

P.L. 108-446  
Individuals with Disabilities Education  
Improvement Act of 2004  
Compared to IDEA '97

Document 5 (Part B, Sections 616-619)  
20 U.S.C. §§ 1416-1419

DRAFT

Contains correction to 616(i), Jan. 5, 2005

prepared by  
Jess Butler for  
**The Council of Parent Attorneys and Advocates, Inc. (COPAA)**  
[www.copaa.org](http://www.copaa.org)

© 2005 by The Council of Parent Attorneys and Advocates, Inc.  
Permission to copy this document is granted provided  
that it is unedited and attributed to COPAA.  
**To join COPAA, visit [www.copaa.org](http://www.copaa.org) and click on “Join Us.”**

January 5, 2005

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

**IDEA 2004 Compared to IDEA '97**  
**20 U.S.C. §§1416-1419**

[COPAA Note: Section 616 imposes many new monitoring and enforcement obligations on the Department of Education.]

~~SEC. 616. WITHHOLDING AND JUDICIAL REVIEW.~~

**20 U.S.C. §1416 (SEC. 616)**

**MONITORING, TECHNICAL ASSISTANCE, AND ENFORCEMENT.**

~~(a) WITHHOLDING OF PAYMENTS.--~~

~~(a) FEDERAL AND STATE MONITORING.--~~

~~(1) IN GENERAL.--The Secretary shall--~~

~~(A) monitor implementation of this part through--~~

~~(i) oversight of the exercise of general supervision by the States, as required in section 612(a)(11); and~~

~~(ii) the State performance plans, described in subsection (b);~~

~~(B) enforce this part in accordance with subsection (e); and~~

~~(C) require States to--~~

~~(i) monitor implementation of this part by local educational agencies; and~~

~~(ii) enforce this part in accordance with paragraph (3) and subsection (e).~~

~~(2) FOCUSED MONITORING.--The primary focus of Federal and State monitoring activities described in paragraph (1) shall be on--~~

~~(A) improving educational results and functional outcomes for all children with disabilities; and~~

~~(B) ensuring that States meet the program requirements under this part, with a particular emphasis on those requirements that are most closely related to improving educational results for children with disabilities.~~

~~(3) MONITORING PRIORITIES.--The Secretary shall monitor the States, and shall require each State to monitor the local educational agencies located in the State (except the State exercise of general supervisory responsibility), using quantifiable indicators in each of the following priority areas, and using such qualitative indicators as are needed to adequately measure performance in the following priority areas:~~

~~(A) Provision of a free appropriate public education in the least restrictive environment.~~

~~(B) State exercise of general supervisory authority, including child find, effective monitoring, the use of resolution sessions, mediation, voluntary binding arbitration, and a system of transition services as defined in sections 602(34) and 637(a)(9).~~

~~(C) Disproportionate representation of racial and ethnic groups in special education and related services, to the extent the representation is the result of inappropriate identification.~~

~~(4) PERMISSIVE AREAS OF REVIEW.--The Secretary shall consider other relevant information and data, including data provided by States under section 618.~~

~~(b) STATE PERFORMANCE PLANS.--~~

(1) PLAN.--

(A) IN GENERAL.--Not later than 1 year after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2004, each State shall have in place a performance plan that evaluates that State's efforts to implement the requirements and purposes of this part and describes how the State will improve such implementation.

(B) SUBMISSION FOR APPROVAL.--Each State shall submit the State's performance plan to the Secretary for approval in accordance with the approval process described in subsection (c).

(C) REVIEW.--Each State shall review its State performance plan at least once every 6 years and submit any amendments to the Secretary.

(2) TARGETS.--

(A) IN GENERAL.--As a part of the State performance plan described under paragraph (1), each State shall establish measurable and rigorous targets for the indicators established under the priority areas described in subsection (a)(3).

(B) DATA COLLECTION.--

(i) IN GENERAL.--Each State shall collect valid and reliable information as needed to report annually to the Secretary on the priority areas described in subsection (a)(3).

(ii) RULE OF CONSTRUCTION.--Nothing in this title shall be construed to authorize the development of a nationwide database of personally identifiable information on individuals involved in studies or other collections of data under this part.

(C) PUBLIC REPORTING AND PRIVACY.--

(i) IN GENERAL.--The State shall use the targets established in the plan and priority areas described in subsection (a)(3) to analyze the performance of each local educational agency in the State in implementing this part.

