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of 2004
Compared to IDEA '97

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(Part B, Sections 611-612)
20 U.S.C. §§ 1411-1412

DRAFT

Contains corrections to 612(a)(10)(A), Jan. 5, 2005

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Additions are marked with underlining and italics.
Deletions are marked with striking through.

IDEA 2004 Compared to IDEA '97

**PART B--ASSISTANCE FOR EDUCATION OF ALL
CHILDREN WITH DISABILITIES**

20 U.S.C. § 1411 (or Sec. 611)

**AUTHORIZATION; -ALLOTMENT;- USE OF FUNDS;- AUTHORIZATION OF
APPROPRIATIONS.**

(a) GRANTS TO STATES.--

(1) PURPOSE OF GRANTS.--The Secretary shall make grants to States ~~and the~~ 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 AMOUNTS.--The maximum amount of the grant a State may receive under this ~~section~~*section*--

(A) for any fiscal year years 2005 and 2006 is--

*(A*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

*(B*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 (~~j~~*i*), the Secretary shall reserve not more than ~~one~~*one* percent, which shall be used--

*(A*i*) to provide assistance to the outlying areas in accordance with their respective populations of individuals aged 3 through 21; -and (B) for fiscal years 1998 through*

2001, to carry out the competition described in paragraph (2), except that the amount reserved to carry out that competition shall not exceed the amount reserved and (ii) to provide each freely associated State a grant in the amount that such freely associated State received for fiscal year 1996 for the competition 2003 under part B of this Act described under the heading SPECIAL EDUCATION in Public Law 104-134. 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.

~~(2) LIMITATION FOR FREELY ASSOCIATED STATES. (A) COMPETITIVE GRANTS. The Secretary shall use funds described in paragraph (1)(B) to award grants, on a competitive basis, to Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and freely associated States to carry out the purposes of this part.~~

~~(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 to carry out the purposes of this part.~~

~~(B) AWARD BASIS. The 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 award grants under subparagraph (A) on a competitive basis, pursuant to the recommendations of the Pacific Region Educational Laboratory in Honolulu, Hawaii. Those recommendations shall be made by experts in the field of special education and related services.~~

~~(C) ASSISTANCE REQUIREMENTS. Any 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 State that wishes to receive 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 part shall include, in its application for assistance-- (i) information demonstrating that it will meet all conditions that apply to States under this part; (ii) an assurance that, notwithstanding any other provision of this part, 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 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; (iii) the identity of the source and amount of funds, in addition to funds under this part, that it will make available to ensure that a free appropriate public education is available to all children with disabilities within its jurisdiction; and (iv) such other information and assurances as the Secretary may require.~~

~~(D) TERMINATION OF ELIGIBILITY.--Notwithstanding any other provision of law, the freely associated States shall not receive any funds under this part for any program year that begins after September 30, 2001.~~

~~(E) ADMINISTRATIVE COSTS.--The Secretary may provide not more than five percent of the amount reserved for grants under this paragraph to pay the administrative costs of the Pacific Region Educational Laboratory under subparagraph (B).~~

~~(3) LIMITATION.--An outlying area is not eligible for a competitive award under paragraph (2) unless it receives assistance under paragraph (1)(A).~~

~~(4) 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 those areas or to the freely associated States under this section.~~

~~(5) ELIGIBILITY FOR DISCRETIONARY PROGRAMS.--The freely associated States shall be eligible to receive assistance under subpart 2 of part D of this Act until September 30, 2001.~~

~~(6) DEFINITION.--As used in this subsection, the term freely associated States means the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.~~

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

~~(d) ALLOCATIONS TO STATES.--(1) IN GENERAL.--After reserving funds for studies and evaluations under section 674(e), and for payments to the outlying areas and the Secretary of the Interior under subsections (b) and (c), the Secretary shall allocate the remaining amount among the States in accordance with paragraph (2) or subsection (e), as the case may be.~~

~~(2) INTERIM FORMULA.--Except as provided in subsection (e), the Secretary shall allocate the amount described in paragraph (1) among the States in accordance with section 611(a)(3), (4), and (5) and (b)(1), (2), and (3) of this Act, as in effect prior to the enactment of the Individuals with Disabilities Education Act Amendments of 1997, except that the determination of the number of children with disabilities receiving special education and related services under such section 611(a)(3) may, at the States discretion, be calculated as of the last Friday in October or as of December 1 of the fiscal year for which the funds are appropriated.~~

