medical services for  
    diagnostic or evaluation purposes. Related services also  
    include school health services and school nurse services,  
    social work services in schools, and parent counseling and  
    training.

(b) Exception; services that apply to children with  
    surgically implanted devices, including cochlear implants.

   (1) Related services do not include a medical device  
       that is surgically implanted, the optimization of that  
       device’s functioning (e.g., mapping), maintenance of  
       that device, or the replacement of that device.

   (2) Nothing in paragraph (b)(1) of this section —  
       (i) Limits the right of a child with a surgically  
           implanted device (e.g., cochlear implant) to receive  
           related services (as listed in paragraph (a) of this  
           section) that are determined by the IEP Team to  
           be necessary for the child to receive FAPE.  
       (ii) Limits the responsibility of a public agency  
            to appropriately monitor and maintain medical  
            devices that are needed to maintain the health and  
            safety of the child, including breathing, nutrition,  
            or operation of other bodily functions, while the child  
            is transported to and from school or is at school; or  
       (iii) Prevents the routine checking of an external  
            component of a surgically implanted device to  
            make sure it is functioning properly, as required in  
            § 300.113(b).

(c) Individual related services terms defined. The terms  
    used in this definition are defined as follows:

   (1) Audiology includes —  
       (i) Identification of children with hearing loss;  
       (ii) Determination of the range, nature, and  
            degree of hearing loss, including referral for
medical or other professional attention for the
habilitation of hearing;
(iii) Provision of habilitative activities, such as
language habilitation, auditory training, speech
reading (lip-reading), hearing evaluation, and
speech conservation;
(iv) Creation and administration of programs for
prevention of hearing loss;
(v) Counseling and guidance of children, parents,
and teachers regarding hearing loss; and
(vi) Determination of children’s needs for group
and individual amplification, selecting and fitting
an appropriate aid, and evaluating the effectiveness
of amplification.
(2) Counseling services means services provided by
qualified social workers, psychologists, guidance
counselors, or other qualified personnel.
(3) Early identification and assessment of disabilities
in children means the implementation of a formal plan
for identifying a disability as early as possible in a
child’s life.
(4) Interpreting services includes —
(i) The following, when used with respect to
children who are deaf or hard of hearing: Oral
transliteration services, cued language
transliteration services, sign language ransliteration
and interpreting services, and transcription services,
such as communication access real-time translation
(CART), C-Print, and TypeWell; and
(ii) Special interpreting services for children who
are deaf-blind.
(5) Medical services means services provided by a
licensed physician to determine a child’s medically
related disability that results in the child’s need for
special education and related services.
(6) Occupational therapy —
(i) Means services provided by a qualified
occupational therapist; and
(ii) Includes —
(A) Improving, developing, or restoring
functions impaired or lost through illness, injury,
/or deprivation;
(B) Improving ability to perform tasks for
independent functioning if functions are impaired
or lost; and
(C) Preventing, through early intervention,
initial or further impairment or loss of function.
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(7) Orientation and mobility services —
(i) Means services provided to blind or visually
impaired children
by qualified personnel to enable those students to
attain systematic
orientation to and safe movement within their
environments in school,
home, and community; and
(ii) Includes teaching children the following, as
appropriate:
(A) Spatial and environmental concepts
and use of information received by the senses (such
as sound, temperature and vibrations) to
establish, maintain, or regain orientation and line
of travel (e.g., using sound at a traffic light to
cross the street);
(B) To use the long cane or a service animal to
supplement visual travel skills or as a tool for
safely negotiating the environment for children
with no available travel vision;
(C) To understand and use remaining vision
and distance low vision aids; and
(D) Other concepts, techniques, and tools.
(8)(i) Parent counseling and training means assisting
parents in understanding the special needs of their
child;
(ii) Providing parents with information about
child development; and
(iii) Helping parents to acquire the necessary
skills that will allow them to support the
implementation of their child’s IEP or IFSP.
(9) Physical therapy means services provided by a
qualified physical therapist.
(10) Psychological services includes —
(i) Administering psychological and educational
tests, and other assessment procedures;
(ii) Interpreting assessment results;
(iii) Obtaining, integrating, and interpreting
information about child behavior and conditions
relating to learning;
(iv) Consulting with other staff members in
planning school programs to meet the special
educational needs of children as indicated by
psychological tests, interviews, direct observation,
and behavioral evaluations;
(v) Planning and managing a program of
psychological services, including psychological
counseling for children and parents; and
(vi) Assisting in developing positive behavioral
intervention strategies.
(11) Recreation includes —
(i) Assessment of leisure function;
(ii) Therapeutic recreation services;
(iii) Recreation programs in schools and
community agencies; and
(iv) Leisure education.
(12) Rehabilitation counseling services means
services provided by qualified personnel in individual
or group sessions that focus specifically on career
development, employment preparation, achieving
independence, and integration in the workplace and
community of a student with a disability. The term also
includes vocational rehabilitation services provided to a
student with a disability by vocational rehabilitation
programs funded under the Rehabilitation Act of 1973,
as amended, 29 U.S.C. 701 et seq.
(13) School health services and school nurse services
means health services that are designed to enable a
child with a disability to receive FAPE as described in
the child’s IEP. School nurse services are services
provided by a qualified school nurse. School health
services are services that may be provided by either a
qualified school nurse or other qualified person.
(14) Social work services in schools includes —
(i) Preparing a social or developmental history on a child with a disability;
(ii) Group and individual counseling with the child and family;
(iii) Working in partnership with parents and others on those problems in a child’s living situation (home, school, and community) that affect the child’s adjustment in school;
(iv) Mobilizing school and community resources to enable the child to learn as effectively as possible in his or her educational program; and
(v) Assisting in developing positive behavioral intervention strategies.

(15) Speech-language pathology services includes —
(i) Identification of children with speech or language impairments;
(ii) Diagnosis and appraisal of specific speech or language impairments;
(iii) Referral for medical or other professional attention necessary for the habilitation of speech or language impairments;
(iv) Provision of speech and language services for the habilitation or prevention of communicative impairments; and
(v) Counseling and guidance of parents, children, and teachers regarding speech and language impairments.

(16) Transportation includes —
(i) Travel to and from school and between schools;
(ii) Travel in and around school buildings; and
(iii) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.

(Authority: 20 U.S.C. 1401(26))

§ 300.35 Scientifically based research.

Scientifically based research has the meaning given the term in section 9101(37) of the ESEA.

(Authority: 20 U.S.C. 1411(c)(2)(C)(xi))

§ 300.36 Secondary school.

Secondary school means a nonprofit institutional day or residential school, including a public secondary charter school that provides secondary education, as determined under State law, except that it does not include any education beyond grade 12.

(Authority: 20 U.S.C. 1401(27))

§ 300.37 Services plan.

Services plan means a written statement that describes the special education and related services the LEA will provide to a parentally-placed child with a disability enrolled in a private school who has been designated to receive services, including the location of the services and any transportation necessary, consistent with § 300.132, and is developed and implemented in accordance with §§ 300.137 through 300.139.

(Authority: 20 U.S.C. 1412(a)(10)(A))

§ 300.38 Secretary.

Secretary means the Secretary of Education.

(Authority: 20 U.S.C. 1401(28))

§ 300.39 Special education.

(a) General. (1) Special education means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including —
(i) Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and
(ii) Instruction in physical education.

(2) Special education includes each of the following, if the services otherwise meet the requirements of paragraph (a)(1) of this section —
(i) Speech-language pathology services, or any other related service, if the service is considered special education rather than a related service under State standards;
(ii) Travel training; and
(iii) Vocational education.

(b) Individual special education terms defined. The terms in this definition are defined as follows:

(1) At no cost means that all specially-designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as a part of the regular education program.

(2) Physical education means —

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(i) The development of —
(A) Physical and motor fitness;
(B) Fundamental motor skills and patterns; and
(C) Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports); and
(ii) Includes special physical education, adapted physical education, movement education, and motor development.

(3) Specially designed instruction means adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction —
(i) To address the unique needs of the child that result from the child’s disability; and
(ii) To ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children.

(4) Travel training means providing instruction, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction, to enable them to —
(i) Develop an awareness of the environment in which they live; and
(ii) Learn the skills necessary to move effectively and safely from place to place within that...
environment (e.g., in school, in the home, at work, and in the community).

(5) Vocational education means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career not requiring a baccalaureate or advanced degree.

(Authority: 20 U.S.C. 1401(29))

§ 300.40 State.

State means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and each of the outlying areas.

(Authority: 20 U.S.C. 1401(31))

§ 300.41 State educational agency.

State educational agency or SEA 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.

(Authority: 20 U.S.C. 1401(32))

§ 300.42 Supplementary aids and services.

Supplementary aids and services means aids, services, and other supports that are provided in regular education classes, other education-related settings, and in extracurricular and nonacademic settings, to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with §§ 300.114 through 300.116.

(Authority: 20 U.S.C. 1401(33))

§ 300.43 Transition services.

(a) Transition services means a coordinated set of activities for a child with a disability that —

(1) 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 postsecondary education, vocational education, integrated employment including supported employment), continuing and adult education, adult services, independent living, or community participation;

(2) Is based on the individual child’s needs, taking into account the child’s strengths, preferences, and interests; and includes —

(i) Instruction;

(ii) Related services;

(iii) Community experiences;

(iv) The development of employment and other post-school adult living objectives; and

(v) If appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.

(b) Transition services for children with disabilities may be special education, if provided as specially designed instruction, or a related service, if required to assist a child with a disability to benefit from special education.

(Authority: 20 U.S.C. 1401(34))

§ 300.44 Universal design.

Universal design has the meaning given the term in section 3 of the Assistive Technology Act of 1998, as amended, 29 U.S.C. 3002.

(Authority: 20 U.S.C. 1401(35))

§ 300.45 Ward of the State.

(a) General. Subject to paragraph (b) of this section, ward of the State means a child who, as determined by the State where the child resides, is —

(1) A foster child;

(2) A ward of the State; or

(3) In the custody of a public child welfare agency.

(b) Exception. Ward of the State does not include a foster child who has a foster parent who meets the definition of a parent in § 300.30.

(Authority: 20 U.S.C. 1401(36))

Subpart B — State Eligibility

General

§ 300.100 Eligibility for assistance.

A State is eligible for assistance under Part B of the Act 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 the conditions in §§ 300.101 through 300.176.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a))

FAPE Requirements

§ 300.101 Free appropriate public education (FAPE).

(a) General. A free appropriate public education must be available to all children residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school, as provided for in § 300.530(d).

(b) FAPE for children beginning at age 3. (1) Each State must ensure that —

(i) The obligation to make FAPE available to each eligible child residing in the State begins no later than the child’s third birthday; and

(ii) An IEP or an IFSP is in effect for the child by that date, in accordance with § 300.323(b).
(2) If a child’s third birthday occurs during the summer, the child’s IEP Team shall determine the date when services under the IEP or IFSP will begin.

(c) Children advancing from grade to grade. (1) Each State must ensure that FAPE is available to any individual child with a disability who needs special education and related services, even though the child has not failed or been retained in a course or grade, and is advancing from grade to grade.

(2) The determination that a child described in paragraph (a) of this section is eligible under this part, must be made on an individual basis by the group responsible within the child’s LEA for making eligibility determinations.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(1)(A))

§ 300.102 Limitation — exception to FAPE for certain ages.

(a) General. The obligation to make FAPE available to all children with disabilities does not apply with respect to the following:

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(1) Children aged 3, 4, 5, 18, 19, 20, or 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 of those ages.

(2)(i) Children aged 18 through 21 to the extent that State law does not require that special education and related services under Part B of the Act be provided to students with disabilities who, in the last educational placement prior to their incarceration in an adult correctional facility —

(A) Were not actually identified as being a child with a disability under § 300.8; and

(B) Did not have an IEP under Part B of the Act.

(ii) The exception in paragraph (a)(2)(i) of this section does not apply to children with disabilities, aged 18 through 21, who —

(A) Had been identified as a child with a disability under § 300.8 and had received services in accordance with an IEP, but who left school prior to their incarceration; or

(B) Did not have an IEP in their last educational setting, but who had actually been identified as a child with a disability under § 300.8.

(3)(i) Children with disabilities who have graduated from high school with a regular high school diploma.

(ii) The exception in paragraph (a)(3)(i) of this section does not apply to children who have graduated from high school but have not been awarded a regular high school diploma.

(iii) Graduation from high school with a regular high school diploma constitutes a change in placement, requiring written prior notice in accordance with § 300.503.

(iv) As used in paragraphs (a)(3)(i) through (a)(3)(iii) of this section, the term regular high school diploma does not include an alternative degree that is not fully aligned with the State’s academic standards, such as a certificate or a general educational development credential (GED).

(4) Children with disabilities who are eligible under subpart H of this part, but who receive early intervention services under Part C of the Act.

(b) Documents relating to exceptions. The State must assure that the information it has provided to the Secretary regarding the exceptions in paragraph (a) of this section, as required by § 300.700 (for purposes of making grants to States under this part), is current and accurate.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(1)(B)-(C))

Other FAPE Requirements

§ 300.103 FAPE — methods and payments.

(a) Each State may use whatever State, local, Federal, and private sources of support are available in the State to meet the requirements of this part. For example, if it is necessary to place a child with a disability in a residential facility, a State could use joint agreements between the agencies involved for sharing the cost of that placement.

(b) Nothing in this part relieves an insurer or similar third party from an otherwise valid obligation to provide or to pay for services provided to a child with a disability.

(c) Consistent with § 300.323(c), the State must ensure that there is no delay in implementing a child’s IEP, including any case in which the payment source for providing or paying for special education and related services to the child is being determined.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1401(8), 1412(a)(1)).

§ 300.104 Residential placement

If placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, must be at no cost to the parents of the child.

(Approved by the Office of Management and Budget under control number 1820-0030)


§ 300.105 Assistive technology.

(a) Each public agency must ensure that assistive technology devices or assistive technology services, or both, as those terms are defined in §§ 300.5 and 300.6, respectively, are made available to a child with a disability if required as a part of the child’s —

(1) Special education under § 300.36;

(2) Related services under § 300.34; or
prepared for the National Academy for IDEA Administrative Law Judges and Hearing Officers
at the Seattle University School of Law
References in double brackets [1xxxxx] are to original Federal Register page numbers, e.g., 71 F.R. 46540 (No. 156, Aug. 18, 2006)

(3) Supplementary aids and services under §§ 300.38 and 300.114(a)(2)(ii).

(b) On a case-by-case basis, the use of school-purchased assistive technology devices in a child’s home or in other settings is required if the child’s IEP Team determines that the child needs access to those devices in order to receive FAPE.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Approved by the Office of Management and Budget under control number 1820-0030)

(Approved by the Office of Management and Budget under control number 1820-0030)

§ 300.106 Extended school year services.

(a) General. (1) Each public agency must ensure that extended school year services are available as necessary to provide FAPE, consistent with paragraph (a)(2) of this section.

(2) Extended school year services must be provided only if a child’s IEP Team determines, on an individual basis, in accordance with §§ 300.320 through 300.324, that the services are necessary for the provision of FAPE to the child.

(3) In implementing the requirements of this section, a public agency may not —

(i) Limit extended school year services to particular categories of disability; or

(ii) Unilaterally limit the type, amount, or duration of those services.

(b) Definition. As used in this section, the term extended school year services means special education and related services that —

(1) Are provided to a child with a disability —

(i) Beyond the normal school year of the public agency;

(ii) In accordance with the child’s IEP; and

(iii) At no cost to the parents of the child; and

(2) Meet the standards of the SEA.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Approved by the Office of Management and Budget under control number 1820-0030)

§ 300.107 Nonacademic services.

The State must ensure the following:

(a) Each public agency must take steps, including the provision of supplementary aids and services determined appropriate and necessary by the child’s IEP Team, to provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities.

(b) Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the public agency, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the public agency and assistance in making outside employment available.

(Approved by the Office of Management and Budget under control number 1820-0030)

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(Approved by the Office of Management and Budget under control number 1820-0030)

§ 300.108 Physical education.

The State must ensure that public agencies in the State comply with the following:

(a) General. Physical education services, specially designed if necessary, must be made available to every child with a disability receiving FAPE, unless the public agency enrolls children without disabilities and does not provide physical education to children without disabilities in the same grades.

(b) Regular physical education. Each child with a disability must be afforded the opportunity to participate in the regular physical education program available to nondisabled children unless —

(1) The child is enrolled full time in a separate facility; or

(2) The child needs specially designed physical education, as prescribed in the child’s IEP.

(c) Special physical education. If specially designed physical education is prescribed in a child’s IEP, the public agency responsible for the education of that child must provide the services directly or make arrangements for those services to be provided through other public or private programs.

(d) Education in separate facilities. The public agency responsible for the education of a child with a disability who is enrolled in a separate facility must ensure that the child receives appropriate physical education services in compliance with this section.

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(Approved by the Office of Management and Budget under control number 1820-0030)

§ 300.109 Full educational opportunity goal (FEOG).

The State must have in effect policies and procedures to demonstrate that the State has established a goal of providing full educational opportunity to all children with disabilities, aged birth through 21, and a detailed timetable for accomplishing that goal.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Approved by the Office of Management and Budget under control number 1820-0030)

§ 300.110 Program options.

The State must ensure that each public agency takes steps to ensure that its children with disabilities have available to them the variety of educational programs and services available to nondisabled children in the area served by the agency, including art, music, industrial arts, consumer and homemaking education, and vocational education.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Approved by the Office of Management and Budget under control number 1820-0030)

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§ 300.111 Child find.

(a) General. (1) The State must have in effect policies and procedures to ensure that —
   (i) 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 disability, and who are in need of special education and related services, are identified, located, and evaluated; and
   (ii) A practical method is developed and implemented to determine which children are currently receiving needed special education and related services.

(b) Use of term developmental delay. The following provisions apply with respect to implementing the child find requirements of this section:

   (1) A State that adopts a definition of developmental delay under § 300.8(b) determines whether the term applies to children aged three through nine, or to a subset of that age range (e.g., ages three through five).

   (2) A State may not require an LEA to adopt and use the term developmental delay for any children within its jurisdiction.

   (3) If an LEA uses the term developmental delay for children described in § 300.8(b), the LEA must conform to both the State’s definition of that term and to the age range that has been adopted by the State.

   (4) If a State does not adopt the term developmental delay, an LEA may not independently use that term as a basis for establishing a child’s eligibility under this part.

(c) Other children in child find. Child find also must include —

   (1) Children who are suspected of being a child with a disability under § 300.8 and who, by reason of that disability, needs special education and related services is regarded as a child with a disability under Part B of the Act.

   (Approved by the Office of Management and Budget under control number 1820-0030)
   (Authority: 20 U.S.C. 1412(a)(4))

§ 300.113 Routine checking of hearing aids and external components of surgically implanted medical devices.

(a) Hearing aids. Each public agency must ensure that hearing aids worn by school children with hearing impairments, including deafness, are functioning properly.

(b) External components of surgically implanted medical devices.

   (1) Subject to paragraph (b)(2) of this section, each public agency must ensure that the external components of surgically implanted medical devices are functioning properly.

   (2) For a child with a surgically implanted medical device who is receiving special education and related services under this part, a public agency is not responsible for the post-surgical maintenance, programming, or replacement of the medical device that has been surgically implanted (or of an external component of the surgically implanted medical device).

   (Approved by the Office of Management and Budget under control number 1820-0030)
   (Authority: 20 U.S.C. 1401(1), 1401(26)(B))

Least Restrictive Environment (LRE)

§ 300.114 LRE requirements.

(a) General. (1) Except as provided in § 300.324(d)(2) (regarding children with disabilities in adult prisons), the State must have in effect policies and procedures to ensure that public agencies in the State meet the LRE requirements of this section and §§ 300.115 through 300.120.

   (2) Each public agency must ensure that —

      (i) 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 nondisabled; and

      (ii) Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

   (b) Additional requirement — State funding mechanism

   (1) General.

      (i) A State funding mechanism must not result in placements that violate the requirements of paragraph (a) of this section; and

      (ii) A State must 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 FAPE according to the unique needs of
the child, as described in the child’s IEP.
(2) Assurance. If the State does not have policies and
procedures to ensure compliance with paragraph (b)(1)
of this section, the State must provide the Secretary an
assurance that the State will revise the funding
mechanism as soon as feasible to ensure that the
mechanism does not result in placements that violate
that paragraph.

(Authority: 20 U.S.C. 1412(a)(5))

§ 300.115 Continuum of alternative placements.

(a) Each public agency must ensure that a continuum of
alternative placements is available to meet the needs of
children with disabilities for special education and related
services.

(b) The continuum required in paragraph (a) of this
section must —

(1) Include the alternative placements listed in the
definition of special education under § 300.39
(instruction in regular classes, special classes, special
schools, home instruction, and instruction in hospitals
and institutions); and

(2) Make provision for supplementary services (such
as resource room or itinerant instruction) to be provided
in conjunction with regular class placement.

(Authority: 20 U.S.C. 1412(a)(5))

§ 300.116 Placements.

In determining the educational placement of a child with
a disability, including a preschool child with a disability,
each public agency must ensure that —

(a) The placement decision —

(1) Is made by a group of persons, including the parents,
and other persons knowledgeable about the child, the
meaning of the evaluation data, and the placement options;
and

(2) Is made in conformity with the LRE provisions of
this subpart, including §§ 300.114 through 300.118;

(b) The child’s placement —

(1) Is determined at least annually;

(2) Is based on the child’s IEP; and

(3) Is as close as possible to the child’s home;

(c) Unless the IEP of a child with a disability requires
some other arrangement, the child is educated in the school
that he or she would attend if nondisabled;

(d) In selecting the LRE, consideration is given to any
potential harmful effect on the child or on the quality of
services that he or she needs; and

(e) A child with a disability is not removed from
education in age-appropriate regular classrooms solely
because of needed modifications in the general education
curriculum.

(Authority: 20 U.S.C. 1412(a)(5))

§ 300.117 Nonacademic settings.

In providing or arranging for the provision of
nonacademic and extracurricular services and activities,
including meals, recess periods, and the services and
activities set forth in § 300.107, each public agency must
ensure that each child with a disability participates with
nondisabled children in the extracurricular services and
activities to the maximum extent appropriate to the needs
of that child. The public agency must ensure that each child
with a disability has the supplementary aids and services
determined by the child’s IEP Team to be appropriate and
necessary for the child to participate in nonacademic
settings.

(Authority: 20 U.S.C. 1412(a)(5))

§ 300.118 Children in public or private institutions.

Except as provided in § 300.149(d) (regarding agency
responsibility for general supervision for some individuals
in adult prisons), an SEA must ensure that § 300.114 is
effectively implemented, including, if necessary, making
arrangements with public and private institutions (such as a
memorandum of agreement or special implementation
procedures).

(Authority: 20 U.S.C. 1412(a)(5))

§ 300.119 Technical assistance and training activities.

Each SEA must carry out activities to ensure that
teachers and administrators in all public agencies —

(a) Are fully informed about their responsibilities for
implementing § 300.114; and

(b) Are provided with technical assistance and training
necessary to assist them in this effort.

(Authority: 20 U.S.C. 1412(a)(5))

§ 300.120 Monitoring activities.

(a) The SEA must carry out activities to ensure that §
300.114 is implemented by each public agency.

(b) If there is evidence that a public agency makes
placements that are inconsistent with § 300.114, the SEA
must —

(1) Review the public agency’s justification for its
actions; and

(2) Assist in planning and implementing any
necessary corrective action.

(Authority: 20 U.S.C. 1412(a)(5))
Additional Eligibility Requirements

§ 300.121 Procedural safeguards.
(a) General. The State must have procedural safeguards in effect to ensure that each public agency in the State meets the requirements of §§ 300.500 through 300.536.

(b) Procedural safeguards identified. Children with disabilities and their parents must be afforded the procedural safeguards identified in paragraph (a) of this section.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(6)(A))

§ 300.122 Evaluation.

Children with disabilities must be evaluated in accordance with §§ 300.300 through 300.311 of subpart D of this part.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(7))

§ 300.123 Confidentiality of personally identifiable information.

The State must have policies and procedures in effect to ensure that public agencies in the State comply with §§ 300.610 through 300.626 related to protecting the confidentiality of any personally identifiable information collected, used, or maintained under Part B of the Act.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

§ 300.124 Transition of children from the Part C program to preschool programs.

The State must have in effect policies and procedures to ensure that —

(a) Children participating in early intervention programs assisted under Part C of the Act, and who will participate in preschool programs assisted under Part B of the Act, experience a smooth and effective transition to those preschool programs in a manner consistent with section 637(a)(9) of the Act;

(b) By the third birthday of a child described in paragraph (a) of this section, an IEP or, if consistent with § 300.323(b) and section 636(d) of the Act, an IFSP, has been developed and is being implemented for the child consistent with § 300.101(b); and

(c) Each affected LEA will participate in transition planning conferences arranged by the designated lead agency under section 635(a)(10) of the Act.

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(Authority: 20 U.S.C. 1412(a)(9))

§ 300.125-300.128 [Reserved]

Children in Private Schools

§ 300.129 State responsibility regarding children in private schools.

The State must have in effect policies and procedures that ensure that LEAs, and, if applicable, the SEA, meet the private school requirements in §§ 300.130 through 300.148.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(10))

Children With Disabilities Enrolled by Their Parents in Private Schools

§ 300.130 Definition of parentally-placed private school children with disabilities.

Parentally-placed private school children with disabilities means children with disabilities enrolled by their parents in private, including religious, schools or facilities that meet the definition of elementary school in § 300.13 or secondary school in § 300.36, other than children with disabilities covered under §§ 300.145 through 300.147.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(10)(A))

§ 300.131 Child find for parentally-placed private school children with disabilities.

(a) General. Each LEA must locate, identify, and evaluate all children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA, in accordance with paragraphs (b) through (e) of this section, and §§ 300.111 and 300.201.

(b) Child find design. The child find process must be designed to ensure —

(1) The equitable participation of parentally-placed private school children; and

(2) An accurate count of those children.

(c) Activities. In carrying out the requirements of this section, the LEA, or, if applicable, the SEA, must undertake activities similar to the activities undertaken for the agency’s public school children.

(d) Cost. The cost of carrying out the child find requirements in this section, including individual evaluations, may not be considered in determining if an LEA has met its obligation under § 300.133.

(e) Completion period. The child find process must be completed in a time period comparable to that for students attending public schools in the LEA consistent with § 300.301.

(f) Out-of-State children. Each LEA in which private, including religious, elementary schools and secondary schools are located must, in carrying out the child find requirements in this section, include parentally-placed private school children who reside in a State other than the
§ 300.132 Provision of services for parentally-placed private school children with disabilities — basic requirement.

(a) General. To the extent consistent with the number and location of children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA, provision is made for the participation of those children in the program assisted or carried out under Part B of the Act by providing them with special education and related services, including direct services determined in accordance with § 300.137, unless the Secretary has arranged for services to those children under the by-pass provisions in §§ 300.190 through 300.198.

(b) Services plan for parentally-placed private school children with disabilities. In accordance with paragraph (a) of this section and §§ 300.137 through 300.139, a services plan must be developed and implemented for each private school child with a disability who has been designated by the LEA in which the private school is located to receive special education and related services under this part.

(c) Record keeping. Each LEA must maintain in its records, and provide to the SEA, the following information related to parentally-placed private school children covered under §§ 300.130 through 300.144:

1. The number of children evaluated;
2. The number of children determined to be children with disabilities; and
3. The number of children served.