(ii) REPORT.--

(I) PUBLIC REPORT.--The State shall report annually to the public on the performance of each local educational agency located in the State on the targets in the State's performance plan. The State shall make the State's performance plan available through public means, including by posting on the website of the State educational agency, distribution to the media, and distribution through public agencies.

(I) STATE PERFORMANCE REPORT.--The State shall report annually to the Secretary on the performance of the State under the State's performance plan.

(iii) PRIVACY.--The State shall not report to the public or the Secretary any information on performance that would result in the disclosure of personally identifiable information about individual children or where the available data is insufficient to yield statistically reliable information.

(c) APPROVAL PROCESS.--

(1) DEEMED APPROVAL.--The Secretary shall review (including the specific provisions described in subsection (b)) each performance plan submitted by a State pursuant to subsection (b)(1)(B) and the plan shall be deemed to be approved by the Secretary unless the Secretary makes a written determination, prior to the expiration of the 120-day period

beginning on the date on which the Secretary received the plan, that the plan does not meet the requirements of this section, including the specific provisions described in subsection (b).

(2) DISAPPROVAL.--The Secretary shall not finally disapprove a performance plan, except after giving the State notice and an opportunity for a hearing.

(3) NOTIFICATION.--If the Secretary finds that the plan does not meet the requirements, in whole or in part, of this section, the Secretary shall--

(A) give the State notice and an opportunity for a hearing; and

(B) notify the State of the finding, and in such notification shall--

(i) cite the specific provisions in the plan that do not meet the requirements; and

(ii) request additional information, only as to the provisions not meeting the requirements, needed for the plan to meet the requirements of this section.

(4) RESPONSE.--If the State responds to the Secretary's notification described in paragraph (3)(B) during the 30-day period beginning on the date on which the State received the notification, and resubmits the plan with the requested information described in paragraph (3)(B)(ii), the Secretary shall approve or disapprove such plan prior to the later of--

(A) the expiration of the 30-day period beginning on the date on which the plan is resubmitted; or

(B) the expiration of the 120-day period described in paragraph (1).

(5) FAILURE TO RESPOND.--If the State does not respond to the Secretary's notification described in paragraph (3)(B) during the 30-day period beginning on the date on which the State received the notification, such plan shall be deemed to be disapproved.

(d) SECRETARY'S REVIEW AND DETERMINATION.--

(1) REVIEW.--The Secretary shall annually review the State performance report submitted pursuant to subsection (b)(2)(C)(ii)(II) in accordance with this section.

(2) DETERMINATION.--

(A) IN GENERAL.--Based on the information provided by the State in the State performance report, information obtained through monitoring visits, and any other public information made available, the Secretary shall determine if the State--

(i) meets the requirements and purposes of this part;

(ii) needs assistance in implementing the requirements of this part;

(iii) needs intervention in implementing the requirements of this part; or

(iv) needs substantial intervention in implementing the requirements of this part.

(B) NOTICE AND OPPORTUNITY FOR A HEARING.--For determinations made under clause (iii) or (iv) of subparagraph (A), the Secretary shall provide reasonable notice and an opportunity for a hearing on such determination.

(e) ENFORCEMENT.--

(1) NEEDS ASSISTANCE.--If the Secretary determines, for 2 consecutive years, that a State needs assistance under subsection (d)(2)(A)(ii) in implementing the requirements of this part, the Secretary shall take 1 or more of the following actions:

(A) Advise the State of available sources of technical assistance that may help the State address the areas in which the State needs assistance, which may include assistance from the Office of Special Education Programs, other offices of the Department of Education, other Federal agencies, technical assistance providers approved by the

Secretary, and other federally funded nonprofit agencies, and require the State to work with appropriate entities. Such technical assistance may include--

(i) the provision of advice by experts to address the areas in which the State needs assistance, including explicit plans for addressing the area for concern within a specified period of time;

(ii) assistance in identifying and implementing professional development, instructional strategies, and methods of instruction that are based on scientifically based research;

(iii) designating and using distinguished superintendents, principals, special education administrators, special education teachers, and other teachers to provide advice, technical assistance, and support; and

(iv) devising additional approaches to providing technical assistance, such as collaborating with institutions of higher education, educational service agencies, national centers of technical assistance supported under part D, and private providers of scientifically based technical assistance.