~~(e) PERMANENT FORMULA. (1) ESTABLISHMENT OF BASE YEAR. The Secretary shall allocate the amount described in subsection (d)(1) among the States in accordance with this subsection for each fiscal year beginning with the first fiscal year for which the amount appropriated under subsection (j) is more than \$4,924,672,200.~~

~~(2) USE OF BASE YEAR. (A) DEFINITION. As used in this subsection, the term base year means the fiscal year preceding the first fiscal year in which this subsection applies.~~

~~(B) SPECIAL RULE FOR USE OF BASE YEAR AMOUNT. If a State received any funds under this section for the base year 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 base year 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 the base 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) Except IN GENERAL.--Except as provided in subparagraph (B), the Secretary shall (I) shall allocate for the fiscal year--~~

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

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

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

~~(ii) For 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) Notwithstanding LIMITATIONS.--Notwithstanding subparagraph (A), allocations under this paragraph shall be subject to the following:~~

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

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

~~(I) the sum of--~~

~~(aa) the amount it received for the base year; and (bb) one third of one 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 (j) for the fiscal year exceeds the amount appropriated under for this section -for the base fiscal year 1999;~~

(II) the sum of--

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

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

(III) the sum of--

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

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

(iii) ~~Notwithstanding~~ 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 ~~the~~ basefiscal year 1999, each State shall be allocated the sum of--

(i) the amount ~~the State~~ received under this section for ~~the basefiscal 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 ~~the basefiscal year 1999~~ bears to the total of all such increases for all States.

~~(B)(i)~~ If

(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 ~~the basefiscal year 1999~~, each State shall be allocated the amount ~~the State~~ received for ~~the basefiscal 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, including the 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;

(i) each State may use not more than twenty percent of the maximum amount it may retain under paragraph (1)(A) for any fiscal year or \$500,000 (adjusted by the cumulative rate of inflation since fiscal year 1998, as measured by the percentage increase, if any, in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor), whichever is greater; and

(ii) each outlying area may reserve for each fiscal year not more than use up to 5 percent of the amount the outlying area it receives under subsection (b)(1) this section for the any 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 described in subparagraph (A) may also be used for the administration of part C of this Act, if the State educational agency is the lead agency for the State under such that part.

(2) OTHER STATE-LEVEL ACTIVITIES.--

(A) STATE-LEVEL ACTIVITIES.--

(i) IN GENERAL.--Except as provided in clause (iii), for the purpose of administering this part, including section 619 (including the coordination of activities under this part with, and providing technical assistance to, other programs that provide services to children with disabilities) (i) carrying out State-level activities, each State may use not more than twenty percent of 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 it may retain under paragraph (1)(A) for any fiscal year or \$500,000 (adjusted by the cumulative the State was eligible to reserve under the preceding sentence for fiscal year 2006 (cumulatively adjusted by the rate of inflation since fiscal year 1998, 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), whichever is greater; and (ii) each outlying area may use up to

five percent of the amount it receives under this section for any fiscal year or \$35,000, whichever is greater.

~~(B) Funds described in subparagraph (A) may also be used for the~~

~~*(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 of part C of this Act, if the State educational agency is the lead agency for the State under that part.*~~

~~(3) OTHER STATE-LEVEL ACTIVITIES.-- Each State shall use any funds it retains *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 (1) and does not use for administration under paragraph (2) for any of the following: (A) Support and direct services, including technical assistance and personnel development and training.*~~

~~(B) Administrative costs of monitoring³ 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, but only to the extent that those costs exceed the costs incurred for those activities during fiscal year 1985.*~~

~~*(ii) To establish and implement the mediation process required by section 615(e), including providing for the costs 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

~~(E) To develop a State Improvement Plan under subpart 1 of part D.~~

~~(F) Activities at the State and local levels to meet the performance goals established by the State under section 612(a)(16) and to support implementation of the State Improvement Plan under subpart 1 of part D if the State receives funds under that subpart.~~

~~(G) To supplement other amounts used to develop and implement a Statewide coordinated services system designed to improve results for children and families, including children with disabilities and their families, but not to exceed one percent of the amount received by the State under this section. This system shall be coordinated with and, to the extent appropriate, build on the system of coordinated services developed by the State under part C of this Act.~~

~~(H) For subgrants to local educational agencies for the purposes described in paragraph (4)(A).~~

~~(4)(A) SUBGRANTS TO LOCAL EDUCATIONAL AGENCIES FOR CAPACITY-BUILDING AND IMPROVEMENT.—In any fiscal year in which the percentage increase in the States allocation under this section exceeds 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), each State shall reserve, from its allocation under this section, the amount described in subparagraph (B) to make subgrants to local educational agencies, unless that amount is less than \$100,000, to assist them in providing direct services and in making systemic change to improve results for children with disabilities through one or more of the following:—~~

~~(ix) Direct services, including a 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.~~

~~(ii) Addressing needs or carrying out improvement strategies identified in the States Improvement Plan under subpart 1 of part D.~~

~~(iii) Adopting promising practices, materials, and technology, based on knowledge derived from education research and other sources.~~

~~(iv) Establishing, expanding, or implementing interagency agreements and arrangements between~~

(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 other agencies or organizations concerning the provision of services, 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 and their families 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.