(Approved by the Office of Management and Budget under control numbers 1820-0030)


§ 300.133 Expenditures.

(a) Formula. To meet the requirement of § 300.132(a), each LEA must spend the following on providing special education and related services (including direct services) to parentally-placed private school children with disabilities:

1. For children aged 3 through 21, an amount that is the same proportion of the LEA’s total subgrant under section 611(f) of the Act as the number of private school children with disabilities aged 3 through 21 who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA, is to the total number of children with disabilities in its jurisdiction aged 3 through 21.

2.(i) For children aged three through five, an amount that is the same proportion of the LEA’s total subgrant under section 619(g) of the Act as the number of parentally-placed private school children with disabilities aged three through five who are enrolled by their parents in a private, including religious, elementary school located in the school district served by the LEA, is to the total number of children with disabilities in its jurisdiction aged three through five.

(ii) As described in paragraph (a)(2)(i) of this section, children aged three through five are considered to be parentally-placed private school children with disabilities enrolled by their parents in private, including religious, elementary schools, if they are enrolled in a private school that meets the definition of elementary school in § 300.13.

(3) If an LEA has not expended for equitable services all of the funds described in paragraphs (a)(1) and (a)(2) of this section by the end of the fiscal year for which Congress appropriated the funds, the LEA must obligate the remaining funds for special education and related services (including direct services) to parentally-placed private school children with disabilities during a carry-over period of one additional year.

(b) Calculating proportionate amount. In calculating the proportionate amount of Federal funds to be provided for parentally-placed private school children with disabilities, the LEA, after timely and meaningful consultation with representatives of parentally-placed private school children with disabilities attending private schools located in the LEA, must conduct a thorough and complete child find process to determine the number of parentally-placed children with disabilities attending private schools located in the LEA.

(See Appendix B for an example of how proportionate share is calculated).

(c) Annual count of the number of parentally-placed private school children with disabilities.

1. Each LEA must —
   (i) After timely and meaningful consultation with representatives of parentally-placed private school children with disabilities (consistent with § 300.134), determine the number of parentally-placed private school children with disabilities attending private schools located in the LEA; and
   (ii) Ensure that the count is conducted on any date between October 1 and December 1, inclusive, of each year.

2. The count must be used to determine the amount that the LEA must spend on providing special education and related services to parentally-placed private school children with disabilities in the next subsequent fiscal year.

(d) Supplement, not supplant. State and local funds may supplement and in no case supplant the proportionate amount of Federal funds required to be expended for parentally-placed private school children with disabilities under this part.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(10)(A))
§ 300.134 Consultation.

To ensure timely and meaningful consultation, an LEA, or, if appropriate, an SEA, must 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 regarding the following:

(a) Child find. The child find process, including —

(1) How parentally-placed private school children suspected of having a disability can participate equitably; and

(2) How parents, teachers, and private school officials will be informed of the process.

(b) Proportionate share of funds. The determination of the proportionate share of Federal funds available to serve parentally-placed private school children with disabilities under § 300.133(b), including the determination of how the proportionate share of those funds was calculated.

(c) Consultation process. The consultation process among the LEA, private school officials, and representatives of parents of parentally-placed private school children with disabilities, including how the process will operate throughout the school year to ensure that parentally-placed children with disabilities identified through the child find process can meaningfully participate in special education and related services.

(d) Provision of special education and related services. 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 —

(1) The types of services, including direct services and alternate service delivery mechanisms; and

(2) How special education and related services will be apportioned if funds are insufficient to serve all parentally-placed private school children; and

(3) How and when those decisions will be made;

(e) Written explanation by LEA regarding services. How, if the LEA 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 LEA will provide to the private school officials a written explanation of the reasons why the LEA chose not to provide services directly or through a contract.

(Approved by the Office of Management and Budget under control numbers 1820-0030 and 1820-0600)


§ 300.135 Written affirmation.

(a) When timely and meaningful consultation, as required by § 300.134, has occurred, the LEA must obtain a written affirmation signed by the representatives of participating private schools.

(b) If the representatives do not provide the affirmation within a reasonable period of time, the LEA must forward the documentation of the consultation process to the SEA.

(Approved by the Office of Management and Budget under control numbers 1820-0030 and 1820-0600)


§ 300.136 Compliance.

(a) General. A private school official has the right to submit a complaint to the SEA that the LEA —

(1) Did not engage in consultation that was meaningful and timely; or

(2) Did not give due consideration to the views of the private school official.

(b) Procedure. (1) If the private school official wishes to submit a complaint, the official must provide to the SEA the basis of the noncompliance by the LEA with the applicable private school provisions in this part; and

(2) The LEA must forward the appropriate documentation to the SEA.

(3)(i) If the private school official is dissatisfied with the decision of the SEA, the official may submit a complaint to the Secretary by providing the information on noncompliance described in paragraph (b)(1) of this section; and

(ii) The SEA must forward the appropriate documentation to the Secretary.

(Approved by the Office of Management and Budget under control numbers 1820-0030 and 1820-0600)


§ 300.137 Equitable services determined.

(a) No individual right to special education and related services. 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.

(b) Decisions. (1) Decisions about the services that will be provided to parentally-placed private school children with disabilities under §§ 300.130 through 300.144 must be made in accordance with paragraph (c) of this section and § 300.134(c).

(2) The LEA must make the final decisions with respect to the services to be provided to eligible parentally-placed private school children with disabilities.

(c) Services plan for each child served under §§ 300.130 through 300.144. If a child with a disability is enrolled in a religious or other private school by the child’s parents and will receive special education or related services from an LEA, the LEA must —

(1) Initiate and conduct meetings to develop, review, and revise a services plan for the child, in accordance with § 300.138(b); and

(2) Ensure that a representative of the religious or other private school attends each meeting. If the representative cannot attend, the LEA shall use other methods to ensure participation by the religious or other private school, including individual or conference telephone calls.
§ 300.138 Equitable services provided.

(a) General. (1) The services provided to parentally-placed private school children with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools, except that private elementary school and secondary school teachers who are providing equitable services to parentally-placed private school children with disabilities do not have to meet the highly qualified special education teacher requirements of § 300.18.

(2) Parentally-placed private school children with disabilities may receive a different amount of services than children with disabilities in public schools.

(b) Services provided in accordance with a services plan.

(1) Each parentally-placed private school child with a disability who has been designated to receive services under § 300.132 must have a services plan that describes the specific special education and related services that the LEA will provide to the child in light of the services that the LEA has determined, through the process described in §§ 300.134 and 300.137, it will make available to parentally-placed private school children with disabilities.

(2) The services plan must, to the extent appropriate —

(i) Meet the requirements of § 300.320, or for a child ages three through five, meet the requirements of § 300.323(b) with respect to the services provided; and

(ii) Be developed, reviewed, and revised consistent with §§ 300.321 through 300.324.

(c) Provision of equitable services. (1) The provision of services pursuant to this section and §§ 300.139 through 300.143 must be provided:

(i) By employees of a public agency; or

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

(2) Special education and related services provided to parentally-placed private school children with disabilities, including materials and equipment, must be secular, neutral, and nonideological.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(10)(A))

§ 300.139 Location of services and transportation.

(a) Services on private school premises. Services to parentally-placed private school children with disabilities may be provided on the premises of private, including religious, schools, to the extent consistent with law.

(b) Transportation —

(1) General.

(2) Cost of transportation. The cost of the transportation described in paragraph (b)(1)(i) of this section may be included in calculating whether the LEA has met the requirement of § 300.133.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(10)(A))

§ 300.140 Due process complaints and State complaints.

(a) Due process not applicable, except for child find.

(1) Except as provided in paragraph (b) of this section, the procedures in §§ 300.504 through 300.519 do not apply to complaints that an LEA has failed to meet the requirements in §§ 300.132 through 300.139, including the provision of services indicated on the child’s services plan.

(b) Child find complaints — to be filed with the LEA in which the private school is located.

(1) The procedures in §§ 300.504 through 300.519 apply to complaints that an LEA has failed to meet the child find requirements in § 300.131, including the requirements in §§ 300.30 through 300.311.

(2) Any due process complaint regarding the child find requirements (as described in paragraph (b)(1) of this section) must be filed with the LEA in which the private school is located and a copy must be forwarded to the SEA.

(c) State complaints. (1) Any complaint that an SEA or LEA has failed to meet the requirements in §§ 300.132 through 300.135 and 300.137 through 300.144 must be filed in accordance with the procedures described in §§ 300.151 through 300.153.

(2) A complaint filed by a private school official under § 300.136(a) must be filed with the SEA in accordance with the procedures in § 300.136(b).

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(10)(A))

§ 300.141 Requirement that funds not benefit a private school.

(a) An LEA may not use funds provided under section 611 or 619 of the Act to finance the existing level of
instruction in a private school or to otherwise benefit the private school.

(b) The LEA must use funds provided under Part B of the Act to meet the special education and related services needs of parentally-placed private school children with disabilities, but not for meeting —

(1) The needs of a private school; or
(2) The general needs of the students enrolled in the private school.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(10)(A))

§ 300.142 Use of personnel.

(a) Use of public school personnel. An LEA may use funds available under sections 611 and 619 of the Act to make public school personnel available in other than public facilities —

(1) To the extent necessary to provide services under §§ 300.130 through 300.144 for parentally-placed private school children with disabilities; and
(2) If those services are not normally provided by the private school.

(b) Use of private school personnel. An LEA may use funds available under sections 611 and 619 of the Act to pay for the services of an employee of a private school to provide services under §§ 300.130 through 300.144 if —

(1) The employee performs the services outside of his or her regular hours of duty; and
(2) The employee performs the services under public supervision and control.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(10)(A))

§ 300.143 Separate classes prohibited.

An LEA may not use funds available under section 611 or 619 of the Act for classes that are organized separately on the basis of school enrollment or religion of the children if —

(a) The classes are at the same site; and
(b) The classes include children enrolled in public schools and children enrolled in private schools.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(10)(A))

§ 300.144 Property, equipment, and supplies.

(a) A public agency must control and administer the funds used to provide special education and related services under §§ 300.137 through 300.139, and hold title to and administer materials, equipment, and property purchased with those funds for the uses and purposes provided in the Act.

(b) The public agency may place equipment and supplies in a private school for the period of time needed for the Part B program.

(c) The public agency must ensure that the equipment and supplies placed in a private school —

(1) Are used only for Part B purposes; and
(2) Can be removed from the private school without remodeling the private school facility.

(d) The public agency must remove equipment and supplies from a private school if —

(1) The equipment and supplies are no longer needed for Part B purposes; or
(2) Removal is necessary to avoid unauthorized use of the equipment and supplies for other than Part B purposes.

(e) No funds under Part B of the Act may be used for repairs, minor remodeling, or construction of private school facilities.

(Approved by the Office of Management and Budget under control number 1820-0030)


Children With Disabilities in Private Schools Placed or Referred by Public Agencies

§ 300.145 Applicability of §§ 300.146 through 300.147.

§§ 300.146 through 300.147 apply only to children with disabilities who are or have been placed in or referred to a private school or facility by a public agency as a means of providing special education and related services.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(10)(B))

§ 300.146 Responsibility of SEA.

Each SEA must ensure that a child with a disability who is placed in or referred to a private school or facility by a public agency —

(a) Is provided special education and related services —

(1) In conformance with an IEP that meets the requirements of §§ 300.320 through 300.325; and
(2) At no cost to the parents;

(b) Is provided an education that meets the standards that apply to education provided by the SEA and LEAs including the requirements of this part, except for § 300.18 and § 300.156(c); and

(c) Has all of the rights of a child with a disability who is served by a public agency.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(10)(B))

§ 300.147 Implementation by SEA.

In implementing § 300.146, the SEA must —

(a) Monitor compliance through procedures such as written reports, on-site visits, and parent questionnaires;
(b) Disseminate copies of applicable standards to each private school and facility to which a public agency has referred or placed a child with a disability; and

(c) Provide an opportunity for those private schools and facilities to participate in the development and revision of State standards that apply to them.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(10)(B))

Children with Disabilities Enrolled by Their Parents in Private Schools

When FAPE Is at Issue

§ 300.148 Placement of children by parents when FAPE is at issue.

(a) General. This part does not require an LEA 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 FAPE available to the child and the parents elected to place the child in a private school or facility. However, the public agency must include that child in the population whose needs are addressed consistent with §§ 300.131 through 300.144.

(b) Disagreements about FAPE. Disagreements between the parents and a public agency regarding the availability of a program appropriate for the child, and the question of financial reimbursement, are subject to the due process procedures in §§ 300.504 through 300.520.

(c) 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 preschool, 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 enrollment if the court or hearing officer finds that the agency had not made FAPE available to the child in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the State standards that apply to education provided by the SEA and LEAs.

(d) Limitation on reimbursement. The cost of reimbursement described in paragraph (c) of this section may be reduced or denied —

(1) If —

(i) The parents are not literate or cannot write in English; or

(ii) Compliance with paragraph (d)(1) of this section would likely result in serious emotional harm to the child.

(2) May, in the discretion of the court or a hearing officer, not be reduced or denied for failure to provide this notice if —

(i) The parents are not literate or cannot write in English; or

(ii) Compliance with paragraph (d)(1) of this section would likely result in physical harm to the child; and

(3) Upon a judicial finding of unreasonableness with respect to actions taken by the parents.

(e) Exception. Notwithstanding the notice requirement in paragraph (d)(1) of this section, the cost of reimbursement —

(1) Must not be reduced or denied for failure to provide the notice if —

(i) The school prevented the parents from providing the notice;

(ii) The parents had not received notice, pursuant to §300.504, of the notice requirement in paragraph (d)(1) of this section; or

(iii) Compliance with paragraph (d)(1) of this section would likely result in physical harm to the child; and

(2) May, in the discretion of the court or a hearing officer, not be reduced or denied for failure to provide this notice if —

(i) The parents are not literate or cannot write in English; or

(ii) Compliance with paragraph (d)(1) of this section would likely result in serious emotional harm to the child.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(10)(C))

SEA Responsibility for General Supervision

and Implementation of Procedural Safeguards

§ 300.149 SEA responsibility for general supervision.

(a) The SEA is responsible for ensuring —

(1) That the requirements of this part are carried out; and

(2) That each educational program for children with disabilities administered within the State, including each program administered by any other State or local agency (but not including elementary schools and secondary schools for Indian children operated or funded by the Secretary of the Interior) —

(i) Is under the general supervision of the persons responsible for educational programs for children with disabilities in the SEA; and

(ii) Meets the educational standards of the SEA (including the requirements of this part).

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

(b) The State must have in effect policies and procedures to ensure that it complies with the monitoring and enforcement requirements in §§ 300.600 through 300.602 and §§ 300.606 through 300.608.

(c) Part B of the Act does not limit the responsibility of agencies other than educational agencies for providing or paying some or all of the costs of FAPE to children with disabilities in the State.

(d) Notwithstanding paragraph (a) of this section, the Governor (or another individual pursuant to State law) may assign to any public agency in the State the responsibility of ensuring that the requirements of Part B of the Act are met with respect to students with disabilities who are convicted as adults under State law and incarcerated in adult prisons.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(11); 1416)

§ 300.150 SEA implementation of procedural safeguards.

The SEA (and any agency assigned responsibility pursuant to § 300.149(d)) must have in effect procedures to inform each public agency of its responsibility for ensuring effective implementation of procedural safeguards for the children with disabilities served by that public agency.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(11); 1415(a))
Methods of Ensuring Services

§ 300.154 Methods of ensuring services.

(a) Establishing responsibility for services. The Chief Executive Officer of a State or designee of that officer must ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each noneducational public agency described in paragraph (b) of this section and the SEA, in order to ensure that all services described in paragraph (b)(1) of this section that are needed to ensure FAPE are provided, including the provision of these services during the pendency of any dispute under paragraph (a)(3) of this section. The agreement or mechanism must include the following:

1. An identification of, or a method for defining, the financial responsibility of each agency for providing services described in paragraph (b)(1) of this section to ensure FAPE to children with disabilities. The financial responsibility of each noneducational public agency described in paragraph (b) of this section, including the State Medicaid agency and other public insurers of children with disabilities, must precede the financial responsibility of the LEA (or the State agency responsible for developing the child’s IEP).

2. Procedures for resolving interagency disputes (including procedures under which LEAs 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.

3. 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 paragraph (b)(1) of this section.

(b) Obligation of noneducational public agencies.

1. If any public agency other than an educational agency is otherwise obligated under Federal or State law, or assigned responsibility under State policy or pursuant to paragraph (a) of this section, 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 § 300.5 relating to assistive technology devices, § 300.6 relating to assistive technology services, § 300.34 relating to related services, § 300.41 relating to supplementary aids and services, and § 300.42 relating to transition services) that are necessary for ensuring FAPE to children with disabilities within the State, the public agency must fulfill that obligation or responsibility, either directly or through contract or other arrangement pursuant to paragraph (a) of this section or an agreement pursuant to paragraph (c) of this section.

2. A noneducational public agency described in paragraph (b)(1)(i) of this section may not disqualify an eligible service for Medicaid reimbursement because that service is provided in a school context.

process hearing until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action must be resolved using the time limit and procedures described in paragraphs (a) and (b) of this section.

2. If an issue raised in a complaint filed under this section has previously been decided in a due process hearing involving the same parties —
   (i) The due process hearing decision is binding on that issue; and
   (ii) The SEA must inform the complainant to that effect.

3. A complaint alleging a public agency’s failure to implement a due process hearing decision must be resolved by the SEA.

(Official: 20 U.S.C. 1221e-3)

§ 300.153 Filing a complaint.

(a) An organization or individual may file a signed written complaint under the procedures described in §§ 300.151 through 300.152.

(b) The complaint must include —

1. A statement that a public agency has violated a requirement of Part B of the Act or of this part;

2. The facts on which the statement is based;

3. A complaint alleging a public agency’s failure to implement a due process hearing decision must be resolved by the SEA.

Approved by the Office of Management and Budget under control numbers 1820-0030 and 1820-0600

(Authority: 20 U.S.C. 1221e-3)
(2) If a public agency other than an educational agency fails to provide or pay for the special education and related services described in paragraph (b)(1) of this section, the LEA (or State agency responsible for developing the child’s IEP) must provide or pay for these services to the child in a timely manner. The LEA or State agency is authorized to claim reimbursement for the services from the noneducational public agency that failed to provide or pay for these services and that agency must reimburse the LEA or State agency in accordance with the terms of the interagency agreement or other mechanism described in paragraph (a) of this section.  

(c) Special rule. The requirements of paragraph (a) of this section may be met through —

(1) State statute or regulation;  
(2) Signed agreements between respective agency officials that clearly identify the responsibilities of each agency relating to the provision of services; or  
(3) Other appropriate written methods as determined by the Chief Executive Officer of the State or designee of that officer and approved by the Secretary.  

(d) Children with disabilities who are covered by public benefits or insurance.  

(1) A public agency may use the Medicaid or other public benefits or insurance programs in which a child participates to provide or pay for services required under this part, as permitted under the public benefits or insurance program, except as provided in paragraph (d)(2) of this section.  

(2) With regard to services required to provide FAPE to an eligible child under this part, the public agency —

(i) May not require parents to sign up for or enroll in public benefits or insurance programs in order for their child to receive FAPE under Part B of the Act;  
(ii) May not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to this part, but pursuant to paragraph (g)(2) of this section, may pay the cost that the parents otherwise would be required to pay;  
(iii) May not use a child’s benefits under a public benefits or insurance program if that use would —

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(A) Decrease available lifetime coverage or any other insured benefit;  
(B) Result in the family paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the child outside of the time the child is in school;  
(C) Increase premiums or lead to the discontinuation of benefits or insurance; or  
(D) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures; and  
(iv) (A) Must obtain parental consent, consistent with § 300.9, each time that access to public benefits or insurance is sought; and  
(B) Notify parents that the parents’ refusal to allow access to their public benefits or insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.  

(e) Children with disabilities who are covered by private insurance.  

(1) With regard to services required to provide FAPE to an eligible child under this part, a public agency may access the parents’ private insurance proceeds only if the parents provide consent consistent with § 300.9.  

(2) Each time the public agency proposes to access the parents’ private insurance proceeds, the agency must —

(i) Observe parental consent in accordance with paragraph (e)(1) of this section; and  
(ii) Inform the parents that their refusal to permit the public agency to access their private insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.  

(f) Use of Part B funds.  

(1) If a public agency is unable to obtain parental consent to use the parents’ private insurance, or public benefits or insurance when the parents would incur a cost for a specified service required under this part, to ensure FAPE the public agency may use its Part B funds to pay for the service.  

(2) To avoid financial cost to parents who otherwise would consent to use private insurance, or public benefits or insurance if the parents would incur a cost, the public agency may use its Part B funds to pay the cost that the parents otherwise would have to pay to use the parents’ benefits or insurance (e.g., the deductible or co-pay amounts).  

(g) Proceeds from public benefits or insurance or private insurance.  

(1) Proceeds from public benefits or insurance or private insurance will not be treated as program income for purposes of 34 CFR 80.25.  

(2) If a public agency spends reimbursements from Federal funds (e.g., Medicaid) for services under this part, those funds will not be considered “State or local” funds for purposes of the maintenance of effort provisions in §§ 300.163 and 300.203.  

(h) Construction. Nothing in this part should be construed to alter the requirements imposed on a State Medicaid agency, or any other agency administering a public benefits or insurance program by Federal statute, regulations or policy under title XIX, or title XXI of the Social Security Act, 42 U.S.C. 1396 through 1396v and 42 U.S.C. 1397aa through 1397jj, or any other public benefits or insurance program.  

(Approved by the Office of Management and Budget under control number 1820-0030)  

(Approval: 20 U.S.C. 1412(a)(12) and (e))
Additional Eligibility Requirements

§ 300.155 Hearings relating to LEA eligibility.

The SEA must not make any final determination that an LEA is not eligible for assistance under Part B of the Act without first giving the LEA reasonable notice and an opportunity for a hearing under 34 CFR 76.401(d).

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(13))

§ 300.156 Personnel qualifications.

(a) General. The SEA must establish and maintain qualifications to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities.

(b) Related services personnel and paraprofessionals. The qualifications under paragraph (a) of this section must include qualifications for related services personnel and paraprofessionals that —

(1) 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; and

(2) Ensure that related services personnel who deliver services in their discipline or profession —

(i) Meet the requirements of paragraph (b)(1) of this section; and

(ii) 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 paragraph (a) of this section must ensure that each person employed as a public school special education teacher in the State who teaches in an elementary school, middle school, or secondary school is highly qualified as a special education teacher by the 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.

(d) Policy. In implementing this section, a State must adopt a policy that includes a requirement that LEAs 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 part shall be construed to create a right of action on behalf of an individual student or a class of students for the failure of a particular SEA or LEA employee to be highly qualified, or to prevent a parent from filing a complaint about staff qualifications with the SEA as provided for under this part.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(14))

§ 300.157 Performance goals and indicators.

The State must —

(a) Have in effect established goals for the performance of children with disabilities in the State that —

1. Promote the purposes of this part, as stated in § 300.1;

2. Are the same as the State’s objectives for progress by children in its definition of adequate yearly progress, including the State’s objectives for progress by children with disabilities, under section 1111(b)(2)(C) of the ESEA, 20 U.S.C. 6311;

3. Address graduation rates and dropout rates, as well as such other factors as the State may determine; and

4. Are consistent, to the extent appropriate, with any other goals and academic standards for children established by the State;

(b) Have in effect established performance indicators the State will use to assess progress toward achieving the goals described in paragraph (a) of this section, including measurable annual objectives for progress by children with disabilities under section 1111(b)(2)(C)(v)(II)(cc) of the ESEA, 20 U.S.C. 6311; and

(c) 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 paragraph (a) of this section, which may include elements of the reports required under section 1111(h) of the ESEA.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(15))

§§ 300.158-300.161 [Reserved]

§ 300.162 Supplementation of State, local, and other Federal funds.

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

(b) Prohibition against commingling.

(1) Funds paid to a State under this part must not be commingled with State funds.

(2) The requirement in paragraph (b)(1) of this section is satisfied by the use of a separate accounting system that includes an audit trail of the expenditure of funds paid to a State under this part. Separate bank accounts are not required. (See 34 CFR 76.702 (Fiscal control and fund accounting procedures).)

(c) State-level nonsupplanting. (1) Except as provided in § 300.202, funds paid to a State under Part B of the Act must be used to supplement the level of Federal, State, and
local funds (including funds that are not under the direct control of the SEA or LEAs) expended for special education and related services provided to children with disabilities under Part B of the Act, and in no case to supplant those Federal, State, and local funds.

(2) If the State provides clear and convincing evidence that all children with disabilities have available to them FAPE, the Secretary may waive, in whole or in part, the requirements of paragraph (c)(1) of this section if the Secretary concurs with the evidence provided by the State under §300.164.

(Authority: 20 U.S.C. 1412(a)(17))

§300.163 Maintenance of State financial support.

(a) General. A State must 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 reduces the allocation of funds under section 611 of the Act for any fiscal year following the fiscal year in which the State fails to comply with the requirement of paragraph (a) of this section 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 paragraph (a) of this section for a State, for one fiscal year at a time, if the Secretary determines that —

(1) 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

(2) The State meets the standard in §300.164 for a waiver of the requirement to supplement, and not to supplant, funds received under Part B of the Act.

(d) Subsequent years. If, for any fiscal year, a State fails to meet the requirement of paragraph (a) of this section, including any year for which the State is granted a waiver under paragraph (c) of this section, the financial support required of the State in future years under paragraph (a) of this section 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.

(Authority: 20 U.S.C. 1412(a)(18))

§300.164 Waiver of requirement regarding supplementing and not supplanting with Part B funds.

(a) Except as provided under §§300.202 through 300.205, funds paid to a State under Part B of the Act must be used to supplement and increase the level of Federal, State, and local funds (including funds that are not under the direct control of SEAs or LEAs) expended for special education and related services provided to children with disabilities under Part B of the Act and in no case to supplant those Federal, State, and local funds. A State may use funds it retains under §300.704(a) and (b) without regard to the prohibition on supplanting other funds.

(b) If a State provides clear and convincing evidence that all eligible children with disabilities throughout the State have FAPE available to them, the Secretary may waive for a period of one year in whole or in part the requirement under §300.162 (regarding State-level nonsupplanting) if the Secretary concurs with the evidence provided by the State.

(c) If a State wishes to request a waiver under this section, it must submit to the Secretary a written request that includes —

(1) An assurance that FAPE is currently available, and will remain available throughout the period that a waiver would be in effect, to all eligible children with disabilities throughout the State, regardless of the public agency that is responsible for providing FAPE to them. The assurance must be signed by an official who has the authority to provide that assurance as it applies to all eligible children with disabilities in the State;

(2) All evidence that the State wishes the Secretary to consider in determining whether all eligible children with disabilities have FAPE available to them, setting forth in detail —

(i) The basis on which the State has concluded that FAPE is available to all eligible children in the State; and

(ii) The procedures that the State will implement to ensure that FAPE remains available to all eligible children in the State, which must include —

(A) The State’s procedures under §300.111 for ensuring that all eligible children are identified, located and evaluated;

(B) The State’s procedures for monitoring public agencies to ensure that they comply with all requirements of this part;

(C) The State’s complaint procedures under §§300.151 through 300.153; and

(D) The State’s hearing procedures under §§300.511 through 300.516 and §§300.530 through 300.536;

(3) A summary of all State and Federal monitoring reports, and State complaint decisions (see §§300.151 through 300.153) and hearing decisions (see §§300.511 through 300.516 and §§300.530 through 300.536), issued within three years prior to the date of the State’s request for a waiver under this section, that includes any finding that FAPE has not been available to one or more eligible children, and evidence that FAPE is now available to all children addressed in those reports or decisions; and

(4) Evidence that the State, in determining that FAPE is currently available to all eligible children with disabilities in the State, has consulted with the State advisory panel under §300.167.
(d) If the Secretary determines that the request and supporting evidence submitted by the State makes a prima facie showing that FAPE is, and will remain, available to all eligible children with disabilities in the State, the Secretary, after notice to the public throughout the State, conducts a public hearing at which all interested persons and organizations may present evidence regarding the following issues:

(1) Whether FAPE is currently available to all eligible children with disabilities in the State.
(2) Whether the State will be able to ensure that FAPE remains available to all eligible children with disabilities in the State if the Secretary provides the requested waiver.