(B) Direct the use of State-level funds under section 611(e) on the area or areas in which the State needs assistance.

(C) Identify the State as a high-risk grantee and impose special conditions on the State's grant under this part.

(2) NEEDS INTERVENTION.--If the Secretary determines, for 3 or more consecutive years, that a State needs intervention under subsection (d)(2)(A)(iii) in implementing the requirements of this part, the following shall apply:

(A) The Secretary may take any of the actions described in paragraph (1).

(B) The Secretary shall take 1 or more of the following actions:

(i) Require the State to prepare a corrective action plan or improvement plan if the Secretary determines that the State should be able to correct the problem within 1 year.

(ii) Require the State to enter into a compliance agreement under section 457 of the General Education Provisions Act, if the Secretary has reason to believe that the State cannot correct the problem within 1 year.

(iii) For each year of the determination, withhold not less than 20 percent and not more than 50 percent of the State's funds under section 611(e), until the Secretary determines the State has sufficiently addressed the areas in which the State needs intervention.

(iv) Seek to recover funds under section 452 of the General Education Provisions Act.

(v) Withhold, in whole or in part, any further payments to the State under this part pursuant to paragraph (5).

(vi) Refer the matter for appropriate enforcement action, which may include referral to the Department of Justice.

(3) NEEDS SUBSTANTIAL INTERVENTION.--Notwithstanding paragraph (1) or (2), at any time that the Secretary determines that a State needs substantial intervention in implementing the requirements of this part or that there is a substantial failure to comply

with any condition of a State educational agency's or local educational agency's eligibility under this part, the Secretary shall take 1 or more of the following actions:

(A) Recover funds under section 452 of the General Education Provisions Act.

(B) Withhold, in whole or in part, any further payments to the State under this part.

(C) Refer the case to the Office of the Inspector General at the Department of Education.

(D) Refer the matter for appropriate enforcement action, which may include referral to the Department of Justice.

(4) OPPORTUNITY FOR HEARING.--

~~(A) WITHHOLDING FUNDS OF PAYMENTS.--~~Prior to withholding any funds under this section, the Secretary shall provide after reasonable notice and an opportunity for a hearing to the State educational agency involved ~~(and to any local educational agency or State agency affected by any failure described in subparagraph (B))~~, ~~finds~~

~~(A) that there has been a failure by the State to comply substantially with any provision of this part; or~~

~~(B) that there is a failure to comply with any condition of a local educational agency's or State agency's eligibility under this part, including the terms of any agreement to achieve compliance with this part within the timelines specified in the agreement; the Secretary shall, after notifying the State educational agency, withhold, in whole or in part, any further payments to the State under this part, or refer the matter for appropriate enforcement action, which may include referral to the Department of Justice. [note: referral to Dept. of Justice moved elsewhere]~~

(B) SUSPENSION.--Pending the outcome of any hearing to withhold payments under subsection (b), the Secretary may suspend payments to a recipient, suspend the authority of the recipient to obligate funds under this part, or both, after such recipient has been given reasonable notice and an opportunity to show cause why future payments or authority to obligate funds under this part should not be suspended.

(5) REPORT TO CONGRESS.--The Secretary shall report to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate within 30 days of taking enforcement action pursuant to paragraph (1), (2), or (3), on the specific action taken and the reasons why enforcement action was taken.

~~(6) (2)~~-NATURE OF WITHHOLDING.--

(A) LIMITATION.--If the Secretary withholds further payments pursuant to paragraph (2) or (3), the Secretary may determine--

(i) that such withholding will be limited to programs or projects, or portions of programs or projects, that affected the Secretary's determination under subsection (d)(2); ~~the Secretary may determine that such withholding will be limited to programs or projects, or portions thereof, affected by the failure or~~

(ii) that the State educational agency shall not make further payments under this part to specified State agencies or local educational agencies State agencies

~~affected by the failure that caused or were involved in the Secretary's determination under subsection (d)(2).~~ ,

~~(B) WITHHOLDING UNTIL RECTIFIED.--Until the Secretary is satisfied that there is no longer any failure to comply with the provisions of this part, as specified in subparagraph (A) or (B) of paragraph (1) the condition that caused the initial withholding has been substantially rectified--~~