(v) Increasing cooperative problem solving between parents and school personnel and promoting the use of alternative dispute resolution.

(B) MAXIMUM SUBGRANT.-- For

(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, the amount referred to in 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) is—(i), but may use the maximum amount funds the State was allowed to retain reserves under paragraph (1)(A) for the prior fiscal year, or for fiscal year 1998, 25, 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 States allocation for fiscal year 1997 under this section; multiplied by (ii) the difference between the percentage increase in the States

- allocation under this section and the rate of inflation, as measured by the percentage increase, if any, from the preceding 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 Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor, 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--(A) describe how amounts retained under paragraph this section--

(1A) will be used to meet the requirements of this part; title; and

(B) how those amounts will be allocated among the activities described in paragraphs (2) and (3) this section to meet State priorities based on input from local educational agencies; and (C) the percentage of those amounts, if any, that will be distributed to local.

(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 agencies by formula.
(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 ~~at the State does not retain~~ reserve under subsection (f) ~~(at least 75 percent of the grant funds)~~ 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, ~~and to State agencies that received funds under section 614A(a) of this Act for fiscal year 1997, as then in effect, and have established their eligibility under section 613, for use in accordance with this part.~~

~~(2) ALLOCATIONS TO LOCAL EDUCATIONAL AGENCIES.--(A) INTERIM PROCEDURE.--For each fiscal year for which funds are allocated to States under subsection (d)(2), each State shall allocate funds under paragraph (1) in accordance with section 611(d) of this Act, as in effect prior to the enactment of the Individuals with Disabilities Education Act Amendments of 1997.~~

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

~~(i) BASE PAYMENTS.--The State shall first award each local educational agency described in paragraph (1) the amount that the local educational agency would have received under this section for the base fiscal year, as defined in subsection (e)(2)(A) 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.~~

~~(ii) ALLOCATION OF REMAINING FUNDS.--After making allocations under clause subparagraph (i), the State shall--~~

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

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

~~(3) FORMER CHAPTER 1 STATE AGENCIES.--(A) To the extent necessary, the State--~~
~~(i) shall use funds that are available under subsection (f)(1)(A) to ensure that each State agency that received fiscal year 1994 funds under subpart 2 of part D of chapter 1 of title I of the Elementary and Secondary Education Act of 1965 receives, from the combination of funds under subsection (f)(1)(A) and funds provided under paragraph (1) of this subsection, an amount equal to~~
~~(I) the number of children with disabilities, aged 6 through 21, to~~

whom the agency was providing special education and related services on December 1 of the fiscal year for which the funds were appropriated, subject to the limitation in subparagraph (B); multiplied by (H) the per-child amount provided under such subpart for fiscal year 1994; and (ii) may use those funds to ensure that each local educational agency that received fiscal year 1994 funds under that subpart for children who had transferred from a State-operated or State-supported school or program assisted under that subpart receives, from the combination of funds available under subsection (f)(1)(A) and funds provided under paragraph (1) of this subsection, an amount for each such child, aged 3 through 21 to whom the agency was providing special education and related services on December 1 of the fiscal year for which the funds were appropriated, equal to the per-child amount the agency received under that subpart for fiscal year 1994.

(B) The number of children counted under subparagraph (A)(i)(I) shall not exceed the number of children aged 3 through 21 for whom the agency received fiscal year 1994 funds under subpart 2 of part D of chapter 1 of title I of the Elementary and Secondary Education Act of 1965.

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

(hg) DEFINITIONS.--~~For the purpose of~~*In this section*--(1) the term *average per-pupil*~~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; ~~and~~.

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

(ih) 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 (e)(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 (~~hereafter referred to~~ in this subsection ~~referred to as BIA~~ *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, ~~but not limited to,~~ child find, evaluation, diagnosis, remediation or therapeutic measures, and (where appropriate) equipment and medical or personal supplies as needed for a child to remain in school or a program);- and

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

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

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

(A) IN GENERAL.--With funds appropriated under subsection (j), 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 ~~the above~~ 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 ~~(e)(2)~~ (2).