(e) Following the hearing, the Secretary, based on all submitted evidence, will provide a waiver, in whole or in part, for a period of one year if the Secretary finds that the State has provided clear and convincing evidence that FAPE is currently available to all eligible children with disabilities in the State, and the State will be able to ensure that FAPE remains available to all eligible children with disabilities in the State if the Secretary provides the requested waiver.

(f) A State may receive a waiver of the requirement of section 612(a)(18)(A) of the Act and § 300.164 if it satisfies the requirements of paragraphs (b) through (e) of this section.

(g) The Secretary may grant subsequent waivers for a period of one year each, if the Secretary determines that the State has provided clear and convincing evidence that FAPE is currently available to all eligible children with disabilities throughout the State have, and will continue to have throughout the one-year period of the waiver, FAPE available to them.

(Approved by the Office of Management and Budget under control number 1820-0030)
(Authority: 20 U.S.C. 1412(a)(20))

§ 300.165 Public participation.

(a) Prior to the adoption of any policies and procedures needed to comply with Part B of the Act (including any amendments to those policies and procedures), the State must ensure 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.

(b) Before submitting a State plan under this part, a State must comply with the public participation requirements in paragraph (a) of this section and those in 20 U.S.C. 1232d(b)(7).

(Approved by the Office of Management and Budget under control number 1820-0030)
(Authority: 20 U.S.C. 1412(a)(19); 20 U.S.C. 1232d(b)(7))

§ 300.166 Rule of construction.

In complying with §§ 300.162 and 300.163, a State may not use funds paid to it under this part to satisfy State-law mandated funding obligations to LEAs, including funding based on student attendance or enrollment, or inflation.

(Approved by the Office of Management and Budget under control number 1820-0030)

State Advisory Panel

§ 300.167 State advisory panel.

The State must establish and maintain 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.

(Approved by the Office of Management and Budget under control number 1820-0030)
(Authority: 20 U.S.C. 1412(a)(21)(A))

§ 300.168 Membership.

(a) General. The advisory panel must 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 —

1. Parents of children with disabilities (ages birth through 26);
2. Individuals with disabilities;
3. Teachers;
4. Representatives of institutions of higher education that prepare special education and related services personnel;
5. 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.);
6. Administrators of programs for children with disabilities;
7. Representatives of other State agencies involved in the financing or delivery of related services to children with disabilities;
8. Representatives of private schools and public charter schools;
9. Not less than one representative of a vocational, community, or business organization concerned with the provision of transition services to children with disabilities;
10. A representative from the State child welfare agency responsible for foster care; and
11. Representatives from the State juvenile and adult corrections agencies.

(b) Special rule. A majority of the members of the panel must be individuals with disabilities or parents of children with disabilities (ages birth through 26).

(Approved by the Office of Management and Budget under control number 1820-0030)
(Authority: 20 U.S.C. 1412(a)(21)(B) and (C))

§ 300.169 Duties.

The advisory panel must —

(a) Advise the SEA of unmet needs within the State in the education of children with disabilities;
(b) Comment publicly on any rules or regulations proposed by the State regarding the education of children with disabilities;

(c) Advise the SEA in developing evaluations and reporting on data to the Secretary under section 618 of the Act;

(d) Advise the SEA in developing corrective action plans to address findings identified in Federal monitoring reports under Part B of the Act; and

(e) Advise the SEA in developing and implementing policies relating to the coordination of services for children with disabilities.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(21)(D))

**Other Provisions Required for State Eligibility**

§ 300.170 Suspension and expulsion rates.

(a) General. The SEA must examine 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 —

1. Among LEAs in the State; or

2. Compared to the rates for nondisabled children within those agencies.

(b) Review and revision of policies. If the discrepancies described in paragraph (a) of this section are occurring, the SEA must review and, if appropriate, revise (or require the affected State agency or LEA 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 these policies, procedures, and practices comply with the Act.

(1) How amounts retained for State administration and State-level activities under § 300.704 will be used to meet the requirements of this part; and

2. How those amounts will be allocated among the activities described in § 300.704 to meet State priorities based on input from LEAs.

(b) If a State’s plans for use of its funds under § 300.704 for the forthcoming year do not change from the prior year, the State may submit a letter to that effect to meet the requirement in paragraph (a) of this section.

(c) The provisions of this section do not apply to the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the freely associated States.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1411(e)(5))

§ 300.172 Access to instructional materials.

(a) General. The State must —

1. Adopt the National Instructional Materials Accessibility Standard (NIMAS), published as appendix C to part 300, for the purposes of providing instructional materials to blind persons or other persons with print disabilities, in a timely manner after publication of the NIMAS in the Federal Register on July 19, 2006 (71 FR 41084); and

2. Establish a State definition of “timely manner” for purposes of paragraphs (b)(2) and (b)(3) of this section if the State is not coordinating with the National Instructional Materials Access Center (NIMAC) or (b)(3) and (c)(2) of this section if the State is coordinating with the NIMAC.

(b) Rights and responsibilities of SEA.

1. Nothing in this section shall be construed to require any SEA to coordinate with the NIMAC.

2. If an SEA chooses not to coordinate with the NIMAC, the SEA must provide an assurance to the Secretary that it will provide instructional materials to blind persons or other persons with print disabilities in a timely manner.

3. Nothing in this section relieves an SEA of its responsibility to ensure that children with disabilities who need instructional materials in accessible formats, but are not included under the definition of blind or other persons with print disabilities in § 300.172(6)(i)(i) or who need materials that cannot be produced from NIMAS files, receive those instructional materials in a timely manner.

4. In order to meet its responsibility under paragraphs (b)(2), (b)(3), and (c) of this section to ensure that children with disabilities who need instructional materials in accessible formats are provided those materials in a timely manner, the SEA must ensure that all public agencies take all reasonable steps to provide instructional materials in accessible formats to children with disabilities who need those instructional materials at the same time as other children receive instructional materials.

(c) Preparation and delivery of files. If an SEA chooses to coordinate with the NIMAC, as of December 3, 2006, the SEA must —

1. As part of any print instructional materials adoption process, procurement contract, or other practice or instrument used for purchase of print instructional materials, must 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 NIMAC electronic files containing the...
§ 300.175 SEA as provider of FAPE or direct services.

If the SEA provides FAPE to children with disabilities, or provides direct services to these children, the agency —

(a) Must comply with any additional requirements of §§ 300.201 and 300.202 and §§ 300.206 through 300.226 as if the agency were an LEA; and

(b) May use amounts that are otherwise available to the agency under Part B of the Act to serve those children without regard to § 300.202(b) (relating to excess costs).

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(25))

§ 300.176 Exception for prior State plans.

(a) General. If a State has on file with the Secretary policies and procedures approved by the Secretary that demonstrate that the State meets any requirement of § 300.100, including any policies and procedures filed under Part B of the Act as in effect before, December 3, 2004, the Secretary considers the State to have met the requirement for purposes of receiving a grant under Part B of the Act.

(b) Modifications made by a State.

(1) Subject to paragraph (b)(2) of this section, policies and procedures submitted by a State in accordance with this subpart remain in effect until the State submits to the Secretary the modifications that the State determines necessary.

(2) The provisions of this subpart apply to a modification to an application to the same extent and in the same manner that they apply to the original plan.

(c) Modifications required by the Secretary. The Secretary may require a State to modify its policies and procedures, but only to the extent necessary to ensure the State’s compliance with this part, if —

(1) After December 3, 2004, the provisions of the Act or the regulations in this part are amended;

(2) There is a new interpretation of this Act by a Federal court or a State’s highest court; or

(3) There is an official finding of noncompliance with Federal law or regulations.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(c)(2) and (3))

§ 300.177 States’ sovereign immunity and positive efforts to employ and advance qualified individuals with disabilities.

(a) States’ sovereign immunity.
with disabilities in programs assisted under Part B of the Act must make positive efforts to employ and advance qualified individuals with disabilities. Each recipient of assistance under Part B of the Act must make positive efforts to employ and advance in employment, qualified individuals with disabilities in programs assisted under Part B of the Act.

(b) Positive efforts to employ and advance qualified individuals with disabilities. Each recipient of assistance under Part B of the Act must make positive efforts to employ, and advance in employment, qualified individuals with disabilities in programs assisted under Part B of the Act.

§ 300.178 Determination by the Secretary that a State is eligible to receive a grant.

If the Secretary determines that a State is eligible to receive a grant under Part B of the Act, the Secretary notifies the State of that determination.

(Authority: 20 U.S.C. 1412(d)(1))

§ 300.179 Notice and hearing before determining that a State is not eligible to receive a grant.

(a) General.

(1) The Secretary does not make a final determination that a State is not eligible to receive a grant under Part B of the Act until providing the State —

(i) With reasonable notice; and

(ii) With an opportunity for a hearing.

(2) In implementing paragraph (a)(1)(i) of this section, the Secretary sends a written notice to the SEA by certified mail with return receipt requested.

(b) Content of notice. In the written notice described in paragraph (a)(2) of this section, the Secretary —

(1) States the basis on which the Secretary proposes to make a final determination that the State is not eligible;

(2) May describe possible options for resolving the issues;

(3) Advises the SEA that it may request a hearing and that the request for a hearing must be made not later than 30 days after it receives the notice of the proposed final determination that the State is not eligible; and

(4) Provides the SEA with information about the hearing procedures that will be followed.

(Authority: 20 U.S.C. 1412(d)(2))

§ 300.180 Hearing official or panel.

(a) If the SEA requests a hearing, the Secretary designates one or more individuals, either from the Department or elsewhere, not responsible for or connected with the administration of this program, to conduct a hearing.

(b) If more than one individual is designated, the Secretary designates one of those individuals as the Chief Hearing Official of the Hearing Panel. If one individual is designated, that individual is the Hearing Official.

(Authority: 20 U.S.C. 1412(d)(2))

§ 300.181 Hearing procedures.

(a) As used in §§ 300.179 through 300.184 the term party or parties means the following:

(1) An SEA that requests a hearing regarding the proposed disapproval of the State’s eligibility under this part.

(2) The Department official who administers the program of financial assistance under this part.

(3) A person, group or agency with an interest in and having relevant information about the case that has applied for and been granted leave to intervene by the Hearing Official or Hearing Panel.

(b) Within 15 days after receiving a request for a hearing, the Secretary designates a Hearing Official or Hearing Panel and notifies the parties.

(c) The Hearing Official or Hearing Panel may regulate the course of proceedings and the conduct of the parties during the proceedings. The Hearing Official or Hearing Panel takes all steps necessary to conduct a fair and impartial proceeding, to avoid delay, and to maintain order, including the following:

(1) The Hearing Official or Hearing Panel may hold conferences or other types of appropriate proceedings to clarify, simplify, or define the issues or to consider other matters that may aid in the disposition of the case.

(2) The Hearing Official or Hearing Panel may schedule a prehearing conference with the Hearing Official or Hearing Panel and the parties.

(3) Any party may request the Hearing Official or Hearing Panel to schedule a prehearing or other conference. The Hearing Official or Hearing Panel decides whether a conference is necessary and notifies all parties.

(4) At a prehearing or other conference, the Hearing Official or Hearing Panel and the parties may consider subjects such as —

(i) Narrowing and clarifying issues;

(ii) Assisting the parties in reaching agreements and stipulations;

(iii) Clarifying the positions of the parties;

(iv) Determining whether an evidentiary hearing or oral argument should be held; and

(v) Setting dates for —

(A) The exchange of written documents;

(B) The receipt of comments from the parties on the need for oral argument or evidentiary hearing;
(C) Further proceedings before the Hearing Official or Hearing Panel (including an evidentiary hearing or oral argument, if either is scheduled);
(D) Requesting the names of witnesses each party wishes to present at an evidentiary hearing and estimation of time for each presentation; or
(E) Completion of the review and the initial decision of the Hearing Official or Hearing Panel.

(5) A prehearing or other conference held under paragraph (b)(4) of this section may be conducted by telephone conference call.

(6) At a prehearing or other conference, the parties must be prepared to discuss the subjects listed in paragraph (b)(4) of this section.

(7) Following a prehearing or other conference the Hearing Official or Hearing Panel may issue a written statement describing the issues raised, the action taken, and the stipulations and agreements reached by the parties.

(d) The Hearing Official or Hearing Panel may require parties to state their positions and to provide all or part of the evidence in writing.

(e) The Hearing Official or Hearing Panel may require parties to present testimony through affidavits and to conduct cross-examination through interrogatories.

(f) The Hearing Official or Hearing Panel may direct the parties to exchange relevant documents or information and lists of witnesses, and to send copies to the Hearing Official or Panel.

(g) The Hearing Official or Hearing Panel may receive, rule on, exclude, or limit evidence at any stage of the proceedings.

(h) The Hearing Official or Hearing Panel may rule on motions and other issues at any stage of the proceedings.

(i) The Hearing Official or Hearing Panel may examine witnesses.

(j) The Hearing Official or Hearing Panel may set reasonable time limits for submission of written documents.

(k) The Hearing Official or Hearing Panel may refuse to consider documents or other submissions if they are not submitted in a timely manner unless good cause is shown.

(l) The Hearing Official or Hearing Panel may interpret applicable statutes and regulations but may not waive them or rule on their validity.

(m)(1) The parties must present their positions through briefs and the submission of other documents and may request an oral argument or evidentiary hearing. The Hearing Official or Hearing Panel shall determine whether an oral argument or an evidentiary hearing is needed to clarify the positions of the parties.

(2) The Hearing Official or Hearing Panel gives each party an opportunity to be represented by counsel.

(n) If the Hearing Official or Hearing Panel determines that an evidentiary hearing would materially assist the resolution of the matter, the Hearing Official or Hearing Panel gives each party, in addition to the opportunity to be represented by counsel —

(1) An opportunity to present witnesses on the party’s behalf; and

(2) An opportunity to cross-examine witnesses either orally or with written questions.

(o) The Hearing Official or Hearing Panel accepts any evidence that it finds is relevant and material to the proceedings and is not unduly repetitious.

(p)(1) The Hearing Official or Hearing Panel —

(i) Arranges for the preparation of a transcript of each hearing;

(ii) Retains the original transcript as part of the record of the hearing; and

(iii) Provides one copy of the transcript to each party.

(2) Additional copies of the transcript are available on request and with payment of the reproduction fee.

(q) Each party must file with the Hearing Official or Hearing Panel all written motions, briefs, and other documents and must at the same time provide a copy to the other parties to the proceedings.

(Authority: 20 U.S.C. 1412(d)(2))

§ 300.182 Initial decision; final decision.

(a) The Hearing Official or Hearing Panel prepares an initial written decision that addresses each of the points in the notice sent by the Secretary to the SEA under § 300.179 including any amendments to or further clarifications of the issues, under § 300.181(c)(7).

(b) The initial decision of a Hearing Panel is made by a majority of Panel members.

(c) The Hearing Official or Hearing Panel mails, by certified mail with return receipt requested, a copy of the initial decision to each party (or to the party’s counsel) and to the Secretary, with a notice stating that each party has an opportunity to submit written comments regarding the decision to the Secretary.

(d) Each party may file comments and recommendations on the initial decision with the Hearing Official or Hearing Panel within 15 days of the date the party receives the Panel’s decision.

(e) The Hearing Official or Hearing Panel sends a copy of a party’s initial comments and recommendations to the other parties by certified mail with return receipt requested. Each party may file responsive comments and recommendations with the Hearing Official or Hearing Panel within seven days of the date the party receives the initial comments and recommendations.

(f) The Hearing Official or Hearing Panel forwards the parties’ initial and responsive comments on the initial decision to the Secretary who reviews the initial decision and issues a final decision.

(g) The initial decision of the Hearing Official or Hearing Panel becomes the final decision of the Secretary unless, within 25 days after the end of the time for receipt of written comments and recommendations, the Secretary

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may be made upon the other party by facsimile

(e) If agreed upon by the parties, service of a document
by hand delivery or by mail within a reasonable period of
applicable, may require the filing of a follow-up hard copy
Secretary, the Hearing Official, or the Hearing Panel, as

(d) If a document is filed by facsimile transmission, the
document was received by the Department.

(c) A party filing by facsimile transmission is responsible
for confirming that a complete and legible copy of the

(b) The filing date under paragraph (a) of this section is
the date the document is —

(1) Hand-delivered;
(2) Mailed; or
(3) Sent by facsimile transmission.

(a) Any written submission by a party under §§ 300.179
through 300.184 must be filed by hand delivery, by mail, or
by facsimile transmission. The Secretary discourages the
use of facsimile transmission for documents longer than
five pages.

(b) The filing date under paragraph (a) of this section is the
date the document is —

(1) Hand-delivered;
(2) Mailed; or
(3) Sent by facsimile transmission.

(c) A party filing by facsimile transmission is responsible
for confirming that a complete and legible copy of the
document was received by the Department.

(d) If a document is filed by facsimile transmission, the
Secretary, the Hearing Official, or the Hearing Panel, as
applicable, may require the filing of a follow-up hard copy
by hand delivery or by mail within a reasonable period of
time.

(e) If agreed upon by the parties, service of a document
may be made upon the other party by facsimile
transmission.

§ 300.183 Filing requirements.

§ 300.185 [Reserved]

§ 300.186 Assistance under other Federal programs.

Part B of the Act may not be construed to permit a State
to reduce medical and other assistance available, or to alter
eligibility, under titles V and XIX of the Social Security
Act with respect to the provision of FAPE for children with
disabilities in the State.

By-pass for Children in Private Schools

§ 300.190 By-pass — general.

(a) If, on December 2, 1983, the date of enactment of the
Education of the Handicapped Act Amendments of 1983,
an SEA 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 section 612(a)(10)(A) of
the Act, or if the Secretary determines that an SEA, LEA,
or other public agency 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 these children
through arrangements which shall be subject to the
requirements of section 612(a)(10)(A) of the Act.

(b) The Secretary waives the requirement of section
612(a)(10)(A) of the Act and of §§ 300.131 through
300.144 if the Secretary implements a by-pass.

Provisions for services under a by-pass.

(a) Before implementing a by-pass, the Secretary
consults with appropriate public and private school
officials, including SEA officials, in the affected State, and
as appropriate, LEA or other public agency officials to
consider matters such as —

(1) Any prohibition imposed by State law that results
in the need for a by-pass; and
(2) The scope and nature of the services required by
private school children with disabilities in the State,
and the number of children to be served under the by-
pass.

(b) After determining that a by-pass is required, the
Secretary arranges for the provision of services to private
school children with disabilities in the State, LEA or other
public agency in a manner consistent with the requirements
of section 612(a)(10)(A) of the Act and §§ 300.131 through
300.144 by providing services through one or more
agreements with appropriate parties.

(c) For any fiscal year that a by-pass is implemented, the
Secretary determines the maximum amount to be paid to
the providers of services by multiplying —

(1) A per child amount determined by dividing the
total amount received by the State under Part B of the
Act for the fiscal year by the number of children with
disabilities served in the prior year as reported to the
Secretary under section 618 of the Act; by
§ 300.192 Notice of intent to implement a by-pass.

(a) Before taking any final action to implement a by-pass, the Secretary provides the SEA and, as appropriate, LEA or other public agency with written notice.

(b) In the written notice, the Secretary —

(1) States the reasons for the proposed by-pass in sufficient detail to allow the SEA and, as appropriate, LEA or other public agency to respond; and

(2) Advises the SEA and, as appropriate, LEA or other public agency that it has a specific period of time (at least 45 days) from receipt of the written notice to submit written objections to the proposed by-pass and that it may request in writing the opportunity for a hearing to show cause why a by-pass should not be implemented.

(c) The Secretary sends the notice to the SEA and, as appropriate, LEA or other public agency by certified mail with return receipt requested.

(Authority: 20 U.S.C. 1412(f)(2))

§ 300.193 Request to show cause.

An SEA, LEA or other public agency in receipt of a notice under § 300.192 that seeks an opportunity to show cause why a by-pass should not be implemented must submit a written request for a show cause hearing to the Secretary, within the specified time period in the written notice in § 300.192(b)(2).

(Authority: 20 U.S.C. 1412(f)(3))

§ 300.194 Show cause hearing.

(a) If a show cause hearing is requested, the Secretary —

(1) Notifies the SEA and affected LEA or other public agency, and other appropriate public and private school officials of the time and place for the hearing;

(2) Designates a person to conduct the show cause hearing. The designee must not have had any responsibility for the matter brought for a hearing; and

(3) Notifies the SEA, LEA or other public agency, and representatives of private schools that they may be represented by legal counsel and submit oral or written evidence and arguments at the hearing.

(b) At the show cause hearing, the designee considers matters such as —

(1) The necessity for implementing a by-pass;

(2) Possible factual errors in the written notice of intent to implement a by-pass; and

(3) The objections raised by public and private school representatives.

(c) The designee may regulate the course of the proceedings and the conduct of parties during the pendency of the proceedings. The designee takes all steps necessary to conduct a fair and impartial proceeding, to avoid delay, and to maintain order.

(d) The designee has no authority to require or conduct discovery.

(e) The designee may interpret applicable statutes and regulations, but may not waive them or rule on their validity.

(f) The designee arranges for the preparation, retention, and, if appropriate, dissemination of the record of the hearing.

(Authority: 20 U.S.C. 1412(f)(3))

§ 300.195 Decision.

(a) The designee who conducts the show cause hearing —

(1) Within 120 days after the record of a show cause hearing is closed, issues a written decision that includes a statement of findings; and

(2) Submits a copy of the decision to the Secretary and sends a copy to each party by certified mail with return receipt requested.

(b) Each party may submit comments and recommendations on the designee’s decision to the Secretary within 30 days of the date the party receives the designee’s decision.

(c) The Secretary adopts, reverses, or modifies the designee’s decision and notifies all parties to the show cause hearing of the Secretary’s final action. That notice is sent by certified mail with return receipt requested.

(Authority: 20 U.S.C. 1412(f)(3))

§ 300.196 Filing requirements.

(a) Any written submission under § 300.194 must be filed by hand-delivery, by mail, or by facsimile transmission. The Secretary discourages the use of facsimile transmission for documents longer than five pages.

(b) The filing date under paragraph (a) of this section is the date the document is —
§ 300.197 Judicial review.

If dissatisfied with the Secretary’s final action, the SEA may, within 60 days after notice of that action, file a petition for review with the United States Court of Appeals for the circuit in which the State is located. The procedures for judicial review are described in section 612(f)(3) (B) through (D) of the Act.

(Authority: 20 U.S.C. 1412(f)(3))

§ 300.198 Continuation of a by-pass.

The Secretary continues a by-pass until the Secretary determines that the SEA, LEA or other public agency will meet the requirements for providing services to private school children.

(Authority: 20 U.S.C. 1412(f)(2)(C))

State Administration

§ 300.199 State administration.

(a) Rulemaking. Each State that receives funds under Part B of the Act must —

1. Ensure that any State rules, regulations, and policies relating to this part conform to the purposes of this part;
2. Identify in writing to LEAs located in the State and the Secretary any such rule, regulation, or policy as a State-imposed requirement that is not required by Part B of the Act and Federal regulations;
3. Minimize the number of rules, regulations, and policies to which the LEAs and schools located in the State are subject under Part B of the Act.

(b) Support and facilitation. State rules, regulations, and policies under Part B of the Act must support and facilitate LEA and school-level system improvement designed to enable children with disabilities to meet the challenging State student academic achievement standards.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1407)

Subpart C — Local Educational Agency Eligibility

§ 300.200 Condition of assistance.

An LEA is eligible for assistance under Part B of the Act for a fiscal year if the agency submits a plan that provides assurances to the SEA that the LEA meets each of the conditions in §§ 300.201 through 300.213.

(Authority: 20 U.S.C. 1413(a))

§ 300.201 Consistency with State policies.

The LEA, in providing for the education of children with disabilities within its jurisdiction, must have in effect policies, procedures, and programs that are consistent with the State policies and procedures established under §§ 300.101 through 300.163, and §§ 300.165 through 300.174.

(Approved by the Office of Management and Budget under control number 1820-0600)

(Authority: 20 U.S.C. 1413(a)(1))

§ 300.202 Use of amounts.

(a) General. Amounts provided to the LEA under Part B of the Act —

1. Must be expended in accordance with the applicable provisions of this part;
2. Must be used only to pay the excess costs of providing special education and related services to children with disabilities, consistent with paragraph (b) of this section; and
3. Must be used to supplement State, local, and other Federal funds and not to supplant those funds.

(b) Excess cost requirement —

1. General. (i) The excess cost requirement prevents an LEA from using funds provided under Part B of the Act to pay for all of the costs directly attributable to the education of a child with a disability, subject to paragraph (b)(1)(ii) of this section.
(ii) The excess cost requirement does not prevent an LEA from using Part B funds to pay for all of the costs directly attributable to the education of a child with a disability in any of the ages 3, 4, 5, 18, 19, 20, or 21, if no local or State funds are available for nondisabled children of these ages. However, the LEA must comply with the nonsupplanting and other requirements of this part in providing the education and services for these children.
2. (i) An LEA meets the excess cost requirement if it has spent at least a minimum average amount for the education of its children with disabilities before funds under Part B of the Act are used.

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§ 300.203 Maintenance of effort.

(a) General. Except as provided in §§ 300.204 and 300.205, funds provided to an LEA under Part B of the Act must not be used to reduce the level of expenditures for the education of children with disabilities made by the LEA from local funds below the level of those expenditures for the preceding fiscal year.

(b) Standard. (1) Except as provided in paragraph (b)(2) of this section, the SEA must determine that an LEA complies with paragraph (a) of this section for purposes of establishing the LEA’s eligibility for an award for a fiscal year if the LEA budgets, for the education of children with disabilities, at least the same total or per capita amount from either of the following sources as the LEA spent for that purpose from the same source for the most recent prior year for which information is available:

   (i) Local funds only.

   (ii) The combination of State and local funds.

(2) An LEA that relies on paragraph (b)(1)(i) of this section for any fiscal year must ensure that the amount of local funds it budgets for the education of children with disabilities in that year is at least the same, either in total or per capita, as the amount it spent for that purpose in the most recent fiscal year for which information is available and the standard in paragraph (b)(1)(i) of this section was used to establish its compliance with this section.

(3) The SEA may not consider any expenditures made from funds provided by the Federal Government for which the SEA is required to account to the Federal Government or for which the LEA is required to account to the Federal Government directly or through the SEA in determining an LEA’s compliance with the requirement in paragraph (a) of this section.

(Approved by the Office of Management and Budget under control number 1820-0600)


§ 300.204 Exception to maintenance of effort.