~~(i) payments to the State under this part shall be withheld in whole or in part; and  
(ii) payments by the State educational agency under this part shall be limited to State agencies and local educational agencies whose actions did not cause or were not involved in the Secretary's determination under subsection (d)(2), agencies whose actions did not cause or were not involved in the failure as the case may be.~~

~~(7) PUBLIC ATTENTION.--Any State State educational agency, State agency, or local educational agency that has received notice under paragraph (1)-subsection (d)(2) shall, by means of a public notice, take such measures as may be necessary to bring the pendency of an action pursuant to this subsection to the attention of the public within the State.~~

~~(b8) JUDICIAL REVIEW.--~~

~~(1A) IN GENERAL.--If any State is dissatisfied with the Secretary's final action with respect to the eligibility of the State under section 612, such State may, not later than 60 days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings upon which the Secretary's action was based, as provided in section 2112 of title 28, United States Code.~~

~~(2B) JURISDICTION; REVIEW BY UNITED STATES SUPREME COURT.--Upon the filing of such petition, the court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.~~

~~(3C) STANDARD OF REVIEW.--The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive, but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify the Secretary's previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.~~

~~(f) STATE ENFORCEMENT.--If a State educational agency determines that a local educational agency is not meeting the requirements of this part, including the targets in the State's performance plan, the State educational agency shall prohibit the local educational agency from reducing the local educational agency's maintenance of effort under section 613(a)(2)(C) for any fiscal year.~~

~~(g) RULE OF CONSTRUCTION.--Nothing in this section shall be construed to restrict the Secretary from utilizing any authority under the General Education Provisions Act to monitor and enforce the requirements of this title.~~

(e/h) DIVIDED STATE AGENCY RESPONSIBILITY.--For purposes of this section, where responsibility for ensuring that the requirements of this part are met with respect to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons is assigned to a public agency other than the State educational agency pursuant to section 612(a)(11)(C), the Secretary, in instances where the Secretary finds that the failure to comply substantially with the provisions of this part are related to a failure by the public agency, shall take appropriate corrective action to ensure compliance with this part, except that--

(1) any reduction or withholding of payments to the State ~~is~~shall be proportionate to the total funds allotted under section 611 to the State as the number of eligible children with disabilities in adult prisons under the supervision of the other public agency is proportionate to the number of eligible individuals with disabilities in the State under the supervision of the State educational agency; and

(2) any withholding of funds under paragraph (1) shall be limited to the specific agency responsible for the failure to comply with this part.

(i) DATA CAPACITY AND TECHNICAL ASSISTANCE REVIEW.--The Secretary shall--

(1) review the data collection and analysis capacity of States to ensure that data and information determined necessary for implementation of this section is collected, analyzed, and accurately reported to the Secretary; and

(2) provide technical assistance (from funds reserved under section 611(c)), where needed, to improve the capacity of States to meet the data collection requirements.

**20 U.S.C. §1417 (SEC. 617)**  
**ADMINISTRATION.**

- (a) RESPONSIBILITIES OF SECRETARY. ~~In carrying out this part,~~ The Secretary shall--
- (1) cooperate with, and (directly or by grant or contract) furnish technical assistance necessary to, ~~the~~ State in matters relating to--
    - (A) the education of children with disabilities; and
    - (B) carrying out this part; and
  - (2) provide short-term training programs and institutes.

~~(b) RULES AND REGULATIONS. In carrying out the provisions of this part, the Secretary shall issue regulations under this Act only to the extent that such regulations are necessary to ensure that there is compliance with the specific requirements of this Act~~

**[COPAA Note : The old section 617(b) has been moved to 607(a). 607(a) discusses the regulation requirements in detail.]**

~~PROHIBITION AGAINST FEDERAL MANDATES, DIRECTION, OR CONTROL.--Nothing in this title shall be construed to authorize an officer or employee of the Federal Government to mandate, direct, or control a State, local educational agency, or school's specific instructional content, academic achievement standards and assessments, curriculum, or program of instruction.~~

(c) CONFIDENTIALITY.--The Secretary shall take appropriate action, in accordance with ~~the provisions of section 444 of the General Education Provisions Act (20 U.S.C. 1232g), to assure~~ ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by the Secretary and by State educational agencies and local educational agencies pursuant to ~~the provisions of this part.~~

(d) PERSONNEL.--The Secretary is authorized to hire qualified personnel necessary to carry out the Secretary's duties under subsection (a) ~~and, under sections 618, 661, and 673 (or their predecessor authorities through October 1, 1997)~~ section 618, and under subpart 4 of part D, without regard to the provisions of title 5, United States Code, relating to appointments in the competitive service and without regard to chapter 51 and subchapter III of chapter 53 of such title relating to classification and general schedule pay rates, except that no more than ~~twenty~~ 20 such personnel shall be employed at any time.