(B) DISTRIBUTION OF FUNDS.--The Secretary of the Interior shall distribute the total amount of the payment under subparagraph (A) by allocating to each tribe ~~or~~ tribal organization, 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 above entities~~ 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 ~~one~~ 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.

(45) PLAN FOR COORDINATION OF SERVICES.--The Secretary of the Interior shall develop and implement a plan for the coordination of services for all Indian children with disabilities residing on reservations covered under this ~~Act~~title. Such plan shall provide for the coordination of services benefiting ~~these~~ children from whatever source, including tribes, the Indian Health Service, other BIA divisions, and other Federal agencies. -In developing the plan, the Secretary of the Interior shall consult with all interested and involved parties. ~~It~~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.

(56) ESTABLISHMENT OF ADVISORY BOARD.--To meet the requirements of section 612(a)(21), the Secretary of the Interior shall establish, ~~not later than 6 months after the date of the enactment of the Individuals with Disabilities Education Act Amendments of 1997,~~ 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's~~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).

(67) ANNUAL REPORTS.--

(A) IN GENERAL.--The advisory board established under paragraph (56) shall prepare and submit to the Secretary of the Interior and to ~~the~~ Congress an annual report containing a description of the activities of the advisory board for the preceding year.

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

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

IDEA 2004 Compared to IDEA '97
PART B--ASSISTANCE FOR EDUCATION OF ALL
CHILDREN WITH DISABILITIES
20 U.S.C. § 1412 (or Sec. 612)
STATE ELIGIBILITY.

(a) IN GENERAL.--A State is eligible for assistance under this part for a fiscal year if the State ~~demonstrates~~ submits a plan that provides assurances to the satisfaction of 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(3) of this Act; 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 Act ~~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.--If the State uses a funding mechanism by which the State distributes State funds on the basis of the type of setting in which a child is served, the~~(i) IN GENERAL.--A State funding mechanism does~~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~~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~~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)(89). 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 6375(a)(810).

(10) CHILDREN PLACED 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 ~~at~~ 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) [COPAA NOTE: *previously III*] Such services *to parentally placed private school* children with disabilities may be provided to the children on the premises of private, including ~~parochial~~ *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 ~~parochial~~ *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 ~~they~~the children would have if served by such agencies.

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

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

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

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

(I) if--

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

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

(II) if, prior to the parents' removal of the child from the public school, the public agency informed the parents, through the notice requirements described in section 615(b)(73), 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 may~~*reimbursement--*

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

~~(I) the parent is illiterate and cannot write in English;~~

~~(II) compliance with clause (iii)(I) would likely result in physical or serious emotional harm to the child;~~

~~(III)~~

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

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

(cc) compliance with clause (iii)(I) would likely result in physical harm to the child; and
(II) may, in the discretion of a court or a hearing officer, not be reduced or denied for failure to provide such notice if--
(aa) the parent is illiterate or cannot write in English; or
(bb) compliance with clause (iii)(I) would likely result in serious emotional harm to the child.

(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; ~~and~~

(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 ~~or~~ 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 sections 602(1) relating to assistive technology devices, 602(2) relating to assistive technology services, 602(226) relating to related services, 602(2933) relating to supplementary aids and services, and 602(304) 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~~ may then be 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.

~~COMPREHENSIVE SYSTEM OF PERSONNEL DEVELOPMENT.~~ The State has in effect, consistent with the purposes of this Act and with section 635(a)(8), a comprehensive system of personnel development that is designed to ensure an adequate supply of qualified special education, regular education, and related services personnel that meets the requirements for a State improvement plan relating to personnel development in subsections (b)(2)(B) and (c)(3)(D) of section 653.(15)

(14) PERSONNEL QUALIFICATIONS.

(A) IN GENERAL.--The State educational agency has established and maintains ~~standards~~qualifications to ensure that personnel necessary to carry out this part are appropriately and adequately prepared and trained.

~~(B) STANDARDS DESCRIBED.~~ Such standards shall ~~(i) be,~~ 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) to the extent the standards described in subparagraph (A) are not based on the highest requirements in the State applicable to a specific profession or discipline, the State is taking steps to require retraining or hiring of personnel that meet appropriate professional requirements in the State; and

(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, regulations, or written policy, in meeting the requirements of this part to be used to assist in the provision of special education and related services under this part to children with disabilities--~~under this part.~~

(C) QUALIFICATIONS FOR SPECIAL EDUCATION TEACHERS- The qualifications described in subparagraph (A) shall ensure that each person employed as a special education teacher in the State who teaches elementary school, middle school, or secondary school is highly qualified by the deadline established in section 1119(a)(2) of the Elementary and Secondary Education Act of 1965.