Notwithstanding the restriction in § 300.203(a), an LEA may reduce the level of expenditures by the LEA under Part B of the Act below the level of those expenditures for the preceding fiscal year if the reduction is attributable to any of the following:

   (a) The voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel.

   (b) A decrease in the enrollment of children with disabilities.

   (c) 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 SEA, because the child —

      (1) Has left the jurisdiction of the agency;

      (2) Has reached the age at which the obligation of the agency to provide FAPE to the child has terminated; or

      (3) No longer needs the program of special education.

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

   (e) The assumption of cost by the high cost fund under § 300.705(e).

(Approved by the Office of Management and Budget under control number 1820-0600)


§ 300.205 Adjustment to local fiscal efforts in certain fiscal years.

(a) Amounts in excess. Notwithstanding § 300.202(a)(2) and (b) and § 300.203(a), and except as provided in paragraph (d) of this section and § 300.230(e)(2), for any fiscal year for which the allocation received by an LEA under § 300.705 exceeds the amount the LEA received for the previous fiscal year, the LEA may reduce the level of expenditures otherwise required by § 300.203(a) by not more than 50 percent of the amount of that excess.

(b) Use of amounts to carry out activities under ESEA. If an LEA exercises the authority under paragraph (a) of this section, the LEA must use an amount of local funds equal to the reduction in expenditures under paragraph (a) of this section to carry out activities that could be supported with funds under the ESEA regardless of whether the LEA is using funds under the ESEA for those activities.

(c) State prohibition. Notwithstanding paragraph (a) of this section, if an SEA determines that an LEA is unable to establish and maintain programs of FAPE that meet the requirements of section 613(a) of the Act and this part or the SEA has taken action against the LEA under section 616 of the Act and subpart F of these regulations, the SEA must prohibit the LEA from reducing the level of expenditures under paragraph (a) of this section for that fiscal year.

(d) Special rule. The amount of funds expended by an LEA for early intervening services under § 300.226 shall count toward the maximum amount of expenditures that the LEA may reduce under paragraph (a) of this section.
§ 300.206 Schoolwide programs under title I of the ESEA.

(a) General. Notwithstanding the provisions of §§ 300.202 and 300.203 or any other provision of Part B of the Act, an LEA may use funds received under Part B of the Act for any fiscal year to carry out a schoolwide program under section 1114 of the ESEA, except that the amount used in any schoolwide program may not exceed —

(1)(i) The amount received by the LEA under Part B of the Act for that fiscal year; divided by
(ii) The number of children with disabilities in the jurisdiction of the LEA; and multiplied by
(2) The number of children with disabilities participating in the schoolwide program.

(b) Funding conditions. The funds described in paragraph (a) of this section are subject to the following conditions:

(1) The funds must be considered as Federal Part B funds for purposes of the calculations required by § 300.202(a)(2) and (a)(3).
(2) The funds may be used without regard to the requirements of § 300.202(a)(1).

(c) Meeting other Part B requirements. Except as provided in paragraph (b) of this section, all other requirements of Part B of the Act must be met by an LEA using Part B funds in accordance with paragraph (a) of this section, including ensuring that children with disabilities in schoolwide program schools —

(1) Receive services in accordance with a properly developed IEP; and
(2) Are afforded all of the rights and services guaranteed to children with disabilities under the Act.

(Approved by the Office of Management and Budget under control number 1820-0600)

(Authority: 20 U.S.C. 1413(a)(2)(C))

§ 300.207 Personnel development.

The LEA must ensure that all personnel necessary to carry out Part B of the Act are appropriately and adequately prepared, subject to the requirements of § 300.156 (related to personnel qualifications) and section 2122 of the ESEA.

(Approved by the Office of Management and Budget under control number 1820-0600)

(Authority: 20 U.S.C. 1413(a)(2)(D))

§ 300.208 Permissive use of funds.

(a) Uses. Notwithstanding §§ 300.202, 300.203(a), and 300.162(b), funds provided to an LEA under Part B of the Act may be used for the following activities:

(1) 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 IEP of the child, even if one or more nondisabled children benefit from these services.
(2) Early intervening services. To develop and implement coordinated, early intervening educational services in accordance with § 300.226.
(3) High cost special education and related services. To establish and implement cost or risk sharing funds, consortia, or cooperatives for the LEA itself, or for LEAs working in a consortium of which the LEA is a part, to pay for high cost special education and related services.

(b) Administrative case management. An LEA may use funds received under Part B of the Act to purchase appropriate technology for recordkeeping, data collection, and related case management activities of teachers and related services personnel providing services described in the IEP of children with disabilities, that is needed for the implementation of those case management activities.

(Approved by the Office of Management and Budget under control number 1820-0600)

(Authority: 20 U.S.C. 1413(a)(4))

§ 300.209 Treatment of charter schools and their students.

(a) Rights of children with disabilities. Children with disabilities who attend public charter schools and their parents retain all rights under this part.

(b) Charter schools that are public schools of the LEA.

(1) In carrying out Part B of the Act and these regulations with respect to charter schools that are public schools of the LEA, the LEA must —

(i) Serve children with disabilities attending those charter schools in the same manner as the LEA 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 LEA has a policy or practice of providing such services on the site to its other public schools; and
(ii) Provide funds under Part B of the Act to those charter schools —

(A) On the same basis as the LEA provides funds to the LEA’s other public schools, including proportional distribution based on relative enrollment of children with disabilities; and
(B) At the same time as the LEA distributes other Federal funds to the LEA’s other public schools, consistent with the State’s charter school law.

(2) If the public charter school is a school of an LEA that receives funding under § 300.705 and includes other public schools —

(i) The LEA is responsible for ensuring that the requirements of this part are met, unless State law assigns that responsibility to some other entity; and
(ii) The LEA must meet the requirements of paragraph (b)(1) of this section.
(c) Public charter schools that are LEAs. If the public charter school is an LEA, consistent with § 300.28, that receives funding under § 300.705, that charter school is responsible for ensuring that the requirements of this part are met, unless State law assigns that responsibility to some other entity.

(d) Public charter schools that are not an LEA or a school that is part of an LEA.

(1) If the public charter school is not an LEA receiving funding under § 300.705, or a school that is part of an LEA receiving funding under § 300.705, the SEA is responsible for ensuring that the requirements of this part are met.

(2) Paragraph (d)(1) of this section does not preclude a State from assigning initial responsibility for ensuring the requirements of this part are met to another entity. However, the SEA must maintain the ultimate responsibility for ensuring compliance with this part, consistent with § 300.149.

(Authority: 20 U.S.C. 1413(a)(5))

§ 300.210 Purchase of instructional materials.

(a) General. Not later than December 3, 2006, an LEA that chooses to coordinate with the National Instructional Materials Access Center (NIMAC), when purchasing print instructional materials, must acquire those instructional materials in the same manner, and subject to the same conditions as an SEA under § 300.172.

(b) Rights of LEA.

(1) Nothing in this section shall be construed to require an LEA to coordinate with the NIMAC.

(2) If an LEA chooses not to coordinate with the NIMAC, the LEA must provide an assurance to the SEA that the LEA will provide instructional materials to blind persons or other persons with print disabilities in a timely manner.

(3) Nothing in this section relieves an LEA of its responsibility to ensure that children with disabilities who need instructional materials in accessible formats but are not included under the definition of blind or other persons with print disabilities in § 300.172(e)(1)(i) or who need materials that cannot be produced from NIMAS files, receive those instructional materials in a timely manner.

(Approved by the Office of Management and Budget under control number 1820-0600)

(Authority: 20 U.S.C. 1413(a)(6))

§ 300.211 Information for SEA.

The LEA must provide the SEA with information necessary to enable the SEA to carry out its duties under Part B of the Act, including, with respect to §§ 300.157 and 300.160, information relating to the performance of children with disabilities participating in programs carried out under Part B of the Act.

(Approved by the Office of Management and Budget under control number 1820-0600)

§ 300.212 Public information.

The LEA must make available to parents of children with disabilities and to the general public all documents relating to the eligibility of the agency under Part B of the Act.

(Approved by the Office of Management and Budget under control number 1820-0600)

(Authority: 20 U.S.C. 1413(a)(8))

§ 300.213 Records regarding migratory children with disabilities.

The LEA must cooperate in the Secretary’s efforts under section 1308 of the ESEA to ensure the linkage of records pertaining to migratory children with disabilities for the purpose of electronically exchanging, among the States, health and educational information regarding those children.

(Approved by the Office of Management and Budget under control number 1820-0600)

(Authority: 20 U.S.C. 1413(a)(9))

§§ 300.214-300.219 [Reserved]
§ 300.221 Notification of LEA or State agency in case of ineligibility.

If the SEA determines that an LEA or State agency is not eligible under Part B of the Act, then the SEA must —

(a) Notify the LEA or State agency of that determination; and

(b) Provide the LEA or State agency with reasonable notice and an opportunity for a hearing.

(Authority: 20 U.S.C. 1413(c))

§ 300.222 LEA and State agency compliance.

(a) General. If the SEA, after reasonable notice and an opportunity for a hearing, finds that an LEA or State agency that has been determined to be eligible under this subpart is failing to comply with any requirement described in §§ 300.201 through 300.213, the SEA must reduce or must not provide any further payments to the LEA or State agency until the SEA is satisfied that the LEA or State agency is complying with that requirement.

(b) Notice requirement. Any State agency or LEA in receipt of a notice described in paragraph (a) of this section must, by means of public notice, take the measures necessary to bring the pendency of an action pursuant to this section to the attention of the public within the jurisdiction of the agency.

(c) Consideration. In carrying out its responsibilities under this section, each SEA must consider any decision resulting from a hearing held under §§ 300.511 through 300.533 that is adverse to the LEA or State agency involved in the decision.

(Authority: 20 U.S.C. 1413(d))

§ 300.223 Joint establishment of eligibility.

(a) General. An SEA may require an LEA to establish its eligibility jointly with another LEA if the SEA determines that the LEA will be ineligible under this subpart because the agency will not be able to establish and maintain programs of sufficient size and scope to effectively meet the needs of children with disabilities.

(b) Charter school exception. An SEA may not require a charter school that is an LEA to jointly establish its eligibility under paragraph (a) of this section unless the charter school is explicitly permitted to do so under the State’s charter school statute.

(c) Amount of payments. If an SEA requires the joint establishment of eligibility under paragraph (a) of this section, the total amount of funds made available to the affected LEAs must be equal to the sum of the payments that each LEA would have received under § 300.705 if the agencies were eligible for those payments.

(Authority: 20 U.S.C. 1413(e)(1) and (2))

§ 300.224 Requirements for establishing eligibility.

(a) Requirements for LEAs in general. LEAs that establish joint eligibility under this section must —

(1) Adopt policies and procedures that are consistent with the State’s policies and procedures under §§ 300.101 through 300.163, and §§ 300.165 through 300.174; and

(2) Be jointly responsible for implementing programs that receive assistance under Part B of the Act.

(b) Requirements for educational service agencies in general. If an educational service agency is required by State law to carry out programs under Part B of the Act, the joint responsibilities given to LEAs under Part B of the Act —

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

(2) Must be carried out only by that educational service agency.

(c) Additional requirement. Notwithstanding any other provision of §§ 300.223 through 300.224, an educational service agency must provide for the education of children with disabilities in the least restrictive environment, as required by § 300.112.

(Authority: 20 U.S.C. 1413(e)(3) and (4))

§ 300.225 Early intervening services.

(a) General. An LEA may not use more than 15 percent of the amount the LEA receives under Part B of the Act for any fiscal year, less any amount reduced by the LEA pursuant to § 300.205, 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 three) who are not currently identified as needing special education or related services, but who need additional academic and behavioral support to succeed in a general education environment. (See Appendix D for examples of how § 300.205(d), regarding local maintenance of effort, and § 300.226(a) affect one another.)

(b) Activities. In implementing coordinated, early intervening services under this section, an LEA may carry out activities that include —

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

(2) Providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction.

(c) Construction. Nothing in this section shall be construed to either limit or create a right to FAPE under Part B of the Act or to delay appropriate evaluation of a child suspected of having a disability.
§ 300.227 Direct services by the SEA.

(a) General.

(1) An SEA must use the payments that would otherwise have been available to an LEA or to a State agency to provide special education and related services directly to children with disabilities residing in the area served by that LEA, or for whom that State agency is responsible, if the SEA determines that the LEA or State agency —

(i) Has not provided the information needed to establish the eligibility of the LEA or State agency, or elected not to apply for its Part B allotment, under Part B of the Act;

(ii) Is unable to establish and maintain programs of FAPE that meet the requirements of this part;

(iii) Is unable or unwilling to be consolidated with one or more LEAs in order to establish and maintain the programs; or

(iv) Has one or more children with disabilities who can best be served by a regional or State program or service delivery system designed to meet the needs of these children.

(2) SEA administrative procedures.

(i) In meeting the requirements in paragraph (a)(1) of this section, the SEA may provide special education and related services directly, by contract, or through other arrangements.

(ii) The excess cost requirements of § 300.202(b) do not apply to the SEA.

(b) Manner and location of education and services. The SEA may provide special education and related services under paragraph (a) of this section in the manner and at the locations (including regional or State centers) as the SEA considers appropriate. The education and services must be provided in accordance with this part.

(Authority: 20 U.S.C. 1413(g))

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§ 300.229 Disciplinary information.

(a) The State may require that a public 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 the statement to the same extent that the disciplinary information is included in, and transmitted with, the student records of nondisabled children.

(b) 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.

(c) If the State adopts such a policy, the child transfers from one school to another, the transmission of any of the child’s records must include both the child’s current IEP and any statement of current or previous disciplinary action that has been taken against the child.

(Authority: 20 U.S.C. 1413(i))
section, to support activities authorized under the ESEA, or to support need-based student or teacher higher education programs.

(d) Report. For each fiscal year for which an SEA exercises the authority under paragraph (a) of this section, the SEA must report to the Secretary —

(1) The amount of expenditures reduced pursuant to that paragraph; and
(2) The activities that were funded pursuant to paragraph (e) of this section.

(e) Limitation.

(1) Notwithstanding paragraph (a) of this section, an SEA may not reduce the level of expenditures described in paragraph (a) of this section if any LEA 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 LEA receive FAPE from the combination of Federal funds received under Part B of the Act and State funds received from the SEA.

(2) If an SEA exercises the authority under paragraph (a) of this section, LEAs in the State may not reduce local effort under § 300.205 by more than the reduction in the State funds they receive.

(Authority: 20 U.S.C. 1413(j))

Subpart D — Evaluations, Eligibility Determinations, Individualized Education Programs, and Educational Placements

Parental Consent

§ 300.300 Parental consent.

(a) Parental consent for initial evaluation.

(1)(i) The public agency proposing to conduct an initial evaluation to determine if a child qualifies as a child with a disability under § 300.8 must, after providing notice consistent with §§ 300.503 and 300.504, obtain informed consent, consistent with § 300.9, from the parent of the child before conducting the evaluation.

(ii) Parental consent for initial evaluation must not be construed as consent for initial provision of special education and related services.

(iii) The public agency must make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability.

(2) For initial evaluations only, if the child is a ward of the State and is not residing with the child’s parent, the public agency is not required to obtain informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability if —

(i) Despite reasonable efforts to do so, the public agency cannot discover the whereabouts of the parent of the child;

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

(iii) 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.

(3)(i) If the parent of a child enrolled in public school or seeking to be enrolled in public school does not provide consent for initial evaluation under paragraph (a)(1) of this section, or the parent fails to respond to a request to provide consent, the public agency may, but is not required to, pursue the initial evaluation of the child by utilizing the procedural safeguards in subpart E of this part (including the mediation procedures under § 300.506 or the due process procedures under §§ 300.507 through 300.516), if appropriate, except to the extent inconsistent with State law relating to such parental consent.

(ii) The public agency does not violate its obligation under § 300.111 and §§ 300.301 through 300.311 if it declines to pursue the evaluation.

(b) Parental consent for services.

(1) A public agency that is responsible for making FAPE available to a child with a disability must obtain informed consent from the parent of the child before the initial provision of special education and related services to the child.

(2) The public agency must make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the child.

(3) If the parent of a child fails to respond to a request for, or refuses to consent to, the initial provision of special education and related services, the public agency—

(i) May not use the procedures in subpart E of this part (including the mediation procedures under Sec. 300.506 or the due process procedures under Sec. Sec. 300.507 through 300.516) in order to obtain agreement or a ruling that the services may be provided to the child;

(ii) Will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with the special education and related services for which the parent refuses to or fails to provide consent; and

(iii) Is not required to convene an IEP Team meeting or develop an IEP under Sec. Sec. 300.320 and 300.324 for the child.

(4) If, at any time subsequent to the initial provision of special education and related services, the parent of a child revokes consent in writing for the continued provision of special education and related services, the public agency—
(i) May not continue to provide special education and related services to the child, but must provide prior written notice in accordance with Sec. 300.503 before ceasing the provision of special education and related services;
(ii) May not use the procedures in subpart E of this part (including the mediation procedures under Sec. 300.506 or the due process procedures under Sec. Sec. 300.507 through 300.516) in order to obtain agreement or a ruling that the services may be provided to the child;
(iii) Will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with further special education and related services; and
(iv) Is not required to convene an IEP Team meeting or develop an IEP under Sec. Sec. 300.320 and 300.324 for the child for further provision of special education and related services.

(c) Parental consent for reevaluations.
   (1) Subject to paragraph (c)(2) of this section, each public agency —
      (i) Must obtain informed parental consent, in accordance with § 300.300(a)(1), prior to conducting any reevaluation of a child with a disability.
      (ii) If the parent refuses to consent to the reevaluation, the public agency may, but is not required to, pursue the reevaluation by using the consent override procedures described in paragraph (a)(3) of this section.
      (iii) The public agency does not violate its obligation under § 300.111 and §§ 300.301 through 300.311 if it declines to pursue the evaluation or reevaluation.
   (2) The informed parental consent described in paragraph (c)(1) of this section need not be obtained if the public agency can demonstrate that —
      (i) It made reasonable efforts to obtain such consent; and
      (ii) The child’s parent has failed to respond.

(d) Other consent requirements.
   (1) Parental consent is not required before —
      (i) Reviewing existing data as part of an evaluation or a reevaluation; or
      (ii) Administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children.
   (2) In addition to the parental consent requirements described in paragraphs (a), (b), and (c) of this section, a State may require parental consent for other services and activities under this part if it ensures that each public agency in the State establishes and implements effective procedures to ensure that a parent’s refusal to consent does not result in a failure to provide the child with FAPE.

   (3) A public agency may not use a parent’s refusal to consent to one service or activity under paragraphs (a), (b), (c), or (d)(2) of this section to deny the parent or child any other service, benefit, or activity of the public agency, except as required by this part.

   (4)(i) If a parent of a child who is home schooled or placed in a private school by the parents at their own expense does not provide consent for the initial evaluation or the reevaluation, or the parent fails to respond to a request to provide consent, the public agency may not use the consent override procedures (described in paragraphs (a)(3) and (c)(1) of this section); and

   (ii) The public agency is not required to consider the child as eligible for services under §§ 300.132 through 300.144.

   (5) To meet the reasonable efforts requirement in paragraphs (a)(1)(iii), (a)(2)(i), (b)(2), and (c)(2)(i) of this section, the public agency must document its attempts to obtain parental consent using the procedures in § 300.322(d).

[Amended by 73 F.R. 73005, 73027 (Dec. 1, 2008).
(Authority: 20 U.S.C. 1414(a)(1)(D) and 1414(c))

Evaluations and Reevaluations

§ 300.301 Initial evaluations.

(a) General. Each public agency must conduct a full and individual initial evaluation, in accordance with §§ 300.305 and 300.306, before the initial provision of special education and related services to a child with a disability under this part.

(b) Request for initial evaluation. Consistent with the consent requirements in § 300.300, either a parent of a child or a public agency may initiate a request for an initial evaluation to determine if the child is a child with a disability.

(c) Procedures for initial evaluation. The initial evaluation —
   (1)(i) Must be conducted within 60 days of receiving parental consent for the evaluation; or
   (ii) If the State establishes a timeframe within which the evaluation must be conducted, within that timeframe; and
   (2) Must consist of procedures —
      (i) To determine if the child is a child with a disability under § 300.8; and
      (ii) To determine the educational needs of the child.

(d) Exception. The timeframe described in paragraph (c)(1) of this section does not apply to a public agency if —
   (1) The parent of a child repeatedly fails or refuses to produce the child for the evaluation; or
   (2) A child enrolls in a school of another public agency after the relevant timeframe in paragraph (c)(1) of this section has begun, and prior to a determination by the child’s previous public agency as to whether the child is a child with a disability under § 300.8.

(e) The exception in paragraph (d)(2) of this section applies only if the subsequent public agency is making
sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent public agency agree to a specific time when the evaluation will be completed.

(Authority: 20 U.S.C. 1414(a))

§ 300.302 Screening for instructional purposes is not evaluation.

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.

(Authority: 20 U.S.C. 1414(a)(1)(E))

§ 300.303 Reevaluations.

(a) General. A public agency must ensure that a reevaluation of each child with a disability is conducted in accordance with §§ 300.304 through 300.311 —

(1) If the public agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or

(2) If the child’s parent or teacher requests a reevaluation.

(b) Limitation. A reevaluation conducted under paragraph (a) of this section —

(1) May occur not more than once a year, unless the parent and the public agency agree otherwise; and

(2) Must occur at least once every 3 years, unless the parent and the public agency agree that a reevaluation is unnecessary.

(Authority: 20 U.S.C. 1414(a)(2))

§ 300.304 Evaluation procedures.

(a) Notice. The public agency must provide notice to the parents of a child with a disability, in accordance with § 300.503, that describes any evaluation procedures the agency proposes to conduct.

(b) Conduct of evaluation. In conducting the evaluation, the public agency must —

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

(i) Whether the child is a child with a disability under § 300.8; and

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

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

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

(c) Other evaluation procedures. Each public agency must ensure that —

(1) Assessments and other evaluation materials used to assess a child under this part —

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

(ii) Are provided and administered in the child’s native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer;

(iii) Are used for the 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 the assessments.

(2) Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.

(3) Assessments are selected and administered so as best to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the child’s aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child’s impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).

(4) The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities;

(5) Assessments of children with disabilities who transfer from one public agency to another public agency in the same school year are coordinated with those children’s prior and subsequent schools, as necessary and as expeditiously as possible, consistent with § 300.301(d)(2) and (e), to ensure prompt completion of full evaluations.

(6) In evaluating each child with a disability under §§ 300.304 through 300.306, the evaluation is sufficiently comprehensive to identify all of the child’s special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.

(7) Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.

§ 300.305 Additional requirements for evaluations and reevaluations.

(a) Review of existing evaluation data. As part of an initial evaluation (if appropriate) and as part of any reevaluation under this part, the IEP Team and other qualified professionals, as appropriate, must —

(1) 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
(2) On the basis of that review, and input from the child’s parents, identify what additional data, if any, are needed to determine —

(i)(A) Whether the child is a child with a disability, as defined in § 300.8, and the educational needs of the child; or
(B) In case of a reevaluation of a child, whether the child continues to have such a disability, and the educational needs of the child;
(ii) The present levels of academic achievement and related developmental needs of the child;
(iii)(A) Whether the child needs special education and related services; or
(B) 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 IEP of the child and to participate, as appropriate, in the general education curriculum.

(b) Conduct of review. The group described in paragraph (a) of this section may conduct its review without a meeting.

(c) Source of data. The public agency must administer such assessments and

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other evaluation measures as may be needed to produce the data identified under paragraph (a) of this section.

(d) Requirements if additional data are not needed.

(1) 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, the public agency must notify the child’s parents of —

(i) That determination and the reasons for the determination; and
(ii) The right of the 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.

(2) The public agency is not required to conduct the assessment described in paragraph (d)(1)(ii) of this section unless requested to do so by the child’s parents.

(e) Evaluations before change in eligibility. (1) Except as provided in paragraph (e)(2) of this section, a public agency must evaluate a child with a disability in accordance with §§ 300.304 through 300.311 before determining that the child is no longer a child with a disability.

(2) The evaluation described in paragraph (e)(1) of this section is not 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 FAPE under State law.

(3) For a child whose eligibility terminates under circumstances described in paragraph (e)(2) of this section, a public agency must provide the child with a summary of the child’s academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child’s postsecondary goals.

(Authority: 20 U.S.C. 1414(c))

§ 300.306 Determination of eligibility.

(a) General. Upon completion of the administration of assessments and other evaluation measures —

(1) A group of qualified professionals and the parent of the child determines whether the child is a child with a disability, as defined in § 300.8, in accordance with paragraph (b) of this section and the educational needs of the child; and
(2) The public agency provides a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent.

(b) Special rule for eligibility determination. A child must not be determined to be a child with a disability under this part —

(1) If the determinant factor for that determination is —

(i) Lack of appropriate instruction in reading, including the essential components of reading instruction (as defined in section 1208(3) of the ESEA);
(ii) Lack of appropriate instruction in math; or
(iii) Limited English proficiency; and
(2) If the child does not otherwise meet the eligibility criteria under § 300.8(a).

(c) Procedures for determining eligibility and educational need.

(1) In interpreting evaluation data for the purpose of determining if a child is a child with a disability under § 300.8, and the educational needs of the child, each public agency must —

(i) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child’s physical condition, social or cultural background, and adaptive behavior; and
(ii) Ensure that information obtained from all of these sources is documented and carefully considered.
(2) If a determination is made that a child has a disability and needs special education and related services, an IEP must be developed for the child in accordance with §§ 300.320 through 300.324.

(Authority: 20 U.S.C. 1414(b)(4) and (5))

Additional Procedures for Identifying Children With Specific Learning Disabilities

§ 300.307 Specific learning disabilities.
(a) General. A State must adopt, consistent with § 300.309, criteria for determining whether a child has a specific learning disability as defined in § 300.8(c)(10). In addition, the criteria adopted by the State —
(1) Must not require the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has a specific learning disability, as defined in § 300.8(c)(10);
(2) Must permit the use of a process based on the child’s response to scientific, research-based intervention; and
(3) May permit the use of other alternative research-based procedures for determining whether a child has a specific learning disability, as defined in § 300.8(c)(10).
(b) Consistency with State criteria. A public agency must use the State criteria adopted pursuant to paragraph (a) of this section in determining whether a child has a specific learning disability.

(Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6))

§ 300.308 Additional group members.
The determination of whether a child suspected of having a specific learning disability is a child with a disability as defined in § 300.8, must be made by the child’s parents and a team of qualified professionals, which must include —
(a)(1) The child’s regular teacher; or
(2) If the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age; or
(3) For a child of less than school age, an individual qualified by the SEA to teach a child of his or her age; and
(b) At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher.

(Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6))

§ 300.309 Determining the existence of a specific learning disability.
(a) The group described in § 300.306 may determine that a child has a specific learning disability, as defined in § 300.8(c)(10), if —
(1) The child does not achieve adequately for the child’s age or to meet State-approved grade-level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the child’s age or State-approved grade-level standards:
   (i) Oral expression.
   (ii) Listening comprehension.
   (iii) Written expression.
   (iv) Basic reading skill.
   (v) Reading fluency skills.
   (vi) Reading comprehension.
   (vii) Mathematics calculation.
   (viii) Mathematics problem solving.
   (2)(i) The child does not make sufficient progress to meet age or State-approved grade-level standards in one or more of the areas identified in paragraph (a)(1) of this section when using a process based on the child’s response to scientific, research-based intervention; or
   (ii) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments, consistent with §§ 300.304 and 300.305; and
   (3) The group determines that its findings under paragraphs (a)(1) and (2)

   of this section are not primarily the result of —
   (i) A visual, hearing, or motor disability;
   (ii) Mental retardation;
   (iii) Emotional disturbance;
   (iv) Cultural factors;
   (v) Environmental or economic disadvantage; or
   (vi) Limited English proficiency.
   (b) To ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group must consider, as part of the evaluation described in §§ 300.304 through 300.306 —
   (1) Data that demonstrate that prior to, or as a part of, the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; and
   (2) Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child’s parents.
   (c) The public agency must promptly request parental consent to evaluate the child to determine if the child needs special education and related services, and must adhere to the timeframes described in §§ 300.301 and 300.303, unless extended by mutual written agreement of the child’s parents and a group of qualified professionals, as described in § 300.306(a)(1) —

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§ 300.310 Observation.

(a) The public agency must ensure that the child is observed in the child’s learning environment (including the regular classroom setting) to document the child’s academic performance and behavior in the areas of difficulty.

(b) The group described in § 300.306(a)(1), in determining whether a child has a specific learning disability, must decide to —

(1) Use information from an observation in routine classroom instruction and monitoring of the child’s performance that was done before the child was referred for an evaluation; or

(2) Have at least one member of the group described in § 300.306(a)(1) conduct an observation of the child’s academic performance in the regular classroom after the child has been referred for an evaluation and parental consent, consistent with § 300.300(a), is obtained.

(c) In the case of a child of less than school age or out of school, a group member must observe the child in an environment appropriate for a child of that age.

(Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6))

§ 300.311 Specific documentation for the eligibility determination.

(a) For a child suspected of having a specific learning disability, the documentation of the determination of eligibility, as required in § 300.306(a)(2), must contain a statement of —

(1) Whether the child has a specific learning disability;

(2) The basis for making the determination, including an assurance that the determination has been made in accordance with § 300.306(c)(1);

(3) The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child’s academic functioning;

(4) The educationally relevant medical findings, if any;

(5) Whether —

(A) The child does not achieve adequately for the child’s age or to meet State-approved grade-level standards consistent with § 300.309(a)(1); and

(B) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade level standards or intellectual development consistent with § 300.309(a)(2);

(6) The determination of the group concerning the effects of a visual, hearing, or motor disability; mental retardation; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the child’s achievement level; and

(7) If the child has participated in a process that assesses the child’s response to scientific, research-based intervention —

(i) The instructional strategies used and the student-centered data collected; and

(ii) The documentation that the child’s parents were notified about —

(A) The State’s policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided;

(B) Strategies for increasing the child’s rate of learning; and

(C) The parents’ right to request an evaluation.

(b) Each group member must certify in writing whether the report reflects the member’s conclusion. If it does not reflect the member’s conclusion, the group member must submit a separate statement presenting the member’s conclusions.

(Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6))

Individualized Education Programs

§ 300.320 Definition of individualized education program.

(a) General. As used in this part, the term individualized education program or IEP means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with §§ 300.320 through 300.324, and that must include —

(1) A statement of the child’s present levels of academic achievement and functional performance, including —

(A) How the child’s disability affects the child’s involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children); or

(B) For preschool children, as appropriate, how the disability affects the child’s participation in appropriate activities;

(2) A statement of measurable annual goals, including academic and functional goals designed to —

(A) 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

(B) Meet each of the child’s other educational needs that result from the child’s disability;

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

(3) A description of —
(i) How the child’s progress toward meeting the annual goals described in paragraph (2) of this section will be measured; and
(ii) When periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;
(4) A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child —
(i) To advance appropriately toward attaining the annual goals;
(ii) To be involved in and make progress in the general education curriculum in accordance with paragraph (a)(1) of this section, and to participate in extracurricular and other nonacademic activities; and
(iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section;
(5) 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 paragraph (a)(4) of this section;
(6)(i) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments consistent with section 612(a)(16) of the Act; and
(ii) If the IEP Team determines that the child must take an alternate assessment instead of a particular regular State or districtwide assessment of student achievement, a statement of why —
(A) The child cannot participate in the regular assessment; and
(B) The particular alternate assessment selected is appropriate for the child; and
(7) The projected date for the beginning of the services and modifications described in paragraph (a)(4) of this section, and the anticipated frequency, location, and duration of those services and modifications.

(b) Transition services. Beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, and updated annually, thereafter, the IEP must include —
(1) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and
(2) The transition services (including courses of study) needed to assist the child in reaching those goals.

(c) Transfer of rights at age of majority. Beginning not later than one year before the child reaches the age of majority under State law, the IEP must include a statement that the child has been informed of the child’s rights under Part B of the Act, if any, that will transfer to the child on reaching the age of majority under § 300.520.

(d) Construction. Nothing in this section shall be construed to require —
(1) That additional information be included in a child’s IEP beyond what is explicitly required in section 614 of the Act; or
(2) The IEP Team to include information under one component of a child’s IEP that is already contained under another component of the child’s IEP.

(Authority: 20 U.S.C. 1414(d)(1)(A) and (d)(6))

§ 300.321 IEP Team.

(a) General. The public agency must ensure that the IEP Team for each child with a disability includes —
(1) The parents of the child;
(2) Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment);
(3) Not less than one special education teacher of the child, or where appropriate, not less than one special education teacher of the child (if the child is, or may be, participating in the regular education environment);
(4) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in paragraphs (a)(2) through (a)(6) of this section;
(5) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in paragraphs (a)(2) through (a)(6) of this section;
(6) 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
(7) Whenever appropriate, the child with a disability.

(b) Transition services participants. (1) In accordance with paragraph (a)(7) of this section, the public agency must invite a child with a disability to attend the child’s IEP Team meeting if a purpose of the meeting will be the consideration of the postsecondary goals for the child and the transition services needed to assist the child in reaching those goals under § 300.320(b).

(2) If the child does not attend the IEP Team meeting, the public agency must take other steps to ensure that the child’s preferences and interests are considered.

(3) To the extent appropriate, with the consent of the parents or a child who has reached the age of majority, in implementing the requirements of paragraph (b)(1) of this section, the public agency must invite a representative of any participating agency that is likely
to be responsible for providing or paying for transition services.

(c) Determination of knowledge and special expertise. The determination of the knowledge or special expertise of any individual described in paragraph (a)(6) of this section must be made by the party (parents or public agency) who invited the individual to be a member of the IEP Team.

(d) Designating a public agency representative. A public agency may designate a public agency member of the IEP Team to also serve as the agency representative, if the criteria in paragraph (a)(4) of this section are satisfied.

(e) IEP Team attendance.

(1) A member of the IEP Team described in paragraphs (a)(2) through (a)(5) of this section is not required to attend an IEP Team meeting, in whole or in part, if the parent of a child with a disability and the public agency agree, in writing, that the attendance of the member is not necessary because the member’s area of the curriculum or related services is not being modified or discussed in the meeting.

(2) A member of the IEP Team described in paragraph (e)(1) of this section may be excused from attending an IEP Team 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, in writing, and the public 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.

(f) Initial IEP Team meeting for child under Part C. In the case of a child who was previously served under Part C of the Act, an invitation to the initial IEP Team meeting the case of a child who was previously served under Part C of the Act). (2) For a child with a disability beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, the notice also must —

(i) Indicate —

(A) That a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the child, in accordance with § 300.320(b); and

(B) That the agency will invite the student; and

(ii) Identify any other agency that will be invited to send a representative.

(c) Other methods to ensure parent participation. If neither parent can attend an IEP Team meeting, the public agency must use other methods to ensure parent participation, including individual or conference telephone calls, consistent with § 300.328 (related to alternative means of meeting participation).

(d) Conducting an IEP Team meeting without a parent in attendance. A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case, the public agency must keep a record of its attempts to arrange a mutually agreed on time and place, such as —

(1) Detailed records of telephone calls made or attempted and the results of those calls;

(2) Copies of correspondence sent to the parents and any responses received; and

(3) Detailed records of visits made to the parent’s home or place of employment and the results of those visits.

(e) Use of interpreters or other action, as appropriate. The public agency 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.

(f) Parent copy of child’s IEP. The public agency must give the parent a copy of the child’s IEP at no cost to the parent.

§ 300.322  Parent participation.

(a) Public agency responsibility — general. Each public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate, including —

(1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and

(2) Scheduling the meeting at a mutually agreed on time and place.

(b) Information provided to parents. (1) The notice required under paragraph (a)(1) of this section must —

(i) Indicate the purpose, time, and location of the meeting and who will be in attendance; and

(ii) Inform the parents of the provisions in § 300.321(a)(6) and (c) (relating to the participation of other individuals on the IEP Team who have knowledge or special expertise about the child), and § 300.321(f) (relating to the participation of the

Part C service coordinator or other representatives of the Part C system at the initial IEP Team meeting for a child previously served under Part C of the Act).

(2) For a child with a disability beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, the notice also must —

(i) Indicate —

(A) That a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the child, in accordance with § 300.320(b); and

(B) That the agency will invite the student; and

(ii) Identify any other agency that will be invited to send a representative.

(c) Other methods to ensure parent participation. If neither parent can attend an IEP Team meeting, the public agency must use other methods to ensure parent participation, including individual or conference telephone calls, consistent with § 300.328 (related to alternative means of meeting participation).

(d) Conducting an IEP Team meeting without a parent in attendance. A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case, the public agency must keep a record of its attempts to arrange a mutually agreed on time and place, such as —

(1) Detailed records of telephone calls made or attempted and the results of those calls;

(2) Copies of correspondence sent to the parents and any responses received; and

(3) Detailed records of visits made to the parent’s home or place of employment and the results of those visits.

(e) Use of interpreters or other action, as appropriate. The public agency 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.

(f) Parent copy of child’s IEP. The public agency must give the parent a copy of the child’s IEP at no cost to the parent.

(Authority: 20 U.S.C. 1414(d)(1)(B)(i))

§ 300.323  When IEPs must be in effect.

(a) General. At the beginning of each school year, each public agency must have in effect, for each child with a disability within its jurisdiction, an IEP, as defined in § 300.320.

(b) IEP or IFSP for children aged three through five. (1) In the case of a child with a disability aged three through five (or, at the discretion of the SEA, a two-year-old child with a disability who will turn age three during the school year), the IEP Team must consider an IFSP that contains transition services for the child, in accordance with § 300.320, or an IEP that includes a transition plan.

(2) If the public agency agrees to provide an IEP under paragraph (b)(1) of this section, the public agency shall consider the IFSP content (including the natural environments statement) described in section 636(d) of the Act and its implementing regulations (including an educational component that promotes school readiness and incorporates
pre-literacy, language, and numeracy skills for children with IFSPs under this section who are at least three years of age), and that is developed in accordance with the IEP procedures under this part. The IFSP may serve as the IEP of the child, if using the IFSP as the IEP is —

(i) Consistent with State policy; and

(ii) Agreed to by the agency and the child’s parents.

(2) In implementing the requirements of paragraph (b)(1) of this section, the public agency must —

(i) Provide to the child’s parents a detailed explanation of the differences between an IFSP and an IEP; and

(ii) If the parents choose an IFSP, obtain written informed consent from the parents.

(c) Initial IEPs; provision of services. Each public agency must ensure that —

(1) A meeting to develop an IEP for a child is conducted within 30 days of a determination that the child needs special education and related services; and

(2) As soon as possible following development of the IEP, special education and related services are made available to the child in accordance with the child’s IEP.

(d) Accessibility of child’s IEP to teachers and others. Each public agency must ensure that —

(1) The child’s IEP is accessible to each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation; and

(2) Each teacher and provider described in paragraph (d)(1) of this section is informed of —

(i) His or her specific responsibilities related to implementing the child’s IEP; and

(ii) The specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.

(e) IEPs for children who transfer public agencies in the same State. If a child with a disability (who had an IEP that was in effect in a previous public agency in the same State) transfers to a new public agency in the same State, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide FAPE to the child (including services comparable to those described in the child’s IEP from the previous public agency), until the new public agency —

(1) Conducts an evaluation pursuant to §§ 300.304 through 300.306 (if determined to be necessary by the new public agency); and

(2) Develops, adopts, and implements a new IEP, if appropriate, that meets the applicable requirements in §§ 300.320 through 300.324.

(g) Transmittal of records. To facilitate the transition for a child described in paragraphs (e) and (f) of this section —

(1) The new public agency in which the child enrolls must 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 public agency in which the child was enrolled, pursuant to 34 CFR 99.31(a)(2); and

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(2) The previous public agency in which the child was enrolled must take reasonable steps to promptly respond to the request from the new public agency.


Development of IEP

§ 300.324 Development, review, and revision of IEP.

(a) Development of IEP — (1) General. In developing each child’s IEP, the IEP Team must consider —

(i) The strengths of the child;

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

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

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

(2) Consideration of special factors. The IEP Team must —

(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 those needs relate to the child’s IEP;

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

(iv) Consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child’s language and communication needs, opportunities for direct communications with peers and professional
personnel in the child’s language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child’s language and communication mode; and
(v) Consider whether the child needs assistive technology devices and services.

(3) Requirement with respect to regular education teacher. A regular education teacher of a child with a disability, as a member of the IEP Team, must, to the extent appropriate, participate in the development of the IEP of the child, including the determination of—
(i) Appropriate positive behavioral interventions and supports and other strategies for the child; and
(ii) Supplementary aids and services, program modifications, and support for school personnel consistent with § 300.320(a)(4).

(4) Agreement. (i) In making changes to a child’s IEP after the annual IEP Team meeting for a school year, the parent of a child with a disability and the public agency may agree not to convene an IEP Team meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the child’s current IEP.
(ii) If changes are made to the child’s IEP in accordance with paragraph (a)(4)(i) of this section, the public agency must inform the child’s IEP Team of those changes.

(5) Consolidation of IEP Team meetings. To the extent possible, the public agency must encourage the consolidation of reevaluation meetings for the child and other IEP Team meetings for the child.

(6) Amendments. Changes to the IEP may be made either by the entire IEP Team at an IEP Team meeting, or as provided in paragraph (a)(4) of this section, by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated.

(b) Review and revision of IEPs — (1) General. Each public agency must ensure that, subject to paragraphs (b)(2) and (b)(3) of this section, the IEP Team —
(i) Reviews the child’s IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and
(ii) Revises the IEP, as appropriate, to address —
(A) Any lack of expected progress toward the annual goals described in § 300.320(a)(2), and in the general education curriculum, if applicable;
(B) The results of any reevaluation conducted under § 300.303;
(C) Information about the child provided to, or by, the parents, as described under § 300.305(a)(2);
(D) The child’s anticipated needs; or
(E) Other matters.

(2) Consideration of special factors. In conducting a review of the child’s IEP, the IEP Team must consider the special factors described in paragraph (a)(2) of this section.

(3) Requirement with respect to regular education teacher. A regular education teacher of the child, as a member of the IEP Team, must, consistent with paragraph (a)(3) of this section, participate in the review and revision of the IEP of the child.

(c) Failure to meet transition objectives —

(1) Participating agency failure. If a participating agency, other than the public agency, fails to provide the transition services described in the IEP in accordance with § 300.320(b), the public agency must reconvene the IEP Team to identify alternative strategies to meet the transition objectives for the child set out in the IEP.

(2) Construction. Nothing in this part relieves any participating agency, including a State vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to children with disabilities who meet the eligibility criteria of that agency.

(d) Children with disabilities in adult prisons —

(1) Requirements that do not apply. The following requirements do not apply to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons:

(i) The requirements contained in section 612(a)(16) of the Act and § 300.320(a)(6) (relating to participation of children with disabilities in general assessments).

(ii) The requirements in § 300.320(b) (relating to transition planning and transition services) do not apply with respect to the children whose eligibility under Part B of the Act will end, because of their age, before they will be eligible to be released from prison based on consideration of their sentence and eligibility for early release.

(2) Modifications of IEP or placement.

(i) Subject to paragraph (d)(2)(ii) of this section, the IEP Team of a child with a disability who is convicted as an adult under State law and incarcerated in an adult prison may modify the child’s IEP or placement if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

(ii) The requirements of §§ 300.320 (relating to IEPs), and 300.112 (relating to LRE), do not apply with respect to the modifications described in paragraph (d)(2)(i) of this section.

(Authority: 20 U.S.C. 1412(a)(1), 1412(a)(2)(A)(i), 1414(d)(3), (4)(B), and (7); and 1414(e))

§ 300.325 Private school placements by public agencies.

(a) Developing IEPs.

(1) Before a public agency places a child with a disability in, or refers a child to, a private school or facility, the agency must initiate and conduct a meeting to develop an IEP for the child in accordance with §§ 300.320 and 300.324.

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Subpart E — Procedural Safeguards Due Process Procedures for Parents and Children

§ 300.500 Responsibility of SEA and other public agencies.
Each SEA must ensure that each public agency establishes, maintains, and implements procedural safeguards that meet the requirements of §§ 300.500 through 300.536.

(Authority: 20 U.S.C. 1415(a))

§ 300.501 Opportunity to examine records; parent participation in meetings.
(a) Opportunity to examine records. The parents of a child with a disability must be afforded an opportunity to inspect and review all education records with respect to —
(1) The identification, evaluation, and educational placement of the child; and
(2) The provision of FAPE to the child.
(b) Parent participation in meetings. (1) The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to —
(i) The identification, evaluation, and educational placement of the child; and
(ii) The provision of FAPE to the child.
(2) Each public agency must provide notice consistent with § 300.322(a)(1) and (b)(1) to ensure that parents of children with disabilities have the opportunity to participate in meetings described in paragraph (b)(1) of this section.

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(2) Each public agency must provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the agency criteria applicable for independent educational evaluations as set forth in paragraph (e) of this section.

(3) For the purposes of this subpart —
   (i) Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question; and
   (ii) Public expense means that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent, consistent with § 300.103.

(b) Parent right to evaluation at public expense.

(1) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency, subject to the conditions in paragraphs (b)(2) through (4) of this section.

(2) If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either —
   (i) File a due process complaint to request a hearing to show that its evaluation is appropriate; or
   (ii) Ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing pursuant to §§ 300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria.

(3) If the public agency files a due process complaint notice to request a hearing and the final decision is that the agency’s evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

(4) If a parent requests an independent educational evaluation, the public agency may ask for the parent’s reason why he or she objects to the public evaluation. However, the public agency may not require the parent to provide an explanation and may not unreasonably delay either providing the independent educational evaluation at public expense or filing a due process complaint to request a due process hearing to defend the public evaluation.

(5) A parent is entitled to only one independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parent disagrees.

(c) Parent-initiated evaluations. If the parent obtains an independent educational evaluation at public expense or shares with the public agency an evaluation obtained at private expense, the results of the evaluation —
   (1) Must be considered by the public agency, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child; and
   (2) May be presented by any party as evidence at a hearing on a due process complaint under subpart E of this part regarding that child.

(d) Requests for evaluations by hearing officers. If a hearing officer requests an independent educational evaluation as part of a hearing on a due process complaint, the cost of the evaluation must be at public expense.

(e) Agency criteria. (1) If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the public agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parent’s right to an independent educational evaluation.

   (2) Except for the criteria described in paragraph (e)(1) of this section, a public agency may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

(Authority: 20 U.S.C. 1415(b)(1) and (d)(2)(A))

§ 300.503 Prior notice by the public agency; content of notice.

(a) Notice. Written notice that meets the requirements of paragraph (b) of this section must be given to the parents of a child with a disability a reasonable time before the public agency —
   (1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or
   (2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

(b) Content of notice. The notice required under paragraph (a) of this section must include —
   (1) A description of the action proposed or refused by the agency;
   (2) An explanation of why the agency proposes or refuses to take the action;
   (3) A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;
   (4) 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;
   (5) Sources for parents to contact to obtain assistance in understanding the provisions of this part;
   (6) A description of other options that the IEP Team considered and the reasons why those options were rejected; and
   (7) A description of other factors that are relevant to the agency’s proposal or refusal.

(c) Notice in understandable language.

   (1) The notice required under paragraph (a) of this section must be —
§ 300.504 Procedural safeguards notice.

(a) General. A copy of the procedural safeguards notice must be given to the parents of a child with a disability or the child, except that a copy may also be given to the child's representative.

(1) Upon initial referral or parent request for evaluation;
(2) Upon receipt of the first State complaint under §§ 300.151 through 300.153 and upon receipt of the first due process complaint under § 300.507 in a school year;
(3) In accordance with the discipline procedures in § 300.530(h); and
(4) Upon request by a parent.

(b) Internet Web site. A public agency may place a current copy of the procedural safeguards notice on its Internet Web site if a Web site exists.

(c) Contents. The procedural safeguards notice must include a full explanation of all of the procedural safeguards available under § 300.148, §§ 300.151 through 300.153, § 300.300, §§ 300.502 through 300.503, §§ 300.505 through 300.518, § 300.520, §§ 300.530 through 300.536 and §§ 300.610 through 300.625 relating to —

(1) Independent educational evaluations;
(2) Prior written notice;
(3) Parental consent;
(4) Access to education records;
(5) Opportunity to present and resolve complaints through the due process complaint and State complaint procedures, including —

(i) The time period in which to file a complaint;
(ii) The opportunity for the agency to resolve the complaint; and
(iii) The difference between the due process complaint and the State complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing and decisional timelines, and relevant procedures;
(6) The availability of mediation;
(7) The child’s placement during the pendency of any due process complaint;
(8) Procedures for students who are subject to placement in an interim alternative educational setting;
(9) Requirements for unilateral placement by parents of children in private schools at public expense;
(10) Hearings on due process complaints, including requirements for disclosure of evaluation results and recommendations;
(11) State-level appeals (if applicable in the State);
(12) Civil actions, including the time period in which to file those actions; and
(13) Attorneys’ fees.

(d) Notice in understandable language. The notice required under paragraph (a) of this section must meet the requirements of § 300.503(c).

(Authority: 20 U.S.C. 1415(b)(3) and (4), 1415(c)(1), 1414(b)(1))

§ 300.505 Electronic mail.

A parent of a child with a disability may elect to receive notices required by §§ 300.503, 300.504, and 300.508 by an electronic mail communication, if the public agency makes that option available.

(Authority: 20 U.S.C. 1415(d))

§ 300.506 Mediation.

(a) General. Each public agency must ensure that procedures are established and implemented to allow parties to disputes involving any matter under this part, including matters arising prior to the filing of a due process complaint, to resolve disputes through a mediation process.

(b) Requirements. The procedures must meet the following requirements:

(1) The procedures must 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 hearing on the parent’s due process complaint, or to deny any other rights afforded under Part B of the Act; and
(iii) Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

(2) A public 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 —

(i) Who is under contract with an appropriate alternative dispute resolution entity, or a parent training and information center or community parent resource center in the State established under section 671 or 672 of the Act; and
(ii) Who would explain the benefits of, and encourage the use of, the mediation process to the parents.

(3)(i) The State must maintain a list of individuals who are qualified mediators and knowledgeable in laws
§ 300.507 Filing a due process complaint.

(a) General. (1) A parent or a public agency may file a due process complaint on any of the matters described in § 300.503(a)(1) and (2) (relating to the identification, evaluation or educational placement of a child with a disability, or the provision of FAPE to the child).

(2) The due process complaint must allege a violation that occurred not more than two years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the due process complaint, or, if the State has an explicit time limitation for filing a due process complaint under this part, in the time allowed by that State law, except that the exceptions to the timeline described in § 300.511(f) apply to the timeline in this section.

(b) Information for parents. The public agency must inform the parent of any free or low-cost legal and other relevant services available in the area if —

(1) The parent requests the information; or

(2) The parent or the agency files a due process complaint under this section.

(Approved by the Office of Management and Budget under control number 1820-0600)

(Authority: 20 U.S.C. 1415(b)(6))

§ 300.508 Due process complaint.

(a) General. (1) The public agency must have procedures that require either party, or the attorney representing a party, to provide to the other party a due process complaint which must remain confidential.

(2) The party filing a due process complaint must forward a copy of the due process complaint to the SEA.

(b) Content of complaint. The due process complaint required in paragraph (a)(1) of this section must include —

(1) The name of the child;

(2) The address of the residence of the child;

(3) The name of the school the child is attending;

(4) In the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the child, and the name of the school the child is attending;

(5) A description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem; and

(6) A proposed resolution of the problem to the extent known and available to the party at the time.

(c) Notice required before a hearing on a due process complaint. A party may not have a hearing on a due process complaint until the party, or the attorney representing the party, files a due process complaint that meets the requirements of paragraph (b) of this section.

(d) Sufficiency of complaint.

(1) The due process complaint required by this section must be deemed sufficient unless the party receiving the due process complaint notifies the hearing officer and the other party in writing, within 15 days of receipt of the due process complaint, that the receiving party believes the due process complaint does not meet the requirements in paragraph (b) of this section.

(2) Within five days of receipt of notification under paragraph (d)(1) of this section, the hearing officer must make a determination on the face of the due process complaint of whether the due process complaint meets the requirements of paragraph (b) of this section, and must immediately notify the parties in writing of that determination.

(3) A party may amend its due process complaint only if —
(i) The other party consents in writing to the amendment and is given the opportunity to resolve the due process complaint through a meeting held pursuant to § 300.510; or
(ii) The hearing officer grants permission, except that the hearing officer may only grant permission to amend at any time not later than five days before the due process hearing begins.

(4) If a party files an amended due process complaint, the timelines for the resolution meeting in § 300.510(a) and the time period to resolve in § 300.510(b) begin again with the filing of the amended due process complaint.

(e) LEA response to a due process complaint. (1) If the LEA has not sent a prior written notice under § 300.503 to the parent regarding the subject matter contained in the parent’s due process complaint, the LEA must, within 10 days of receiving the due process complaint, send to the parent a response that includes —
   (i) An explanation of why the agency proposed or refused to take the action raised in the due process complaint;
   (ii) A description of other options that the IEP Team considered and the reasons why those options were rejected;
   (iii) A description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and
   (iv) A description of the other factors that are relevant to the agency’s proposed or refused action.
(2) A response by an LEA under paragraph (e)(1) of this section shall not be construed to preclude the LEA from asserting that the parent’s due process complaint was insufficient, where appropriate.

(f) Other party response to a due process complaint. Except as provided in paragraph (e) of this section, the party receiving a due process complaint must, within 10 days of receiving the due process complaint, send to the other party a response that specifically addresses the issues raised in the due process complaint.

(Authority: 20 U.S.C. 1415(b)(7), 1415(c)(2))

§ 300.509 Model forms.

(a) Each SEA must develop model forms to assist parents and public agencies in filing a due process complaint in accordance with §§ 300.507(a) and 300.508(a) through (c) and to assist parents and other parties in filing a State complaint under §§ 300.151 through 300.153. However, the SEA or LEA may not require the use of the model forms.

(b) Parents, public agencies, and other parties may use the appropriate model form described in paragraph (a) of this section, or another form or other document, so long as the form or document that is used meets, as appropriate, the content requirements in § 300.508(b) for filing a due process complaint, or the requirements in § 300.153(b) for filing a State complaint.

(Authority: 20 U.S.C. 1415(b)(8))

§ 300.510 Resolution process.