~~(e) MODEL FORMS.--Not later than the date that the Secretary publishes final regulations under this title, to implement amendments made by the Individuals with Disabilities Education Improvement Act of 2004, the Secretary shall publish and disseminate widely to States, local educational agencies, and parent and community training and information centers--~~

~~(1) a model IEP form;~~

~~(2) a model individualized family service plan (IFSP) form;~~

~~(3) a model form of the notice of procedural safeguards described in section 615(d); and~~

~~(4) a model form of the prior written notice described in subsections (b)(3) and (c)(1) of section 615 that is consistent with the requirements of this part and is sufficient to meet such requirements.~~

**20 U.S.C. §1418 (SEC. 618)**  
**PROGRAM INFORMATION**

(a) IN GENERAL.--Each State that receives assistance under this part, and the Secretary of the Interior, shall provide data each year to the Secretary ~~(1)(A) on~~ ~~(i) the number~~ Secretary of Education and the public on the following:

(1)(A) The number and percentage of children with disabilities, by race, ethnicity, limited English proficiency status, gender, and disability category, who are ~~in each of the following separate categories:~~

~~(i) Receiving a free appropriate public education;~~ ~~(ii) the number of children with disabilities, by race and ethnicity, who are receiving early intervention services;~~ ~~(iii) the number of children with disabilities, by race, ethnicity, and disability category, who are participating.~~

~~(ii) Participating~~ in regular education; ~~(iv) the number of children with disabilities, by race, ethnicity, and disability category, who are in.~~

~~(iii) In~~ separate classes, separate schools or facilities, or public or private residential facilities; ~~(v) the number of children with disabilities, by race, ethnicity, and disability category, who, for.~~

~~(iv) For~~ each year of age from age 14 ~~to~~ through 21, stopped receiving special education and related services because of program completion (including graduation with a regular secondary school diploma), or other reasons, and the reasons why those children stopped receiving special education and related services; ~~(vi) the.~~

~~(v)(I) Removed to an interim alternative educational setting under section 615(k)(1).~~

~~(I) The acts or items precipitating those removals.~~

~~(III) The~~ number of children with disabilities who are subject to long-term suspensions or expulsions.

~~(B) The number and percentage of children with disabilities,~~ by race, gender, and ethnicity, who are receiving early intervention services.

~~(C) The number and percentage of children with disabilities, by race, gender,~~ and ethnicity, who, from birth through age 2, stopped receiving early intervention services because of program completion or for other reasons; ~~and (vii)(I) the number.~~

~~(D) The incidence and duration of disciplinary actions by race, ethnicity, limited English proficiency status, gender, and disability category,~~ of children with disabilities, by race, ethnicity, and disability category, who under subparagraphs (A)(ii) and (B) of section 615(k)(1), are removed to an interim alternative educational setting; ~~(II) the acts or items precipitating those removals;~~ and ~~(III) the number~~ including suspensions of 1 day or more.

~~(E) The number and percentage~~ of children with disabilities who are subject to long-term suspensions or expulsions; ~~and (B) on the number~~ removed to alternative educational settings or expelled as compared to children without disabilities who are removed to alternative educational settings or expelled.

(F) The number of due process complaints filed under section 615 and the number of hearings conducted.

(G) The number of hearings requested under section 615(k) and the number of changes in placements ordered as a result of those hearings.

(H) The number of mediations held and the number of settlement agreements reached through such mediations.

(2) The number and percentage of infants and toddlers, by race, and ethnicity, who are at risk of having substantial developmental delays (as ~~described~~defined in section 632), and who are receiving early intervention services under part C; ~~and~~

(23) on any other information that may be required by the Secretary.