[COPAA Note: (C) was added by a technical amendment as reported in H. CON. RES. 524, which Congress adopted after the House had passed the IDEA bill, H.R. 1350.]

(D) POLICY.~~--In--~~In implementing this ~~paragraph~~section, a State ~~may~~shall adopt a policy that includes a requirement that local educational agencies in the State ~~make an ongoing good faith effort to recruit and hire appropriately and adequately trained~~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. ~~, including, in a geographic area of the State~~

where there is a shortage of such personnel, the most qualified individuals available who are making satisfactory progress toward completing applicable course work necessary to meet the standards described in subparagraph (B)(i), consistent with State law, and the steps described in subparagraph (B)(ii) within three years.

~~(16).~~

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

(15) PERFORMANCE GOALS AND INDICATORS.--The State--

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

(i) ~~will~~ promote the purposes of this ~~Act~~title, as stated in section 601(d); ~~and (ii)(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 ~~maximum~~ 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 ~~those goals that, at a minimum, address the performance of~~the goals described in subparagraph (A), including measurable annual objectives for progress by children with disabilities ~~on assessments, drop-out rates, and graduation rates;~~ (C) ~~will, every two years, 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); ~~and (D) based on its assessment of that progress, will revise its State improvement plan under subpart 1 of part D as may be needed to improve its performance, if the State receives assistance under that subpart 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. ~~Children--~~All children with disabilities are included in all general State and district-wide 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. ~~As appropriate, the State or~~ 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--(i) developsagency) 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 State and district wide assessment programs; and (ii) develops and, beginning not later than July 1, 2000, conducts those 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-
(ii) ~~F~~, 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-
(iii) ~~F~~ 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 those children with disabilities on regular assessments (beginning not later than July 1, 1998) and on alternate assessments (not later than July 1, 2000), if doing so would be statistically sound and would not result in the disclosure of performance results identifiable to individual children-

(II) Data relating to the performance of children described under subclause (I) shall be disaggregated-- (aa) for assessments conducted after July 1, 1998; and (bb) for assessments conducted before July 1, 1998, if the State is required to disaggregate such data prior to July 1, 1998.

~~(4)~~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.

(198) 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 ~~one~~ one 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 ~~(187)(C) of this section~~ 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.

~~(E) REGULATIONS.—(i) The Secretary shall, by regulation, establish procedures (including objective criteria and consideration of the results of compliance reviews of the State conducted by the Secretary) for determining whether to grant a waiver under subparagraph (C)(ii).~~

~~(ii) The Secretary shall publish proposed regulations under clause (i) not later than 6 months after the date of the enactment of the Individuals with Disabilities Education Act Amendments of 1997, and shall issue final regulations under clause (i) not later than 1 year after such date of enactment.~~

(19) PUBLIC PARTICIPATION.—~~Prior~~—*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, ~~that is~~*be* representative of the State population, and ~~that is~~*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) ~~at least one~~*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 ~~Act~~*title*.

(23) ACCESS TO INSTRUCTIONAL MATERIALS.--

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

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

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

- (i) require the publisher to prepare and, on or before delivery of the print instructional materials, provide to the National Instructional Materials Access Center

electronic files containing the contents of the print instructional materials using the National Instructional Materials Accessibility Standard; or
(ii) purchase instructional materials from the publisher that are produced in, or may be rendered in, specialized formats.

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

(E) DEFINITIONS.--In this paragraph:

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

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

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

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

(25) PROHIBITION ON MANDATORY MEDICATION.--

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

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

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

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

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

(c) EXCEPTION FOR PRIOR STATE PLANS.--

(1) IN GENERAL.--If a State has on file with the Secretary policies and procedures that demonstrate that such State meets any requirement of subsection (a), including any policies

and procedures filed under this part as in effect before the effective date of the Individuals with Disabilities Education Improvement Act Amendments of 1997~~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 ~~deems~~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 Amendments of 1997~~2004~~, the provisions of this ~~Act~~title are amended (or the regulations developed to carry out this ~~Act~~title are amended), ~~or~~ there is a new interpretation of this ~~Act~~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~~--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 ~~is~~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 ~~which~~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~~--Pending final resolution of any investigation or complaint that ~~could~~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 ~~would~~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 ~~at least~~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.