(a) Resolution meeting. (1) Within 15 days of receiving notice of the parent’s due process complaint, and prior to the initiation of a due process hearing under § 300.511, the LEA must convene a meeting with the parent and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the due process complaint that —
   (i) Includes a representative of the public agency who has decision-making authority on behalf of that agency; and
   (ii) May not include an attorney of the LEA unless the parent is accompanied by an attorney.
(2) The purpose of the meeting is for the parent of the child to discuss the due process complaint, and the facts that form the basis of the due process complaint, so that the LEA has the opportunity to resolve the dispute that is the basis for the due process complaint.
(3) The meeting described in paragraph (a)(1) and (2) of this section need not be held if —
   (i) The parent and the LEA agree in writing to waive the meeting; or
   (ii) The parent and the LEA agree to use the mediation process described in § 300.506.
(4) The parent and the LEA determine the relevant members of the IEP Team to attend the meeting.

(b) Resolution period. (1) If the LEA has not resolved the due process complaint to the satisfaction of the parent within 30 days of the receipt of the due process complaint, the due process hearing may occur.

(2) Except as provided in paragraph (c) of this section, the timeline for issuing a final decision under § 300.515 begins at the expiration of this 30-day period.
(3) Except where the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding paragraphs (b)(1) and (2) of this section, the failure of the parent filing a due process complaint to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held.
(4) If the LEA is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made (and documented using the procedures in § 300.322(d)), the LEA may, at the conclusion of the 30-day period, request that a hearing officer dismiss the parent’s due process complaint.

(c) Adjustments to 30-day resolution period. The 45-day timeline for the due process hearing in § 300.515(a) starts the day after one of the following events:
   (1) Both parties agree in writing to waive the resolution meeting;
   (2) Except as provided in paragraph (c) of this section, the timelines for the resolution process begin at the expiration of this 30-day period.
(3) Except where the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding paragraphs (b)(1) and (2) of this section, the failure of the parent filing a due process complaint to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held.
(4) If the LEA is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made (and documented using the procedures in § 300.322(d)), the LEA may, at the conclusion of the 30-day period, request that a hearing officer dismiss the parent’s due process complaint.
(5) If the LEA fails to hold the resolution meeting specified in paragraph (a) of this section within 15 days of receiving notice of a parent’s due process complaint or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer to begin the due process hearing timeline.

(6) If the LEA fails to hold the resolution meeting specified in paragraph (a) of this section within 15 days of receiving notice of a parent’s due process complaint or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer to begin the due process hearing timeline.

(7) If the LEA fails to hold the resolution meeting specified in paragraph (a) of this section within 15 days of receiving notice of a parent’s due process complaint or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer to begin the due process hearing timeline.
§ 300.511 Impartial due process hearing.

(a) General. Whenever a due process complaint is received under § 300.507 or § 300.532, the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing, consistent with the procedures in §§ 300.507, 300.508, and 300.510.

(b) Agency responsible for conducting the due process hearing. The hearing described in paragraph (a) of this section must be conducted by the SEA or the public agency directly responsible for the education of the child, as determined under State statute.

§ 300.512 Hearing rights.

(a) General. Any party to a hearing conducted pursuant to §§ 300.507 through 300.513 or §§ 300.530 through 300.534, or an appeal conducted pursuant to § 300.514, has the right to —

(1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities, except that whether parties have the right to be represented by non-attorneys at due process hearings is determined under State law;

(2) Present evidence and confront, cross-examine, and compel the attendance of witnesses;

(3) Prevent the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing;

(4) Obtain a written, or, at the option of the parents, electronic, verbatim record of the hearing; and

(5) Obtain written, or, at the option of the parents, electronic findings of fact and decisions.

(iv) Must possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

(2) A person who otherwise qualifies to conduct a hearing under paragraph (c)(1) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer.

(3) Each public agency must keep a list of the persons who serve as hearing officers. The list must include a statement of the qualifications of each of those persons.

(d) Subject matter of due process hearings. The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process complaint filed under § 300.508(b), unless the other party agrees otherwise.

(e) Timeline for requesting a hearing. A parent or agency must request an impartial hearing on their due process complaint within two years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the due process complaint, or if the State has an explicit time limitation for requesting such a due process hearing under this part, in the time allowed by that State law.

(f) Exceptions to the timeline. The timeline described in paragraph (e) of this section does not apply to a parent if the parent was prevented from filing a due process complaint due to —

(1) Specific misrepresentations by the LEA that it had resolved the problem forming the basis of the due process complaint; or

(2) The LEA’s withholding of information from the parent that was required under this part to be provided to the parent.

(Approved by the Office of Management and Budget under control number 1820-0600)

§ 300.513 Hearing decisions.

(a) Decision of hearing officer on the provision of FAPE. 

(1) Subject to paragraph (a)(2) of this section, a hearing officer’s determination of whether a child received FAPE must be based on substantive grounds. 

(2) In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies —

(i) Impeded the child’s right to a FAPE; 

(ii) Significantly impeded the parent’s opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent’s child; or

(iii) Caused a deprivation of educational benefit.

(3) Nothing in paragraph (a) of this section shall be construed to preclude a hearing officer from ordering an LEA to comply with procedural requirements under §§ 300.500 through 300.536.

(b) Additional disclosure of information. (1) At least five business days prior to a hearing conducted pursuant to § 300.511(a), each party must 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.

(2) A hearing officer may bar any party that fails to comply with paragraph (b)(1) of this section from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

(c) Parental rights at hearings. Parents involved in hearings must be given the right to —

(1) Have the child who is the subject of the hearing present;

(2) Open the hearing to the public; and

(3) Have the record of the hearing and the findings of fact and decisions described in paragraphs (a)(4) and (a)(5) of this section provided at no cost to parents.

(Authority: 20 U.S.C. 1415(f)(2), 1415(h))

§ 300.514 Finality of decision; appeal; impartial review.

(a) Finality of hearing decision. A decision made in a hearing conducted pursuant to §§ 300.507 through 300.513 or §§ 300.530 through 300.534 is final, except that any party involved in the hearing may appeal the decision under the provisions of paragraph (b) of this section and § 300.516.

(b) Appeal of decisions; impartial review. (1) If the hearing required by § 300.511 is conducted by a public agency other than the SEA, any party aggrieved by the findings and decision in the hearing may appeal to the SEA.

(2) If there is an appeal, the SEA must conduct an impartial review of the findings and decision appealed. The official conducting the review must —

(i) Examine the entire hearing record;

(ii) Ensure that the procedures at the hearing were consistent with the requirements of due process;

(iii) Seek additional evidence if necessary. If a hearing is held to receive additional evidence, the rights in § 300.512 apply;

(Authority: 20 U.S.C. 1415(f)(3)(E) and (F), 1415(h)(4), 1415(o))
(2) A copy of the decision is mailed to each of the parties.

(c) A hearing or reviewing officer may grant specific extensions of time beyond the periods set out in paragraphs (a) and (b) of this section at the request of either party.

(d) Each hearing and review involving oral arguments must be conducted at a time and place that is reasonably convenient to the parents and child involved.

(Authority: 20 U.S.C. 1415(f)(1)(B)(ii), 1415(g), 1415(i)(1))

§ 300.516 Civil action.

(a) General. Any party aggrieved by the findings and decision made under §§ 300.507 through 300.513 or §§ 300.530 through 300.534 who does not have the right to an appeal under § 300.514(b), and any party aggrieved by the findings and decision under § 300.514(b), has the right to bring a civil action with respect to the due process complaint notice requesting a due process hearing under § 300.507 or §§ 300.530 through 300.532. The action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy.

(b) Time limitation. The party bringing the action shall have 90 days from the date of the decision of the hearing officer or, if applicable, the decision of the State review official, to file a civil action, or, if the State has an explicit time limitation for bringing civil actions under Part B of the Act, in the time allowed by that State law.

(c) Additional requirements. In any action brought under paragraph (a) of this section, the court —

(1) Receives the records of the administrative proceedings;

(2) Hears additional evidence at the request of a party; and

(3) Basing its decision on the preponderance of the evidence, grants the relief that the court determines to be appropriate.

(d) Jurisdiction of district courts. The district courts of the United States have jurisdiction of actions brought under section 615 of the Act without regard to the amount in controversy.

(e) Rule of construction. Nothing in this part restricts or limits the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under section 615 of the Act, the procedures under §§ 300.507 and 300.514 must be exhausted to the same extent as would be required had the action been brought under section 615 of the Act.

(Authority: 20 U.S.C. 1415(i)(2) and (3)(A), 1415(i))

§ 300.517 Attorneys’ fees.

(a) In general. (1) In any action or proceeding brought under section 615 of the Act, the court, in its discretion, may award reasonable attorneys’ fees as part of the costs to —

(i) The prevailing party who is the parent of a child with a disability;

(ii) To a prevailing party who is an SEA or LEA against the attorney of a parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation;

(iii) To a prevailing SEA or LEA against the attorney of a parent, or against the parent, if the parent’s request for a due process hearing 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.

(2) Nothing in this subsection shall be construed to affect section 327 of the District of Columbia Appropriations Act, 2005.

(b) Prohibition on use of funds. (1) Funds under Part B of the Act may not be used to pay attorneys’ fees or costs of a party related to any action or proceeding under section 615 of the Act and subpart E of this part.

(2) Paragraph (b)(1) of this section does not preclude a public agency from using funds under Part B of the Act for conducting an action or proceeding under section 615 of the Act.

(c) Award of fees. A court awards reasonable attorneys’ fees under section 615(i)(3) of the Act consistent with the following:

(1) Fees awarded under section 615(i)(3) of the Act must 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 paragraph.

(2) (i) Attorneys’ fees may not be awarded and related costs may not be reimbursed in any action or proceeding under section 615 of the Act for services performed subsequent to the time of a written offer of settlement to a parent if —

(A) 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;

(B) The offer is not accepted within 10 days; and

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

(ii) Attorneys’ fees may not be awarded relating to any meeting of the IEP Team unless the 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 § 300.506.

(iii) A meeting conducted pursuant to § 300.510 shall not be considered —
(A) A meeting convened as a result of an administrative hearing or judicial action; or
(B) An administrative hearing or judicial action for purposes of this section.

(3) Notwithstanding paragraph (c)(2) of this section, an award of attorneys’ fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.

(4) Except as provided in paragraph (c)(5) of this section, the court reduces, accordingly, the amount of the attorneys’ fees awarded under section 615 of the Act, if 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 LEA the appropriate information in the due process request notice in accordance with § 300.508.

(5) The provisions of paragraph (c)(4) of this section do not apply in any action or proceeding if the court finds that the State or local agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of section 615 of the Act.


§ 300.518 Child’s status during proceedings.

(a) Except as provided in § 300.533, during the pendency of any administrative or judicial proceeding regarding a due process complaint notice requesting a due process hearing under § 300.507, unless the State or local agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her current educational placement.

(b) If the complaint involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school until the completion of all the proceedings.

(c) If the complaint involves an application for initial services under this part from a child who is transitioning from Part C of the Act to Part B and is no longer eligible for Part C services because the child has turned three, the public agency is not required to provide the Part C services that the child had been receiving. If the child is found eligible for special education and related services under Part B and the parent consents to the initial provision of special education and related services under § 300.300(b), then the public agency must provide those special education and related services that are not in dispute between the parent and the public agency.

(d) If the hearing officer in a due process hearing conducted by the SEA or a State review official in an administrative appeal agrees with the child’s parents that a change of placement is appropriate, that placement must be treated as an agreement between the State and the parents for purposes of paragraph (a) of this section.

(Authority: 20 U.S.C. 1415(j))

§ 300.519 Surrogate parents.

(a) General. Each public agency must ensure that the rights of a child are protected when —
   (1) No parent (as defined in § 300.30) can be identified;
   (2) The public agency, after reasonable efforts, cannot locate a parent;
   (3) The child is a ward of the State under the laws of that State; or
   (4) The child is an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(6)).

(b) Duties of public agency. The duties of a public agency under paragraph (a) of this section include the assignment of an individual to act as a surrogate for the parents. This must include a method —
   (1) For determining whether a child needs a surrogate parent; and
   (2) For assigning a surrogate parent to the child.

(c) Wards of the State. In the case of a child who is a ward of the State, the surrogate parent alternatively may be appointed by the judge overseeing the child’s case, provided that the surrogate meets the requirements in paragraphs (d)(2)(i) and (e) of this section.

(d) Criteria for selection of surrogate parents. (1) The public agency may select a surrogate parent in any way permitted under State law.

   (2) Public agencies must ensure that a person selected as a surrogate parent —
      (i) Is not an employee of the SEA, the LEA, or any other agency that is involved in the education or care of the child;
      (ii) Has no personal or professional interest that conflicts with the interest of the child the surrogate parent represents; and
      (iii) Has knowledge and skills that ensure adequate representation of the child.

(e) Non-employee requirement; compensation. A person otherwise qualified to be a surrogate parent under paragraph (d) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.

(f) Unaccompanied homeless youth. In the case of a child who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate parents without regard to paragraph (d)(2)(i) of this section, until a
surrogate parent can be appointed that meets all of the requirements of paragraph (d) of this section.

(g) Surrogate parent responsibilities. The surrogate parent may represent the child in all matters relating to —

(1) The identification, evaluation, and educational placement of the child; and
(2) The provision of FAPE to the child.

(h) SEA responsibility. The SEA must make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after a public agency determines that the child needs a surrogate parent.

(Authority: 20 U.S.C. 1415(b)(2))

§ 300.520 Transfer of parental rights at age of majority.

(a) General. A State may provide that, when a child with a disability reaches the age of majority under State law that applies to all children (except for a child with a disability who has been determined to be incompetent under State law) —

(1)(i) The public agency must provide any notice required by this part to both the child and the parents; and
(ii) All rights accorded to parents under Part B of the Act transfer to the child;
(2) All rights accorded to parents under Part B of the Act transfer to children who are incarcerated in an adult or juvenile, State or local correctional institution; and
(3) Whenever a State provides for the transfer of rights under this part pursuant to paragraph (a)(1) or (a)(2) of this section, the agency must notify the child and the parents of the transfer of rights.

(b) Special rule. A State must establish procedures for appointing the parent of a child with a disability, or, if the parent is not available, another appropriate individual, to represent the educational interests of the child throughout the period of the child’s eligibility under Part B of the Act if, under State law, a child who has
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reached the age of majority, but has not been determined to be incompetent, can be determined not to have the ability to provide informed consent with respect to the child’s educational program.

(Authority: 20 U.S.C. 1415(m))

§§ 300.521-300.529 [Reserved]

Discipline Procedures

§ 300.530 Authority of school personnel.

(a) Case-by-case determination. School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of this section, is appropriate for a child with a disability who violates a code of student conduct.

(b) General. (1) School personnel under this section may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days (to the extent those alternatives are applied to children without disabilities), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under § 300.536).

(2) After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, during any subsequent days of removal the public agency must provide services to the extent required under paragraph (d) of this section.

(c) Additional authority. For disciplinary changes in placement that would exceed 10 consecutive school days, if 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 paragraph (e) of this section, school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities, except as provided in paragraph (d) of this section.

(d) Services. (1) A child with a disability who is removed from the child’s current placement pursuant to paragraphs (c), or (g) of this section must —

(i) Continue to receive educational services, as provided in § 300.101(a), 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, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

(2) The services required by paragraph (d)(1), (d)(3), (d)(4), and (d)(5) of this section may be provided in an interim alternative educational setting.

(3) A public agency is only required to provide services during periods of removal to a child with a disability who has been removed from his or her current placement for 10 school days or less in that school year, if it provides services to a child without disabilities who is similarly removed.

(4) After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, if the current removal is for not more than 10 consecutive school days and is not a change of placement under § 300.536, school personnel, in consultation with at least one of the child’s teachers, determine the extent to which services are needed, as provided in § 300.101(a), 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.
(5) If the removal is a change of placement under § 300.536, the child’s IEP Team determines appropriate services under paragraph (d)(1) of this section.

(e) Manifestation determination. (1) 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 LEA, the parent, and relevant members of the child’s IEP Team (as determined by the parent and the LEA) must 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 LEA’s failure to implement the IEP.

(2) The conduct must be determined to be a manifestation of the child’s disability if the LEA, the parent, and relevant members of the child’s IEP Team determine that a condition in either paragraph (e)(1)(i) or (1)(ii) of this section was met.

(3) If the LEA, the parent, and relevant members of the child’s IEP Team determine the condition described in paragraph (e)(1)(ii) of this section was met, the LEA must take immediate steps to remedy those deficiencies.

(f) Determination that behavior was a manifestation. If the LEA, 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 must —

(1) Either —

(i) Conduct a functional behavioral assessment, unless the LEA had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or

(ii) If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and

(2) Except as provided in paragraph (g) of this section, return the child to the placement from which the child was removed, unless the parent and the LEA 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 services under § 300.530(c), (d)(5), and (g).

(3) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA.

(h) Notification. On the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of a code of student conduct, the LEA must notify the parents of that decision, and provide the parents the procedural safeguards notice described in § 300.504.

(i) Definitions. For purposes of this section, the following definitions apply:

(1) Controlled substance means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

(2) Illegal drug means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.

(3) Serious bodily injury has the meaning given the term “serious bodily injury” under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code.

(4) Weapon has the meaning given the term “dangerous weapon” under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code.

(5) If the removal is a change of placement under § 300.536, the child’s IEP Team determines appropriate services under paragraph (d)(1) of this section.
§ 300.533 Placement during appeals.

When an appeal under § 300.532 has been made by either the parent or the LEA, the child must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period specified in § 300.530(c) or (g), whichever occurs first, unless the parent and the SEA or LEA agree otherwise.

(Authority: 20 U.S.C. 1415(k)(3) and (4)(B), 1415(f)(1)(A))

§ 300.534 Protections for children not determined eligible for special education and related services.

(a) General. A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violated a code of student conduct, may assert any of the protections provided for in this part if the public agency had knowledge (as determined in accordance with paragraph (b) of this section) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

(b) Basis of knowledge. A public agency must be deemed to have knowledge that a child is a child with a disability if before the behavior that precipitated the disciplinary action occurred —

(1) The parent of the child 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;

(2) The parent of the child requested an evaluation of the child pursuant to §§ 300.300 through 300.311; or

(3) The teacher of the child, or other personnel of the LEA, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of the agency or to other supervisory personnel of the agency.

(c) Exception. A public agency would not be deemed to have knowledge under paragraph (b) of this section if —

(1) The parent of the child —

(i) Has not allowed an evaluation of the child pursuant to §§ 300.300 through 300.311; or

(ii) Has refused services under this part; or

(2) The child has been evaluated in accordance with §§ 300.300 through 300.311 and determined not to be a child with a disability under this part.

(d) Conditions that apply if no basis of knowledge. (1) If a public agency does not have knowledge that a child is a child with a disability (in accordance with paragraphs (b) and (c) of this section) prior to taking disciplinary measures against the child, the child may be subjected to the disciplinary measures applied to children without disabilities who engage in comparable behaviors consistent with paragraph (d)(2) of this section.

(2)(i) 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

§ 300.530, the evaluation must be conducted in an expedited manner.

(ii) Until the evaluation is completed, the child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.

(iii) 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 must provide special education and related services
§ 300.535  Referral to and action by law enforcement and judicial authorities.

(a) Rule of construction. Nothing in this part prohibits an agency from reporting a crime committed by a child with a disability to appropriate authorities or prevents 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.

(1) An agency reporting a crime committed by a child with a disability must 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.

(2) An agency reporting a crime under this section may transmit copies of the child’s special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.

§ 300.536  Change of placement because of disciplinary removals.

(a) For purposes of removals of a child with a disability from the child’s current educational placement under §§ 300.530 through 300.535, a change of placement occurs if

1. The removal is for more than 10 consecutive school days; or
2. The child has been subjected to a series of removals that constitute a pattern —
   (i) Because the series of removals total more than 10 school days in a school year;
   (ii) Because the child’s behavior is substantially similar to the child’s behavior in previous incidents that resulted in the series of removals; and
   (iii) Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.

(b) The public agency determines on a case-by-case basis whether a pattern of removals constitutes a change of placement.

(2) This determination is subject to review through due process and judicial proceedings.

§ 300.537  State enforcement mechanisms.

Notwithstanding §§ 300.506(b)(7) and 300.510(d)(2), which provide for judicial enforcement of a written agreement reached as a result of mediation or a resolution meeting, there is nothing in this part that would prevent the SEA from using other mechanisms to seek enforcement of that agreement, provided that use of those mechanisms is not mandatory and does not delay or deny a party the right to seek enforcement of the written agreement in a State court of competent jurisdiction or in a district court of the United States.

§§ 300.538-300.599  [Reserved]
§ 300.601 State performance plans and data collection.

(a) General. Not later than December 3, 2005, each State must have in place a performance plan that evaluates the State’s efforts to implement the requirements and purposes of Part B of the Act, and describes how the State will improve such implementation.

(1) Each State must submit the State’s performance plan to the Secretary for approval in accordance with the approval process described in section 616(c) of the Act.

(2) Each State must review its State performance plan at least once every six years, and submit any amendments to the Secretary.

(3) As part of the State performance plan, each State must establish measurable and rigorous targets for the indicators established by the Secretary under the priority areas described in § 300.600(d).

(b) Data collection.

(1) Each State must collect valid and reliable information as needed to report annually to the Secretary on the indicators established by the Secretary for the State performance plans.

(2) If the Secretary permits States to collect data on specific indicators through State monitoring or sampling, and the State collects the data through State monitoring or sampling, the State must collect data on those indicators for each LEA at least once during the period of the State performance plan.

(3) Nothing in Part B of the Act shall be construed to authorize the development of a nationwide database of personally identifiable information on individuals involved in studies or other collections of data under Part B of the Act.

(4) In exercising its monitoring responsibilities under paragraph (d) of this section, the State must ensure that when it identifies noncompliance with the requirements of this part by LEAs, the noncompliance is corrected as soon as possible, and in no case later than one year after the State's identification of the noncompliance.

[Amended by 73 F.R. 73005, 73027 (Dec. 1, 2008)]

(Approved by the Office of Management and Budget under control number 1820-0624)

(Authority: 20 U.S.C. 1416(a))

§ 300.602 State use of targets and reporting.

(a) General. Each State must use the targets established in the State’s performance plan under § 300.601 and the priority areas described in § 300.600(d) to analyze the performance of each LEA.

(b) Public reporting and privacy — (1) Public report.

(i) Subject to paragraph (b)(1)(ii) of this section, the State must —

(A) Report annually to the public on the performance of each LEA located in the State on the targets in the State's performance plan as soon as practicable but no later than 120 days following the State's submission of its annual performance report to the Secretary under paragraph (b)(2) of this section; and

(B) Make each of the following items available through public means: the State's performance plan, under § 300.601(a); annual performance reports, under paragraph (b)(2) of this section; and the State's annual reports on the performance of each LEA located in the State, under paragraph (b)(1)(i)(A) of this section. In doing so, the State must, at a minimum, post the plan and reports on the SEA's Web site, and distribute the plan and reports to the media and through public agencies.

(ii) If the State, in meeting the requirements of paragraph (b)(1)(i) of this section, collects performance data through State monitoring or sampling, the State must include in its report under paragraph (b)(1)(i)(A) of this section the most recently available performance data on each LEA, and the date the data were obtained.

(2) State performance report. The State must report annually to the Secretary on the performance of the State under the State’s performance plan.

(3) Privacy. The State must 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 are insufficient to yield statistically reliable information.

(Approved by the Office of Management and Budget under control number 1820-0624)

[Amended by 73 F.R. 73005, 73028-29 (Dec. 1, 2008)]

(Authority: 20 U.S.C. 1416(b)(2)(C))

§ 300.603 Secretary’s review and determination regarding State performance.

(a) Review. The Secretary annually reviews the State’s performance report submitted pursuant to § 300.602(b)(2).

(b) Determination — (1) General. Based on the information provided by the State in the State’s annual performance report, information obtained through...
monitoring visits, and any other public information made available, the Secretary determines if the State —

(i) Meets the requirements and purposes of Part B of the Act;
(ii) Needs assistance in implementing the requirements of Part B of the Act;
(iii) Needs intervention in implementing the requirements of Part B of the Act; or
(iv) Needs substantial intervention in implementing the requirements of Part B of the Act.

(2) Notice and opportunity for a hearing. (i) For determinations made under paragraphs (b)(1)(iii) and (b)(1)(iv) of this section, the Secretary provides reasonable notice and an opportunity for a hearing on those determinations.

(ii) The hearing described in paragraph (b)(2) of this section consists of an opportunity to meet with the Assistant Secretary for Special Education and Rehabilitative Services to demonstrate why the Department should not make the determination described in paragraph (b)(1) of this section.

(Authority: 20 U.S.C. 1416(d))

§ 300.604 Enforcement.

(a) Needs assistance. If the Secretary determines, for two consecutive years, that a State needs assistance under § 300.603(b)(1)(ii) in implementing the requirements of Part B of the Act, the Secretary takes one or more of the following actions:

(1) Advises 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 requires 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 of 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 of the Act, and private providers of scientifically based technical assistance.

(2) Directs the use of State-level funds under section 611(c) of the Act on the area or areas in which the State needs assistance.

(3) Identifies the State as a high-risk grantee and imposes special conditions on the State’s grant under Part B of the Act.

(b) Needs intervention. If the Secretary determines, for three or more consecutive years, that a State needs intervention under § 300.603(b)(1)(iii) in implementing the requirements of Part B of the Act, the following shall apply:

(1) The Secretary may take any of the actions described in paragraph (a) of this section.

(2) The Secretary takes one or more of the following actions:

(i) Requires 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 one year.
(ii) Requires the State to enter into a compliance agreement under section 457 of the General Education Provisions Act, as amended, 20 U.S.C. 1221 et seq. (GEPA), if the Secretary has reason to believe that the State cannot correct the problem within one year.
(iii) For each year of the determination, withholds not less than 20 percent and not more than 50 percent of the State’s funds under section 611(e) of the Act, until the Secretary determines the State has sufficiently addressed the areas in which the State needs intervention.
(iv) Seeks to recover funds under section 452 of GEPA.
(v) Withholds, in whole or in part, any further payments to the State under Part B of the Act.
(vi) Refers the matter for appropriate enforcement action, which may include referral to the Department of Justice.

(c) Needs substantial intervention. Notwithstanding paragraph (a) or (b) of this section, at any time that the Secretary determines that a State needs substantial intervention in implementing the requirements of Part B of the Act or that there is a substantial failure to comply with any condition of an SEA’s or LEA’s eligibility under Part B of the Act, the Secretary takes one or more of the following actions:

(1) Recovers funds under section 452 of GEPA.
(2) Withholds, in whole or in part, any further payments to the State under Part B of the Act.
(3) Refers the case to the Office of the Inspector General at the Department of Education.

(4) Refers the matter for appropriate enforcement action, which may include referral to the Department of Justice.

(d) Report to Congress. The Secretary reports 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 after taking any of the actions described in paragraphs (a) through (c) of this section.

(Authority: 20 U.S.C. 1416(d))
days of taking enforcement action pursuant to paragraph (a), (b), or (c) of this section, on the specific action taken and the reasons why enforcement action was taken.

(Authority: 20 U.S.C. 1416(c)(1)-(c)(3), (c)(5))

§ 300.605 Withholding funds.

(a) Opportunity for hearing. Prior to withholding any funds under Part B of the Act, the Secretary provides reasonable notice and an opportunity for a hearing to the SEA involved, pursuant to the procedures in §§ 300.180 through 300.183.

(b) Suspension. Pending the outcome of any hearing to withhold payments under paragraph (a) of this section, the Secretary may suspend payments to a recipient, suspend the authority of the recipient to obligate funds under Part B of the Act, or both, after the recipient has been given reasonable notice and an opportunity to show cause why future payments or authority to obligate funds under Part B of the Act should not be suspended.