~~(b)~~ (b) DATA REPORTING.--

(1) PROTECTION OF IDENTIFIABLE DATA.--The data described in subsection (a) shall be publicly reported by each State in a manner that does not result in the disclosure of data identifiable to individual children.

(2) SAMPLING.--The Secretary may permit States and the Secretary of the Interior to obtain the data described in subsection (a) through sampling.

(c) TECHNICAL ASSISTANCE.--The Secretary may provide technical assistance to States to ensure compliance with the data collection and reporting requirements under this title.

(d) DISPROPORTIONALITY.--

(1) IN GENERAL.--Each State that receives assistance under this part, and the Secretary of the Interior, shall provide for the collection and examination of data to determine if significant disproportionality based on race and ethnicity is occurring in the State and the local educational agencies of the State with respect to--

(A) the identification of children as children with disabilities, including-- the identification of children as children with disabilities in accordance with a particular impairment described in section 602(3);

~~and~~ (B) the placement in particular educational settings of such children; and

(C) the incidence, duration, and type of disciplinary actions, including suspensions and expulsions .

(2) REVIEW AND REVISION OF POLICIES, PRACTICES, AND PROCEDURES.--In the case of a determination of significant disproportionality with respect to the identification of children as children with disabilities, or the placement in particular educational settings of such children, in accordance with paragraph (1), the State or the Secretary of the Interior, as the case may be, shall--

(A) provide for the review and, if appropriate, revision of the policies, procedures, and practices used in such identification or placement to ensure that such policies, procedures, and practices comply with the requirements of this Act; ~~title;~~

(B) require any local educational agency identified under paragraph (1) to reserve the maximum amount of funds under section 613(f) to provide comprehensive coordinated early intervening services to serve children in the local educational agency, particularly children in those groups that were significantly overidentified under paragraph (1); and

(C) require the local educational agency to publicly report on the revision of policies, practices, and procedures described under subparagraph (A).

**20 U.S.C. §1419 (SEC. 619)**  
**PRESCHOOL GRANTS**

(a) IN GENERAL.--The Secretary shall provide grants under this section to assist States to provide special education and related services, in accordance with this part--

(1) to children with disabilities aged 3 through 5, inclusive; and

(2) at the State's discretion, to ~~2-year-old~~ 2-year-old children with disabilities who will turn 3 during the school year.

(b) ELIGIBILITY.--A State shall be eligible for a grant under this section if such State--

(1) is eligible under section 612 to receive a grant under this part; and

(2) makes a free appropriate public education available to all children with disabilities, aged 3 through 5, residing in the State.

(c) ALLOCATIONS TO STATES.--

(1) IN GENERAL.--~~After reserving funds for studies and evaluations under section 674(e),--~~  
The Secretary shall allocate the ~~remaining~~ amount made available to carry out this section for a fiscal year among the States in accordance with paragraph (2) or (3), as the case may be.

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

(A) ALLOCATION--

(i) ~~Except~~ IN GENERAL--~~Except~~ as provided in subparagraph (B), the Secretary shall--

(I) allocate to each State the amount ~~the State~~ received under this section for fiscal year 1997;

(II) allocate 85 percent of any remaining funds to States on the basis of ~~their~~ the States' relative populations of children aged 3 through 5; and

(III) allocate 15 percent of those remaining funds to States on the basis of ~~their~~ the States' relative populations of all children aged 3 through 5 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 YEARS--~~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 ~~the State~~ received under this section for fiscal year 1997; and

(bb) ~~one third~~  $1/3$  of ~~one~~  $1$  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 fiscal year 1997;

(I) the sum of--

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

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

(III) the sum of--

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

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

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

(3) DECREASE IN FUNDS.--If the amount available for allocations to States under paragraph (1) for a fiscal year is less than the amount allocated to the States under this section for the preceding fiscal year, those allocations shall be calculated as follows:

(A) ALLOCATIONS.--If the amount available for allocations is greater than the amount allocated to the States for fiscal year 1997, each State shall be allocated the sum of--

(i) the amount ~~the State~~ received under this section for fiscal year 1997; and

(ii) an amount that bears the same relation to any remaining funds as the increase the State received under this section for the preceding fiscal year over fiscal year 1997 bears to the total of all such increases for all States.

(B) RATABLE REDUCTIONS.--If the amount available for allocations is equal to or less than the amount allocated to the States for fiscal year 1997, each State shall be allocated the amount ~~the State~~ received for ~~that~~ fiscal year 1997, ratably reduced, if necessary.