(c) Nature of withholding. (1) If the Secretary determines that it is appropriate to withhold further payments under § 300.604(b)(2) or (c)(2), the Secretary may determine —

   (i) That the withholding will be limited to programs or projects, or portions of programs or projects, that affected the Secretary’s determination under § 300.603(b)(1); or

   (ii) That the SEA must not make further payments under Part B of the Act to specified State agencies or LEAs that caused or were involved in payments under Part B of the Act to specified State agencies or LEAs that caused or were involved in the Secretary’s determination under § 300.603(b)(1).

(2) Until the Secretary is satisfied that the condition that caused the initial withholding has been substantially rectified —

   (i) Payments to the State under Part B of the Act must be withheld in whole or in part; and

   (ii) Payments by the SEA under Part B of the Act must be limited to State agencies and LEAs whose actions did not cause or were not involved in the Secretary’s determination under § 300.603(b)(1), as the case may be.

(Authority: 20 U.S.C. 1416(c)(4), (c)(6))

§ 300.606 Public attention.

Whenever a State receives notice that the Secretary is proposing to take or is taking an enforcement action pursuant to Sec. 300.604, the State must, by means of a public notice, take such actions as may be necessary to notify the public within the State of the pendency of an action pursuant to Sec. 300.604, including, at a minimum, by posting the notice on the SEA’s Web site and distributing the notice to the media and through public agencies.

[Amended by 73 F.R. 73005, 73028 (Dec. 1, 2008)]

(Authority: 20 U.S.C. 1416(c)(7))

§ 300.607 Divided State agency responsibility.

For purposes of this subpart, if responsibility for ensuring that the requirements of Part B of the Act 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 SEA pursuant to § 300.149(d), and if the Secretary finds that the failure to comply substantially with the provisions of Part B of the Act are related to a failure by the public agency, the Secretary takes appropriate corrective action to ensure compliance with Part B of the Act, except that —

(a) Any reduction or withholding of payments to the State under § 300.604 must be proportionate to the total funds allotted under section 611 of the Act to the State as the number of eligible children with disabilities in adult prisons under supervision of the public agency is proportionate to the number of eligible individuals with disabilities in the State under the supervision of the Secretary; and

(b) Any withholding of funds under § 300.604 must be limited to the specific agency responsible for the failure to comply with Part B of the Act.

(Authority: 20 U.S.C. 1416(h))

§ 300.608 State enforcement.

(a) If an SEA determines that an LEA is not meeting the requirements of Part B of the Act, including the targets in the State’s performance plan, the SEA must prohibit the LEA from reducing the State’s maintenance of effort under § 300.203 for any fiscal year.

(b) Nothing in this subpart shall be construed to restrict a State from utilizing any other authority available to it to monitor and enforce the requirements of Part B of the Act.

(Authority: 20 U.S.C. 1416(f); 20 U.S.C. 1412(a)(11))

§ 300.609 Rule of construction.

Nothing in this subpart shall be construed to restrict the Secretary from utilizing any authority under GEPA, including the provisions in 34 CFR parts 76, 77, 80, and 81 to monitor and enforce the requirements of the Act, including the imposition of special conditions under 34 CFR 80.12.

(Authority: 20 U.S.C. 1416(g))

Confidentiality of Information

§ 300.610 Confidentiality.

The Secretary takes appropriate action, in accordance with section 444 of GEPA, to ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by the Secretary and by SEAs and LEAs pursuant to Part B of the Act, and consistent with §§ 300.611 through 300.627.

(Authority: 20 U.S.C. 1417(c))

§ 300.611 Definitions.

As used in §§ 300.611 through 300.625 —

(a) Destruction means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

(b) Education records means the type of records covered under the definition of “education records” in 34 CFR part...
99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g (FERPA)).

(c) Participating agency means any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part B of the Act.

(Authority: 20 U.S.C. 1221e-3, 1412(a)(8), 1417(c))

§ 300.612 Notice to parents.

(a) The SEA must give notice that is adequate to fully inform parents about the requirements of § 300.123, including —

(1) A description of the extent that the notice is given in the native languages of the various population groups in the State;

(2) A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the State intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;

(3) A summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and

(4) A description of all of the rights of parents and children regarding this information, including the rights under FERPA and implementing regulations in 34 CFR part 99.

(b) Before any major identification, location, or evaluation activity, the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the State of the activity.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

§ 300.613 Access rights.

(a) Each participating agency must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under this part. The agency must comply with a request without unnecessary delay and before any meeting regarding an IEP, or any hearing pursuant to § 300.507 or §§ 300.530 through 300.532, or resolution session pursuant to § 300.510, and in no case more than 45 days after the request has been made.

(b) The right to inspect and review education records under this section includes —

(1) The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records;

(2) The right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and

(3) The right to have a representative of the parent inspect and review the records.

(c) An agency may presume that the parent has authority to inspect and review records relating to his or her child unless the agency has been advised that the parent does not have the authority under applicable State law governing such matters as guardianship, separation, and divorce.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

§ 300.614 Record of access.

Each participating agency must keep a record of parties obtaining access to education records collected, maintained, or used under Part B of the Act (except access by parents and authorized employees of the participating agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

§ 300.615 Records on more than one child.

If any education record includes information on more than one child, the parents of those children have the right to inspect and review only the information relating to their child or to be informed of that specific information.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

§ 300.616 List of types and locations of information.

Each participating agency must provide parents on request a list of the types and locations of education records collected, maintained, or used by the agency.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

§ 300.617 Fees.

(a) Each participating agency may charge a fee for copies of records that are made for parents under this part if the fee does not effectively prevent the parents from exercising their right to inspect and review those records.

(b) A participating agency may not charge a fee to search for or to retrieve information under this part.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

§ 300.618 Amendment of records at parent’s request.

(a) A parent who believes that information in the education records collected, maintained, or used under this part is inaccurate or misleading or violates the privacy or other rights of the child may request the participating agency that maintains the information to amend the information.

(b) The agency must decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.

(c) If the agency decides to refuse to amend the information in accordance with the request, it must inform the parent of the refusal and advise the parent of the right to a hearing under § 300.619.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))
§ 300.619 Opportunity for a hearing.

The agency must, on request, provide an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

§ 300.620 Result of hearing.

(a) If, as a result of the hearing, the agency decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it must amend the information accordingly and so inform the parent in writing.

(b) If, as a result of the hearing, the agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it must inform the parent of the parent’s right to place in the records the agency maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.

(c) Any explanation placed in the records of the child under this section must —

(1) Be maintained by the agency as part of the records of the child as long as the record or contested portion is maintained by the agency; and

(2) If the records of the child or the contested portion is disclosed by the agency to any party, the explanation must also be disclosed to the party.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

§ 300.621 Hearing procedures.

A hearing held under § 300.619 must be conducted according to the procedures in 34 CFR 99.22.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

§ 300.622 Consent.

(a) Parental consent must be obtained before personally identifiable information is disclosed to parties, other than officials of participating agencies in accordance with paragraph (b)(1) of this section, unless the information is contained in education records, and the disclosure is authorized without parental consent under 34 CFR part 99.

(b)(1) Except as provided in paragraphs (b)(2) and (b)(3) of this section, parental consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement of this part.

(2) Parental consent, or the consent of an eligible child who has reached the age of majority under State law, must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services in accordance with § 300.321(b)(3).

(3) If a child is enrolled, or is going to enroll in a private school that is not located in the LEA of the parent’s residence, parental consent must be obtained before any personally identifiable information about the child is released between officials in the LEA where the private school is located and officials in the LEA of the parent’s residence.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

§ 300.623 Safeguards.

(a) Each participating agency must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

(b) One official at each participating agency must assume responsibility for

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ensuring the confidentiality of any personally identifiable information.

(c) All persons collecting or using personally identifiable information must receive training or instruction regarding the State’s policies and procedures under § 300.123 and 34 CFR part 99.

(d) Each participating agency must maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

§ 300.624 Destruction of information.

(a) The public agency must inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide educational services to the child.

(b) The information must be destroyed at the request of the parents. However, a permanent record of a student’s name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

§ 300.625 Children’s rights.

(a) The SEA must have in effect policies and procedures regarding the extent to which children are afforded rights of privacy similar to those afforded to parents, taking into consideration the age of the child and type or severity of disability.

(b) Under the regulations for FERPA in 34 CFR 99.5(a), the rights of parents regarding education records are transferred to the student at age 18.

(c) If the rights accorded to parents under Part B of the Act are transferred to a student who reaches the age of majority, consistent with § 300.520, the rights regarding educational records in §§ 300.613 through 300.624 must also be transferred to the student. However, the public agency must provide any notice required under section 615 of the Act to the student and the parents.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

§ 300.626 Enforcement.

The SEA must have in effect the policies and procedures, including sanctions that the State uses, to ensure that its policies and procedures consistent with §§ 300.613 through
§ 300.625 are followed and that the requirements of the Act and the regulations in this part are met.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

§ 300.627 Department use of personally identifiable information.

If the Department or its authorized representatives collect any personally identifiable information regarding children with disabilities that is not subject to the Privacy Act of 1974, 5 U.S.C. 552a, the Secretary applies the requirements of 5 U.S.C. 552a(b)(1) and (b)(2), 552a(b)(4) through (b)(11); 552a(c) through 552a(e)(3)(B); 552a(e)(3)(D); 552a(e)(5) through (e)(10); 552a(h); 552a(m); and 552a(n); and the regulations implementing those provisions in 34 CFR part 5b.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

Reports — Program Information

§ 300.640 Annual report of children served — report requirement.

(a) The SEA must annually report to the Secretary on the information required by section 618 of the Act at the times specified by the Secretary.

(b) The SEA must submit the report on forms provided by the Secretary.

(Approved by the Office of Management and Budget under control numbers 1820-0030 and 1820-0043)

§ 300.641 Annual report of children served — information required in the report.

(a) For purposes of the annual report required by section 618 of the Act and § 300.640, the State and the Secretary of the Interior must count and report the number of children with disabilities receiving special education and related services on any date between October 1 and December 1 of each year.

(b) For the purpose of this reporting provision, a child’s age is the child’s actual age on the date of the child count.

(c) The SEA may not report a child under more than one disability category.

(d) If a child with a disability has more than one disability, the SEA must report that child in accordance with the following procedure:

(1) If a child has only two disabilities and those disabilities are deafness and blindness, and the child is not reported as having a developmental delay, that child must be reported under the category “deaf-blindness.”

(2) A child who has more than one disability and is not reported as having deaf-blindness or as having a developmental delay must be reported under the category “multiple disabilities.”

(Approved by the Office of Management and Budget under control numbers 1820-0030, 1820-0043, 1820-0621, 1820-0659, 1820-0661, 1820-0518, 1820-0521, and 1820-0517)

(Authority: 20 U.S.C. 1418(a), (b))

§ 300.642 Data reporting.

(a) Protection of personally identifiable data. The data described in section 618(a) of the Act and in § 300.641 must be publicly reported by each State in a manner that does not result in disclosure of data identifiable to individual children.

(b) Sampling. The Secretary may permit States and the Secretary of the Interior to obtain data in section 618(a) of the Act through sampling.

(Approved by the Office of Management and Budget under control numbers 1820-0030, 1820-0043, 1820-0518, 1820-0521, and 1820-0517)

(Authority: 20 U.S.C. 1418(b))

§ 300.643 Annual report of children served — certification.

The SEA must include in its report a certification signed by an authorized official of the agency that the information provided under § 300.640 is an accurate and unduplicated count of children with disabilities receiving special education and related services on the dates in question.

(Approved by the Office of Management and Budget under control numbers 1820-0030 and 1820-0043)

(Authority: 20 U.S.C. 1418(a)(3))

§ 300.644 Annual report of children served — criteria for counting children.

The SEA may include in its report children with disabilities who are enrolled in a school or program that is operated or supported by a public agency, and that —

(a) Provides them with both special education and related services that meet State standards;

(b) Provides them only with special education, if a related service is not required, that meets State standards; or

(c) In the case of children with disabilities enrolled by their parents in private schools, counts those children who are eligible under the Act and receive special education or related services or both that meet State standards under § 300.132 through 300.144.

(Approved by the Office of Management and Budget under control numbers 1820-0030, 1820-0043, 1820-0659, 1820-0621, 1820-0521, and 1820-0517)

(Authority: 20 U.S.C. 1418(a))

§ 300.645 Annual report of children served — other responsibilities of the SEA.

In addition to meeting the other requirements of §§ 300.640 through 300.644, the SEA must —

(a) Establish procedures to be used by LEAs and other educational institutions

in counting the number of children with disabilities receiving special education and related services;

(b) Set dates by which those agencies and institutions must report to the SEA to ensure that the State complies with § 300.640(a);
(c) Obtain certification from each agency and institution that an unduplicated and accurate count has been made;

(d) Aggregate the data from the count obtained from each agency and institution, and prepare the reports required under §§ 300.640 through 300.644; and

(e) Ensure that documentation is maintained that enables the State and the Secretary to audit the accuracy of the count.

(Approved by the Office of Management and Budget under control numbers 1820-0030, 1820-0043, 1820-0659, 1820-0621, 1820-0518, 1820-0521, and 1820-0517)

(Authority: 20 U.S.C. 1418(a))

§ 300.646 Disproportionality.

(a) General. Each State that receives assistance under Part B of the Act, and the Secretary of the Interior, must provide for the collection and examination of data to determine if significant disproportionality based on race or ethnicity is occurring in the State and the LEAs of the State with respect to —

(1) The identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment described in section 602(3) of the Act;

(2) The placement in particular educational settings of these children; and

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

(A) Aged three through five if the State is

(B) Aged 6 through 21; multiplied by

(ii) Forty (40) percent of the average per-pupil expenditure in public elementary schools and secondary schools in the United States (as defined in § 300.717); and

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

(A) Eighty-five (85) percent of the State’s population of children aged 3 through 21 who are of the same age as children with disabilities for whom the State ensures the availability of FAPE under Part B of the Act; and

(B) Fifteen (15) percent of the State’s population of children described in paragraph (b)(2)(iii)(A) of this section who are living in poverty.

(Authority: 20 U.S.C. 1411(a) and (d))

§ 300.701 Outlying areas, freely associated States, and the Secretary of the Interior.

(a) Outlying areas and freely associated States.

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

(A) Aged three through five if the State is eligible for a grant under section 619 of the Act; and

(B) Aged 6 through 21; multiplied by

(ii) Forty (40) percent of the average per-pupil expenditure in public elementary schools and secondary schools in the United States (as defined in § 300.717); and

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

(A) Eighty-five (85) percent of the State’s population of children aged 3 through 21 who are of the same age as children with disabilities for whom the State ensures the availability of FAPE under Part B of the Act; and

(B) Fifteen (15) percent of the State’s population of children described in paragraph (b)(2)(iii)(A) of this section who are living in poverty.
(1) Funds reserved. From the amount appropriated for any fiscal year under section 611(i) of the Act, the Secretary reserves not more than one percent, which must 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 the freely associated State received for fiscal year 2003 under Part B of the Act, but only if the freely associated State —

(A) Meets the applicable requirements of Part B of the Act that apply to States.
(B) Meets the requirements in paragraph (a)(2) of this section.

(2) Application. Any freely associated State that wishes to receive funds under Part B of the Act must include, in its application for assistance —

(i) Information demonstrating that it will meet all conditions that apply to States under Part B of the Act.
(ii) An assurance that, notwithstanding any other provision of Part B of the Act, it will use those funds only for the direct provision of special education and related services to children with disabilities and to enhance its capacity to make FAPE available to all children with disabilities;
(iii) The identity of the source and amount of funds, in addition to funds under Part B of the Act, that it will make available to ensure that FAPE is available to all children with disabilities within its jurisdiction; and
(iv) Such other information and assurances as the Secretary may require.

(3) Special rule. The provisions of Public Law 95-134, permitting the consolidation of grants by the Secretary for technical assistance activities authorized under section 616(i) of the Act.

(b) Secretary of the Interior. From the amount appropriated for any fiscal year under section 611(i) of the Act, the Secretary reserves 1.226 percent to provide technical assistance to the Secretary of the Interior in accordance with §§ 300.707 through 300.716.

Authority: 20 U.S.C. 1411(b)

§ 300.702 Technical assistance.

(a) In general. The Secretary may reserve not more than one-half of one percent of the amounts appropriated under Part B of the Act for each fiscal year to support technical assistance activities authorized under section 616(i) of the Act.

(b) Maximum amount. The maximum amount the Secretary may reserve under paragraph (a) of this section 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.

Authority: 20 U.S.C. 1411(c)

§ 300.703 Allocations to States.

(a) General. After reserving funds for technical assistance under § 300.702, and for payments to the outlying areas, the freely associated States, and the Secretary of the Interior under § 300.701 (a) and (b) for a fiscal year, the Secretary allocates the remaining amount among the States in accordance with paragraphs (b), (c), and (d) of this section.

(b) Special rule for use of fiscal year 1999 amount. If a State received any funds under section 611 of the Act for fiscal year 1999 on the basis of children aged three through five, but does not make FAPE available to all children with disabilities aged three through five in the State in any subsequent fiscal year, the Secretary computes the State’s amount for fiscal year 1999, solely for the purpose of calculating the State’s allocation in that subsequent year under paragraph (c) or (d) of this section, by subtracting the amount allocated to the State for fiscal year 1999 on the basis of those children.

(c) Increase in funds. If the amount available for allocations to States under paragraph (a) of this section for a fiscal year is equal to or greater than the amount allocated to the States under section 611 of the Act for the preceding fiscal year, those allocations are calculated as follows:

(1) Allocation of increase. — (i) General. Except as provided in paragraph (c)(2) of this section, the Secretary allocates for the fiscal year —

(A) To each State the amount the State received under this section for fiscal year 1999;
(B) Eighty-five (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 FAPE under Part B of the Act; and
(C) Fifteen (15) percent of those remaining funds to States on the basis of the States’ relative populations of children described in paragraph (c)(1)(i)(B) of this section who are living in poverty.

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

(2) Limitations. Notwithstanding paragraph (c)(1) of this section, allocations under this section are subject to the following:

(i) Preceding year allocation. No State’s allocation may be less than its allocation under section 611 of the Act for the preceding fiscal year.
(ii) Minimum. No State’s allocation may be less than the greatest of —

(A) The sum of —
(1) The amount the State received under section 611 of the Act for fiscal year 1999; and

(2) One third of one percent of the amount by which the amount appropriated under section 611(i) of the Act for the fiscal year exceeds the amount appropriated for section 611 of the Act for fiscal year 1999;

(B) The sum of —

(1) The amount the State received under section 611 of the Act for the preceding fiscal year; and

(2) That amount multiplied by the percentage by which the increase in the funds appropriated for section 611 of the Act from the preceding fiscal year exceeds 1.5 percent; or

(C) The sum of —

(1) The amount the State received under section 611 of the Act for the preceding fiscal year; and

(2) That amount multiplied by 90 percent of the percentage increase in the amount appropriated for section 611 of the Act from the preceding fiscal year.

(iii) Maximum. Notwithstanding paragraph (c)(2)(ii) of this section, no State’s allocation under paragraph (a) of this section may exceed the sum of

(A) The amount the State received under section 611 of the Act for the preceding fiscal year; and

(B) That amount multiplied by the sum of 1.5 percent and the percentage increase in the amount appropriated under section 611 of the Act from the preceding fiscal year.

(3) Ratable reduction. If the amount available for allocations to States under paragraph (c) of this section is insufficient to pay those allocations in full, those allocations are ratably reduced, subject to paragraph (c)(2)(i) of this section.

(d) Decrease in funds. If the amount available for allocations to States under paragraph (a) of this section for a fiscal year is less than the amount allocated to the States under section 611 of the Act for the preceding fiscal year, those allocations are calculated as follows:

(1) Amounts greater than fiscal year 1999 allocations. If the amount available for allocations under paragraph (a) of this section is greater than the amount allocated to the States for fiscal year 1999, each State is allocated the sum of —

(i) 1999 amount. The amount the State received under section 611 of the Act for fiscal year 1999; and

(ii) Remaining funds. An amount that bears the same relation to any remaining funds as the increase the State received under section 611 of the Act for the preceding fiscal year over fiscal year 1999 bears to the total of all such increases for all States.

(2) Amounts equal to or less than fiscal year 1999 allocations. —

(i) General. If the amount available for allocations under paragraph (a) of this section is equal to or less than the amount allocated to the States for fiscal year 1999, each State is allocated the amount it received for fiscal year 1999.

(ii) Ratable reduction. If the amount available for allocations under paragraph (d) of this section is insufficient to make the allocations described in paragraph (d)(2)(i) of this section, those allocations are ratably reduced.

(Authority: 20 U.S.C. 1411(d))

§ 300.704 State-level activities.

(a) State administration. (1) For the purpose of administering Part B of the Act, including paragraph (c) of this section, section 619 of the Act, and the coordination of activities under Part B of the Act 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 section 611 of the Act for fiscal year 2004 or $800,000 (adjusted in accordance with paragraph (a)(2) of this section), whichever is greater; and

(ii) Each outlying area may reserve for each fiscal year not more than five percent of the amount the outlying area receives under § 300.701(a) for the fiscal year or $35,000, whichever is greater.

(2) For each fiscal year, beginning with fiscal year 2005, the Secretary cumulatively adjusts —

(i) The maximum amount the State was eligible to reserve for State administration under section 611 of the Act 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.

(3) Prior to expenditure of funds under paragraph (a) of this section, the State must certify to the Secretary that the arrangements to establish responsibility for services pursuant to section 612(a)(12)(A) of the Act are current.

(4) Funds reserved under paragraph (a)(1) of this section may be used for the administration of Part C of the Act, if the SEA is the lead agency for the State under that Part.

(b) Other State-level activities.

(1) States may reserve a portion of their allocations for other State-level activities. The maximum amount that a State may reserve for other State-level activities is as follows:

(i) If the amount that the State sets aside for State
administration under paragraph (a) of this section is greater than $850,000 and the State opts to finance a high cost fund under paragraph (c) of this section:

(A) For fiscal years 2005 and 2006, 10 percent of the State’s allocation under § 300.703.

(B) For fiscal year 2007 and subsequent fiscal years, an amount equal to 10 percent of the State’s allocation for fiscal year 2006 under § 300.703 adjusted cumulatively for inflation.

(ii) If the amount that the State sets aside for State administration under paragraph (a) of this section is greater than $850,000 and the State opts not to finance a high cost fund under paragraph (c) of this section —

(A) For fiscal years 2005 and 2006, nine percent of the State’s allocation under § 300.703.

(B) For fiscal year 2007 and subsequent fiscal years, an amount equal to nine percent of the State’s allocation for fiscal year 2006 adjusted cumulatively for inflation.

(iii) If the amount that the State sets aside for State administration under paragraph (a) of this section is less than or equal to $850,000 and the State opts to finance a high cost fund under paragraph (c) of this section:

(A) For fiscal years 2005 and 2006, 10.5 percent of the State’s allocation under § 300.703.

(B) For fiscal year 2007 and subsequent fiscal years, an amount equal to 10.5 percent of the State’s allocation for fiscal year 2006 under § 300.703 adjusted cumulatively for inflation.

(iv) If the amount that the State sets aside for State administration under paragraph (a) of this section is equal to or less than $850,000 and the State opts not to finance a high cost fund under paragraph (c) of this section:

(A) For fiscal years 2005 and 2006, nine and one-half percent of the State’s allocation under § 300.703.

(B) For fiscal year 2007 and subsequent fiscal years, an amount equal to nine and one-half percent of the State’s allocation for fiscal year 2006 under § 300.703 adjusted cumulatively for inflation.

(2) The adjustment for inflation is the rate of inflation as measured by the percentage of 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.

(3) Some portion of the funds reserved under paragraph (b)(1) of this section must be used to carry out the following activities:

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

(ii) To establish and implement the mediation process required by section 615(e) of the Act, including providing for the costs of mediators and support personnel;

(4) Funds reserved under paragraph (b)(1) of this section also 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 LEAs in providing positive behavioral interventions and supports and mental health services for children with disabilities;

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

(v) To support the use of technology, including 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 students with disabilities to postsecondary activities;

(vii) To assist LEAs in meeting personnel shortages;

(viii) To support capacity building activities and improve the delivery of services by LEAs to improve results for children with disabilities;

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

(x) To support the development and provision of appropriate accommodations for children with disabilities, or the development and provision of alternate assessments that are valid and reliable for assessing the performance of children with disabilities, in accordance with sections 1111(b) and 611 of the ESEA; and

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

(c) Local educational agency high cost fund.

(1) In general —

(i) For the purpose of assisting LEAs (including a charter school that is an LEA or a consortium of
LEAs in addressing the needs of high need children with disabilities, each State has the option to reserve for each fiscal year 10 percent of the amount of funds the State reserves for other State-level activities under paragraph (b)(1) of this section —

(A) To finance and make disbursements from the high cost fund to LEAs in accordance with paragraph (c) of this section during the first and succeeding fiscal years of the high cost fund; and

(B) To support innovative and effective ways of cost sharing by the State, by an LEA, or among a consortium of LEAs, as determined by the State in coordination with representatives from LEAs, subject to paragraph (c)(2)(ii) of this section.

(ii) For purposes of paragraph (c) of this section, local educational agency includes a charter school that is an LEA, or a consortium of LEAs.

(2)(i) A State must not use any of the funds the State reserves pursuant to paragraph (c)(1)(i) of this section, which are solely for disbursement to LEAs, for costs associated with establishing, supporting, and otherwise administering the fund. The State may use funds the State reserves under paragraph (a) of this section for those administrative costs.

(ii) A State must not use more than 5 percent of the funds the State reserves pursuant to paragraph (c)(1)(i) of this section for each fiscal year to support innovative and effective ways of cost sharing among consortia of LEAs.

(3)(i) The SEA must develop, not later than 90 days after the State reserves funds under paragraph (c)(1)(i) of this section, annually review, and amend as necessary, a State plan for the high cost fund. Such State plan must —

(A) Establish, in consultation and coordination with representatives from LEAs, a definition of a high need child with a disability that, at a minimum —

(1) Addresses the financial impact a high need child with a disability has on the budget of the child’s LEA; and

(2) Ensures that the cost of the high need child with a disability is greater than 3 times the average per pupil expenditure (as defined in section 9101 of the ESEA) in that State;

(B) Establish eligibility criteria for the participation of an LEA that, at a minimum, take into account the number and percentage of high need children with disabilities served by an LEA;

(C) Establish criteria to ensure that placements supported by the fund are consistent with the requirements of §§ 300.114 through 300.118;

(D) Develop a funding mechanism that provides distributions each fiscal year to LEAs that meet the criteria developed by the State under paragraph(c)(3)(i)(B) of this section;

(E) Establish an annual schedule by which the SEA must make its distributions from the high cost fund each fiscal year; and

(F) If the State elects to reserve funds for supporting innovative and effective ways of cost sharing under paragraph (c)(1)(i)(B) of this section, describe how these funds will be used.

(ii) The State must make its final State plan available to the public not less than 30 days before the beginning of the school year, including dissemination of such information on the State Web site.

(4)(i) Each SEA must make all annual disbursements from the high cost fund established under paragraph (c)(1)(i) of this section in accordance with the State plan published pursuant to paragraph (c)(3) of this section.