~~(4) OUTLYING AREAS~~.--~~The Secretary shall increase the fiscal year 1998 allotment of each outlying area under section 611 by at least the amount that that area received under this section for fiscal year 1997.~~

(d) RESERVATION FOR STATE ACTIVITIES.--

(1) IN GENERAL.--Each State may ~~retain~~reserve not more than the amount described in paragraph (2) for administration and other State-level activities in accordance with subsections (e) and (f).

(2) AMOUNT DESCRIBED.--For each fiscal year, the Secretary shall determine and report to the State educational agency an amount that is 25 percent of the amount the State received under this section for fiscal year 1997, cumulatively adjusted by the Secretary for each succeeding fiscal year by the lesser of--

(A) the percentage increase, if any, from the preceding fiscal year in the State's allocation under this section; or

(B) the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor.

(e) STATE ADMINISTRATION.--

(1) IN GENERAL.--For the purpose of administering this section (including the coordination of activities under this part with, and providing technical assistance to, other programs that provide services to children with disabilities) a State may use not more than 20 percent of the maximum amount ~~it~~the State may ~~retain~~reserve under subsection (d) for any fiscal year.

(2) ADMINISTRATION OF PART C.--Funds described in paragraph (1) may also be used for the administration of part C ~~of this Act, if the State educational agency is the lead agency for the State under that part.~~

(f) OTHER STATE-LEVEL ACTIVITIES.--Each State shall use any funds ~~it retains~~the State reserves under subsection (d) and does not use for administration under subsection (e)--

(1) for support services (including establishing and implementing the mediation process required by section 615(e)), which may benefit children with disabilities younger than 3 or older than 5 as long as those services also benefit children with disabilities aged 3 through 5;

(2) for direct services for children eligible for services under this section;

~~(3) to develop a State improvement plan under subpart 1 of part D; (4) for 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; or (5) 15);~~

(4) to supplement other funds used to develop and implement a Statewide coordinated services system designed to improve results for children and families, including children with disabilities and their families, but not to exceed more than 1 percent of the amount received by the State under this section for a fiscal year;

(5) to provide early intervention services (which shall include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills) in accordance with part C to children with disabilities who are eligible for services under this section and who previously received services under part C until such children enter, or are eligible under State law to enter, kindergarten; or

(6) at the State's discretion, to continue service coordination or case management for families who receive services under part C.

(g) SUBGRANTS TO LOCAL EDUCATIONAL AGENCIES.--

(1) SUBGRANTS REQUIRED.--Each State that receives a grant under this section for any fiscal year shall distribute ~~any~~ all of the grant funds that ~~it~~ the State does not reserve under subsection (d) to local educational agencies in the State that have established their eligibility under section 613, as follows:

(A) BASE PAYMENTS.--The State shall first award each local educational agency described in paragraph (1) the amount that agency would have received under this section for fiscal year 1997 if the State had distributed 75 percent of its grant for --that year under section 619(c)(3), ~~as~~ such section was then in effect.

(B) ALLOCATION OF REMAINING FUNDS.--After making allocations under subparagraph (A), the State shall--

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

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

(2) REALLOCATION OF FUNDS.--If a State educational agency determines that a local educational agency is adequately providing a free appropriate public education to all children with disabilities aged 3 through 5 residing in the area served by ~~that~~ the local educational agency with State and local funds, the State educational agency may reallocate any portion of the funds under this section that are not needed by that local educational agency to provide a free appropriate public education to other local educational agencies in the State that are not adequately providing special education and related services to all children with disabilities aged 3 through 5 residing in the areas ~~they~~ the other local educational agencies serve.

(h) PART C INAPPLICABLE.--Part C ~~of this Act~~ does not apply to any child with a disability receiving a free appropriate public education, in accordance with this part, with funds received under this section.

(i) ~~DEFINITION~~ STATE DEFINED.--~~For the purpose of--~~ In this section, the term State means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(j) AUTHORIZATION OF APPROPRIATIONS.--~~For the purpose of carrying out this section, there--~~ There are authorized to be appropriated to carry out this section such sums as may be necessary. ~~appropriated to the Secretary \$500,000,000 for fiscal year 1998 and for each subsequent fiscal year.~~