(ii) The costs associated with educating a high need child with a disability, as defined under paragraph (c)(3)(i)(A) of this section, are only those costs associated with providing direct special education and related services to the child that are identified in that child’s IEP, including the cost of room and board for a residential placement determined necessary, consistent with § 300.114, to implement a child’s IEP.

(iii) The funds in the high cost fund remain under the control of the State until disbursed to an LEA to support a specific child who qualifies under the State plan for the high cost funds or distributed to LEAs, consistent with paragraph (c)(9) of this section.

(5) The disbursements under paragraph (c)(4) of this section must not be used to 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 FAPE for such child.

(6) Nothing in paragraph (c) of this section —

(i) Limits or conditions the right of a child with a disability who is assisted under Part B of the Act to receive FAPE pursuant to section 612(a)(1) of the Act in the least restrictive environment pursuant to section 612(a)(5) of the Act; or

(ii) Authorizes an SEA or LEA to establish a limit on what may be spent on the education of a child with a disability.

(7) Notwithstanding the provisions of paragraphs (c)(1) through (6) of this section, a State may use funds reserved pursuant to paragraph (c)(1)(i) of this section for implementing a placement neutral cost sharing and reimbursement program of high need, low incidence, catastrophic, or extraordinary aid to LEAs that provides services to high need children 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 requirements of the definition of a high need child with a disability as described in paragraph (c)(3)(ii)(A) of this section.

(8) Disbursements provided under paragraph (c) of this section must 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.

(9) Funds reserved under paragraph (c)(1)(i) of this section from the appropriation for any fiscal year, but not expended pursuant to paragraph (c)(4) of this section before the beginning of their last year of availability for obligation, must be allocated to LEAs in the same manner as other funds from the appropriation for that fiscal year are allocated to LEAs under § 300.705 during their final year of availability.

(d) Inapplicability of certain prohibitions. A State may use funds the State reserves under paragraphs (a) and (b) of this section without regard to —

(1) The prohibition on commingling of funds in § 300.162(b).
(2) The prohibition on supplanting other funds in § 300.162(c).

(e) Special rule for increasing funds. A State may use funds the State reserves under paragraph (a)(1) of this section as a result of inflationary increases under paragraph (a)(2) of this section to carry out activities authorized under paragraph(b)(4)(i), (iii), (vii), or (viii) of this section.

(f) Flexibility in using funds for Part C. Any State eligible to receive a grant under section 619 of the Act may use funds made available under paragraph (a)(1) of this section, § 300.705(c), or § 300.814(e) to develop and implement a State policy jointly with the lead agency under Part C of the Act and the SEA to provide early intervention services (which must include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills) in accordance with Part C of the Act with children with disabilities who are eligible for services under section 619 of the Act and who previously received services under Part C of the Act until the children enter, or are eligible under State law to enter, kindergarten, or elementary school as appropriate.

(Approved by the Office of Management and Budget under control number 1820-0600)

(Authority: 20 U.S.C. 1411(e))

§ 300.705 Subgrants to LEAs.

(a) Subgrants required. Each State that receives a grant under section 611 of the Act for any fiscal year must distribute any funds the State does not reserve under Sec. 300.704 to LEAs (including public charter schools that operate as LEAs) in the State that have established their eligibility under section 613 of the Act for use in accordance with Part B of the Act. Effective with funds that become available on the July 1, 2009, each State must distribute funds to eligible LEAs, including public charter schools that operate as LEAs, even if the LEA is not serving any children with disabilities.

(b) Allocations to LEAs. For each fiscal year for which funds are allocated to States under § 300.703, each State shall allocate funds as follows:

(1) Base payments. The State first must award each LEA described in paragraph (a) of this section the amount the LEA would have received under section 611 of the Act for fiscal year 1999, if the State had distributed 75 percent of its grant for that year under section 611(d) of the Act, as that section was then in effect.

(2) Base payment adjustments. For any fiscal year after 1999 —

(i) If a new LEA is created, the State must divide the base allocation

(determined under paragraph (b)(1) of this section for the LEAs that would have been responsible for serving children with disabilities now being served by the new LEA, among the new LEA and affected LEAs based on the relative numbers of children with disabilities ages 3 through 21, or ages 6 through 21 if a State has had its payment reduced under § 300.703(b), currently provided special education by each of the LEAs;

(ii) If one or more LEAs are combined into a single new LEA, the State must combine the base allocations of the merged LEAs;

(iii) If, for two or more LEAs, geographic boundaries or administrative responsibility for providing services to children with disabilities ages 3 through 21 change, the base allocations of affected LEAs must be redistributed among affected LEAs based on the relative numbers of children with disabilities ages 3 through 21, or ages 6 through 21 if a State has had its payment reduced under § 300.703(b), currently provided special education by each affected LEA; and

(iv) If an LEA received a base payment of zero in its first year of operation, the SEA must adjust the base payment for the first fiscal year after the first annual child count in which the LEA reports that it is serving any children with disabilities. The State must divide the base allocation determined under paragraph (b)(1) of this section for the LEAs that would have been responsible for serving children with disabilities now being served by the LEA, among the LEA and affected LEAs based on the relative numbers of children with disabilities ages 3 through 21, or ages 6 through 21 currently provided special education by each of the LEAs. This requirement takes effect with funds that become available on July 1, 2009.

(3) Allocation of remaining funds. After making allocations under paragraph (b)(1) of this section, as adjusted by paragraph (b)(2) of this section, the State must —

(i) Allocate 85 percent of any remaining funds to those LEAs on the basis of the relative numbers of children enrolled in public and private elementary schools and secondary schools within the LEA’s jurisdiction; and

(ii) Allocate 15 percent of those remaining funds to those LEAs in accordance with their relative numbers of children living in poverty, as determined by the SEA.
(c) Reallocations of LEA funds. (1) If an SEA determines that an LEA is adequately providing FAPE to all children with disabilities residing in the area served by that agency with State and local funds, the SEA may reallocate any portion of the funds under this part that are not needed by the LEA to provide FAPE, to other LEAs 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 LEAs. The SEA may also retain those funds for use at the State level to the extent the State has not reserved the maximum amount of funds it is permitted to reserve for State-level activities pursuant to § 300.704.

(2) After an SEA distributes funds under this part to an eligible LEA that is not serving any children with disabilities, as provided in paragraph (a) of this section, the SEA must determine, within a reasonable period of time prior to the end of the carryover period in 34 CFR 76.709, whether the LEA has obligated the funds. The SEA may reallocate any of those funds not obligated by the LEA to other LEAs 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 LEAs. The SEA may also retain those funds for use at the State level to the extent the State has not reserved the maximum amount of funds it is permitted to reserve for State-level activities pursuant to Sec. 300.704.

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[Amended by 73 F.R. 73005, 73028 (Dec. 1, 2008)]

(Authority: 20 U.S.C. 1411(f))

§ 300.706 [Reserved]

§ 300.707 Use of amounts by Secretary of the Interior.

(a) Definitions. For purposes of §§ 300.707 through 300.716, the following definitions apply:

(1) Reservation means Indian Country as defined in 18 U.S.C. 1151.

(2) Tribal governing body has the definition given that term in 25 U.S.C. 2021(19).

(b) Provision of amounts for assistance. The Secretary provides 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 the payment for any fiscal year is equal to 80 percent of the amount allotted under section 611(b)(2) of the Act for that fiscal year. Of the amount described in the preceding sentence, after the Secretary of the Interior reserves funds for administration under § 300.710, 80 percent must be allocated to such schools by July 1 of that fiscal year and 20 percent must be allocated to such schools by September 30 of that fiscal year.

(c) Additional requirement. With respect to all other children aged 3 to 21, inclusive, on reservations, the SEA of the State in which the reservation is located must ensure that all of the requirements of Part B of the Act are implemented.

(Authority: 20 U.S.C. 1411(b)(1))

§ 300.708 Submission of information.

The Secretary may provide the Secretary of the Interior amounts under § 300.707 for a fiscal year only if the Secretary of the Interior submits to the Secretary information that —

(a) Meets the requirements of section 612(a)(1), (3) through (9), (10)(B) through (C), (11) through (12), (14) through (16), (19), and (21) through (25) of the Act (including monitoring and evaluation activities);

(b) Meets the requirements of section 612(b) and (e) of the Act;

(c) Meets the requirements of section 613(a)(1), (2)(A)(i), (7) through (9) and section 613(i) of the Act (references to LEAs in these sections must be read as references to elementary schools and secondary schools for Indian children operated or funded by the Secretary of the Interior);

(d) Meets the requirements of section 616 of the Act that apply to States (references to LEAs in section 616 of the Act must be read as references to elementary schools and secondary schools for Indian children operated or funded by the Secretary of the Interior);

(e) Meets the requirements of this part that implement the sections of the Act listed in paragraphs (a) through (d) of this section;

(f) Includes a description of how the Secretary of the Interior will coordinate the provision of services under Part B of the Act with LEAs, tribes and tribal organizations, and other private and Federal service providers;

(g) Includes an assurance that there are public hearings, adequate notice of the 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 paragraphs (a) through (d) of this section;

(h) Includes an assurance that the Secretary of the Interior provides the information that the Secretary may require to comply with section 618 of the Act;

(i)(1) 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, for the coordination of services, resources, and personnel between their respective Federal, State, and local offices and with the SEAs and LEAs and other entities to facilitate the provision of services to Indian children with disabilities residing on or near reservations.

(2) The agreement must 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.
§ 300.709 Public participation.

In fulfilling the requirements of § 300.708 the Secretary of the Interior must provide for public participation consistent with § 300.165.

(Authority: 20 U.S.C. 1411(h))

§ 300.710 Use of funds under Part B of the Act.

(a) The Secretary of the Interior may reserve five percent of its payment under § 300.707(b) in any fiscal year, or $500,000, whichever is greater, for administrative costs in carrying out the provisions of §§ 300.707 through 300.709, 300.711, and 300.713 through 300.716.

(b) Payments to the Secretary of the Interior under § 300.712 must be used in accordance with that section.

(Authority: 20 U.S.C. 1411(h)(1)(A))

§ 300.711 Early intervening services.

(a) The Secretary of the Interior may allow each elementary school and secondary school for Indian children operated or funded by the Secretary of the Interior to use not more than 15 percent of the amount the school receives under § 300.707(b) for any fiscal year, 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 children in kindergarten through grade 12 (with a particular emphasis on children in kindergarten through grade three) 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, in accordance with section 613(f) of the Act.

(b) Each elementary school and secondary school for Indian children operated or funded by the Secretary of the Interior that develops and maintains coordinated early intervening services in accordance with section 613(f) of the Act and § 300.226 must annually report to the Secretary of the Interior in accordance with section 613(f) of the Act.

(Authority: 20 U.S.C. 1411(h) and 1413(f))

§ 300.712 Payments for education and services for Indian children with disabilities aged three through five.

(a) General. With funds appropriated under section 611(i) of the Act, the Secretary makes payments to the Secretary of the Interior to be distributed to tribes or tribal organizations (as defined under section 4 of the Indian Self-Determination and Education Assistance Act) or consortia of tribes or tribal organizations to provide for the coordination of assistance for special education and related services for children with disabilities aged three through five on reservations served by Bureau of Indian Affairs (BIA), local education agencies (LEAs), 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.

(b) Distribution of funds. The Secretary of the Interior must distribute the total amount of the payment under paragraph (a) of this section by allocating to each tribe, tribal organization, or consortium an amount based on the number of children with disabilities aged three through five 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 section, the tribe or tribal organization must submit the figures to the Secretary of the Interior as required to determine the amounts to be allocated under paragraph (b) of this section. This information must be compiled and submitted to the Secretary.

(d) Use of funds. (1) The funds received by a tribe or tribal organization must be used to assist in child find, screening, and other procedures for the early identification of children aged three through five, parent training, and the provision of direct services. These activities may be carried out directly or through contracts or cooperative agreements with the BIA, LEAs, 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.

(2) The tribe or tribal organization, as appropriate, must 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 paragraph (a) of this section, the tribe or tribal organization must provide to the Secretary of the Interior a biennial report of activities undertaken under this section, 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 two years following the year in which the report is made. The Secretary of the Interior must include a summary of this information on a biennial basis in the report to the Secretary required under section 611(h) of the Act. The Secretary may require any additional information from the Secretary of the Interior.

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§ 300.713 Plan for coordination of services.

(a) The Secretary of the Interior must develop and implement a plan for the coordination of services for all Indian children with disabilities residing on reservations served by elementary schools and secondary schools for Indian children operated or funded by the Secretary of the Interior.

(b) The plan must provide for the coordination of services benefiting those children from whatever source, including tribes, the Indian Health Service, other BIA divisions, other Federal agencies, State educational agencies, and State, local, and tribal juvenile and adult correctional facilities.

(c) In developing the plan, the Secretary of the Interior must consult with all interested and involved parties.

(d) The plan must 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.

(e) The plan also must be distributed upon request to States; to SEAs, LEAs, and other agencies providing services to infants, toddlers, and children with disabilities; to tribes; and to other interested parties.

§ 300.714 Establishment of advisory board.

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

(b) The advisory board must —

(1) 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;

(2) Advise and assist the Secretary of the Interior in the performance of the Secretary of the Interior’s responsibilities described in section 611(h) of the Act;

(3) 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;

(4) 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

(5) Provide assistance in the preparation of information required under § 300.708(h).

§ 300.715 Annual reports.

(a) In general. The advisory board established under § 300.714 must 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 must make available to the Secretary the report described in paragraph (a) of this section.

§ 300.716 Applicable regulations.

The Secretary of the Interior must comply with the requirements of §§ 300.103 through 300.108, 300.110 through 300.124, 300.145 through 300.154, 300.156 through 300.160, 300.165, 300.170 through 300.186, 300.226, 300.300 through 300.606, 300.610 through 300.646, and 300.707 through 300.716.

Definitions that Apply to this Subpart

§ 300.717 Definitions applicable to allotments, grants, and use of funds.

As used in this subpart —

(a) Freely associated States means the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau;

(b) Outlying areas means the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands;

(c) State means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico; and

(d) Average per-pupil expenditure in public elementary schools and secondary schools in the United States means —

(1) 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 LEAs 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 (2) The
aggregate number of children in average daily attendance to whom those agencies provided free public education during that preceding year.

(Authority: 20 U.S.C. 1401(22), 1411(b)(1) (C) and (g))

**Acquisition of Equipment and Construction or Alteration of Facilities**

§ 300.718  Acquisition of equipment and construction or alteration of facilities.

(a) General. If the Secretary determines that a program authorized under Part B of the Act 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 may 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 paragraph (a) of this section must 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 Standards for Buildings and Facilities”); or

(Authority: 20 U.S.C. 1404)

**Subpart H — Preschool Grants for Children with Disabilities**

§ 300.800  In general.

The Secretary provides grants under section 619 of the Act to assist States to provide special education and related services in accordance with Part B of the Act —

(a) To children with disabilities aged three through five years; and

(b) At a State’s discretion, to two-year-old children with disabilities who will turn three during the school year.

(Authority: 20 U.S.C. 1419(a))

§§ 300.801-300.802  [Reserved]

§ 300.803  Definition of State.

As used in this subpart, State means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(Authority: 20 U.S.C. 1419(i))

§ 300.804  Eligibility.

A State is eligible for a grant under section 619 of the Act if the State —

(a) Is eligible under section 612 of the Act to receive a grant under Part B of the Act; and

(b) Makes FAPE available to all children with disabilities, aged three through five, residing in the State.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1419(b))

§ 300.805  [Reserved]

§ 300.806  Eligibility for financial assistance.

No State or LEA, or other public institution or agency, may receive a grant or enter into a contract or cooperative agreement under subpart 2 or 3 of Part D of the Act that relates exclusively to programs, projects, and activities pertaining to children aged three through five years, unless the State is eligible to receive a grant under section 619(b) of the Act.

(Authority: 20 U.S.C. 1481(e))

§ 300.807  Allocations to States.

The Secretary allocates the amount made available to carry out section 619 of the Act for a fiscal year among the States in accordance with §§ 300.808 through 300.810.

(Authority: 20 U.S.C. 1419(c)(1))

§ 300.808  Increase in funds.

If the amount available for allocation to States under § 300.807 for a fiscal year is equal to or greater than the amount allocated to the States under section 619 of the Act for the preceding fiscal year, those allocations are calculated as follows:

(a) Except as provided in § 300.809, the Secretary —

1. Allocates to each State the amount the State received under section 619 of the Act for fiscal year 1997;

2. Allocates 85 percent of any remaining funds to States on the basis of the States’ relative populations of children aged three through five; and

3. Allocates 15 percent of those remaining funds to States on the basis of the States’ relative populations of all children aged three through five who are living in poverty.

(b) For the purpose of making grants under this section, the Secretary uses the most recent population data, including data on children living in poverty, that are available and satisfactory to the Secretary.

(Authority: 20 U.S.C. 1419(c)(2)(A))

§ 300.809  Limitations.

(a) Notwithstanding § 300.808, allocations under that section are subject to the following:
(1) No State’s allocation may be less than its allocation under section 619 of the Act for the preceding fiscal year.

(2) No State’s allocation may be less than the greatest of —

   (i) The sum of —
      (A) The amount the State received under section 619 of the Act for fiscal year 1997; and
      (B) One-third of one percent of the amount by which the amount appropriated under section 619(j) of the Act for the fiscal year exceeds the amount appropriated for section 619 of the Act for fiscal year 1997;

   (ii) The sum of —
      (A) The amount the State received under section 619 of the Act for the preceding fiscal year; and
      (B) That amount multiplied by the percentage by which the increase in the funds appropriated under section 619 of the Act from the preceding fiscal year exceeds 1.5 percent;

   (iii) The sum of —
      (A) The amount the State received under section 619 of the Act for fiscal year 1997; and
      (B) That amount multiplied by 90 percent of the percentage increase in the amount appropriated under section 619 of the Act from the preceding fiscal year.

   (b) Notwithstanding paragraph (a)(2) of this section, no State’s allocation under § 300.808 may exceed the sum of —

   (1) The amount the State received under section 619 of the Act for the preceding fiscal year; and

   (2) That amount multiplied by the sum of 1.5 percent and the percentage increase in the amount appropriated under section 619 of the Act from the preceding fiscal year.

   (c) If the amount available for allocation to States under § 300.808 and paragraphs (a) and (b) of this section is insufficient to pay those allocations in full, those allocations are ratably reduced, subject to paragraph (a)(1) of this section.

§ 300.810 Decrease in funds.

If the amount available for allocations to States under § 300.807 for a fiscal year is less than the amount allocated to the States under section 619 of the Act for the preceding fiscal year, those allocations are calculated as follows:

(a) If the amount available for allocations is greater than the amount allocated to the States for fiscal year 1997, each State is allocated the sum of —

   (1) The amount the State received under section 619 of the Act for fiscal year 1997; and

   (2) An amount that bears the same relation to any remaining funds as the increase the State received under section 619 of the Act for the preceding fiscal year over fiscal year 1997 bears to the total of all such increases for all States.

(b) If the amount available for allocations is equal to or less than the amount allocated to the States for fiscal year 1997, each State is allocated the amount the State received for fiscal year 1997, ratably reduced, if necessary.

§ 300.811 [Reserved]

§ 300.812 Reservation for State activities.

(a) Each State may reserve not more than the amount described in paragraph (b) of this section for administration and other State-level activities in accordance with §§ 300.813 and 300.814.

(b) For each fiscal year, the Secretary determines and reports to the SEA an amount that is 25 percent of the amount the State received under section 619 of the Act for fiscal year 1997, cumulatively adjusted by the Secretary for each succeeding fiscal year by the lesser of —

   (1) The percentage increase, if any, from the preceding fiscal year in the State’s allocation under section 619 of the Act; or

   (2) 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.

§ 300.813 State administration.

(a) For the purpose of administering section 619 of the Act (including the coordination of activities under Part B of the Act 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 § 300.812 for any fiscal year.

(b) Funds described in paragraph (a) of this section may also be used for the administration of Part C of the Act.

§ 300.814 Other State-level activities.

Each State must use any funds the State reserves under § 300.812 and does not use for administration under § 300.813 —

(a) For support services (including establishing and implementing the mediation process required by section 615(e) of the Act), which may benefit children with disabilities younger than three or older than five as long as those services also benefit children with disabilities aged three through five;

(b) For direct services for children eligible for services under section 619 of the Act;

(c) For activities at the State and local levels to meet the performance goals established by the State under section 612(a)(15) of the Act;

(d) 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 one percent of the amount received by the State under section 619 of the Act for a fiscal year;

(e) To provide early intervention services (which must include an educational component that promotes school
§ 300.815 Subgrants to LEAs.
Each State that receives a grant under section 619 of the Act for any fiscal year must distribute all of the grant funds the State does not reserve under Sec. 300.812 to LEAs (including public charter schools that operate as LEAs) in the State that have established their eligibility under section 613 of the Act. Effective with funds that become available on July 1, 2009, each State must distribute funds to eligible LEAs that are responsible for providing education to children aged three through five years, including public charter schools that operate as LEAs, even if the LEA is not serving any preschool children with disabilities.

§ 300.816 Allocations to LEAs.
(a) Base payments. The State must first award each LEA described in § 300.815 the amount that agency would have received under section 619 of the Act for fiscal year 1997 if the State had distributed 75 percent of its grant for that year under section 619(c)(3), as such section was then in effect.

(b) Base payment adjustments. For fiscal year 1998 and beyond —

(1) If a new LEA is created, the State must divide the base allocation determined under paragraph (a) of this section for the LEAs that would have been responsible for serving children with disabilities now being served by the new LEA, among the new LEA and affected LEAs based on the relative numbers of children with disabilities ages three through five currently provided special education by each LEA;

(2) If one or more LEAs are combined into a single new LEA, the State must combine the base allocations of the merged LEAs;

(3) If for two or more LEAs, geographic boundaries or administrative responsibility for providing services to children with disabilities ages three through five changes, the base allocations of affected LEAs must be redistributed among affected LEAs based on the relative numbers of children with disabilities ages three through five currently provided special education by each affected LEA;

(4) If an LEA received a base payment of zero in its first year of operation, the SEA must adjust the base payment for the first fiscal year after the first annual child count in which the LEA reports that it is serving any children with disabilities aged three through five years. The State must divide the base allocation determined under paragraph (a) of this section for the LEAs that would have been responsible for serving children with disabilities aged three through five years now being served by the LEA, among the LEA and affected LEAs based on the relative numbers of children with disabilities aged three through five years currently provided special education by each of the LEAs. This requirement takes effect with funds that become available on July 1, 2009.

(c) Allocation of remaining funds. After making allocations under paragraph (a) of this section, the State must —

(1) Allocate 85 percent of any remaining funds to those LEAs on the basis of the relative numbers of children enrolled in public and private elementary schools and secondary schools within the LEA’s jurisdiction; and

(2) Allocate 15 percent of those remaining funds to those LEAs in accordance with their relative numbers of children living in poverty, as determined by the SEA.

(d) Use of best data. For the purpose of making grants under this section, States must apply on a uniform basis across all LEAs the best data that are available to them on the numbers of children enrolled in public and private elementary and secondary schools and the numbers of children living in poverty.

§ 300.817 Reallocation of LEA funds.
(a) If an SEA determines that an LEA is adequately providing FAPE to all children with disabilities aged three through five years residing in the area served by the LEA with State and local funds, the SEA may reallocate any portion of the funds under section 619 of the Act that are not needed by that LEA to provide FAPE, to other LEAs in the State that are not adequately providing special education and related services to all children with disabilities aged three through five years residing in the areas served by those other LEAs. The SEA may also retain those funds for use at the State level to the extent the State has not reserved the maximum amount of funds it is permitted to reserve for State-level activities pursuant to Sec. 300.812.

(b) After an SEA distributes section 619 funds to an eligible LEA that is not serving any children with disabilities aged three through five years, as provided in § 300.815, the SEA must determine, within a reasonable period of time prior to the end of the carryover period in 34 CFR 76.709, whether the LEA has obligated the funds. The SEA may reallocate any of those funds not obligated by the LEA to other LEAs in the State that are not adequately providing special education and related services to all children with disabilities aged three through five years residing in the areas served by those other LEAs. The SEA may also retain those funds for use at the State level to the extent the State has not reserved the maximum amount of
funds it is permitted to reserve for State-level activities pursuant to § 300.812.

[Amended by 73 F.R. 73005, 73029 (Dec. 1, 2008)]

(Authority: 20 U.S.C. 1419(g)(2))

§ 300.818 Part C of the Act inapplicable.

Part C of the Act does not apply to any child with a disability receiving FAPE, in accordance with Part B of the Act, with funds received under section 619 of the Act.

(Authority: 20 U.S.C. 1419(h))
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TIMETABLE

- Full educational opportunity goal (FEOG)

ACKNOWLEDGMENT

- To children in correctional institutions

SPECIAL RULE

- IEP requirement
- Transmittal of records
- New school district responsibilities
- Assessments coordinated between public agencies
- Travel training
- Technical assistance and training for teachers and administrators
- Parent counseling and training
- Confidentiality procedures
- Assistive technology services

CONFIDENTIALITY PROCEDURES

Personnel using personally identifiable information must receive training

PERSONNEL USING PERSONALLY IDENTIFIABLE INFORMATION

Parent counseling and training

TECHNICAL ASSISTANCE AND TRAINING FOR TEACHERS AND ADMINISTRATORS

Travel training

TRANSFER DURING ACADEMIC YEAR

- Assessments coordinated between public agencies
- New school district responsibilities
- Transmittal of records

TRANSFER OF PARENTAL RIGHTS

- IEP requirement
- Special rule
- To children in correctional institutions

TRANSITION FROM PART C TO PART B

- Authority of school personnel
- Authority of hearing officer
- State eligibility Department hearing procedures
- Decision
- Show cause hearing
- Parent notice before private placement
- Initial evaluation
- Manifestation determination review
- Hearing officer
- Expedited due process hearings
- Due process hearing request
- Change of placement for disciplinary removals
- Removal of a child
- Manifestation determination review
- Hearing officer (Order change of placement for not more than 45 days)
- Decision within 10 days
- Manifestation determination review (Conducted in no more than 10 school days)
- Change of placement for not more than 45 consecutive days for weapons or drugs
- Because series of removals total more than 10 school days
- Due process hearing request
- Expedited due process hearings
- Decision within 10 days
- Hearing officer (Order change of placement for not more than 45 days)
- Manifestation determination review
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- 45 days (To interim alternative educational setting)
- By hearing officer (For substantial likelihood of injury to child or others)
- By school personnel (For weapons or drugs)
- TIMETABLE—Full educational opportunity goal (FEOG)

TRAINING

- Assistive technology services
- Confidentiality procedures
- Personnel using personally identifiable information must receive training
- Parent counseling and training
- Technical assistance and training for teachers and administrators
- Travel training
- Authority of hearing officer
- May order change of placement for not more than 45 school days
- Authority of school personnel
- Change of placement for not more than 45 consecutive days for weapons or drugs
- Removal of a child for not more than 10 school days
- Change of placement for disciplinary removals
- Of more than 10 consecutive school days
- Because series of removals total more than 10 school days
- Due process hearing request
- Expedited due process hearings
- Conducted within 20 days
- Decision within 10 days
- Hearing officer (Order change of placement for not more than 45 days)
- Manifestation determination review (Conducted in no more than 10 school days)
- Placement during appeals
- TIMELINES—DISCIPLINE (A–P)
- Authority of hearing officer
- May order change of placement for not more than 45 school days
- Authority of school personnel
- Change of placement for not more than 45 consecutive days for weapons or drugs
- Removal of a child for not more than 10 school days

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