

1 **“PART B—ASSISTANCE FOR EDU-**  
2 **CATION OF ALL CHILDREN**  
3 **WITH DISABILITIES**

4 **“SEC. 611. AUTHORIZATION; ALLOTMENT; USE OF FUNDS;**  
5 **AUTHORIZATION OF APPROPRIATIONS.**

6 “(a) GRANTS TO STATES.—

7 “(1) PURPOSE OF GRANTS.—The Secretary  
8 shall make grants to States and the outlying areas,  
9 and provide funds to the Secretary of the Interior,  
10 to assist them to provide special education and re-  
11 lated services to children with disabilities in accord-  
12 ance with this part.

13 “(2) MAXIMUM AMOUNT.—The maximum  
14 amount available for awarding grants under this  
15 part for any fiscal year is—

16 “(A) the total number of children with dis-  
17 abilities in the 2002–2003 school year in the  
18 States who received special education and re-  
19 lated services and who were—

20 “(i) aged 3 through 5, if the State  
21 was eligible for a grant under section 619;  
22 and

23 “(ii) aged 6 through 21; multiplied by

24 “(B) 40 percent of the average per-pupil  
25 expenditure in public elementary schools and

1 secondary schools in the United States; ad-  
2 justed by;

3 “(C) the rate of change in the sum of—

4 “(i) 85 percent of the change in the  
5 nationwide total of the population de-  
6 scribed in subsection (d)(3)(A)(i)(II); and

7 “(ii) 15 percent of the change in the  
8 nationwide total of the population de-  
9 scribed in subsection (d)(3)(A)(i)(III).

10 “(b) OUTLYING AREAS AND FREELY ASSOCIATED  
11 STATES.—

12 “(1) FUNDS RESERVED.—From the amount ap-  
13 propriated for any fiscal year under subsection (i),  
14 the Secretary shall reserve not more than 1 percent,  
15 which shall be used—

16 “(A) to provide assistance to the outlying  
17 areas in accordance with their respective popu-  
18 lations of individuals aged 3 through 21; and

19 “(B) to provide each freely associated  
20 State a grant in the amount that such freely  
21 associated State received for fiscal year 2003  
22 under this part, but only if the freely associated  
23 State meets the applicable requirements of this  
24 part, as well as the requirements of section  
25 611(b)(2)(C) as such section was in effect on

1           the day before the date of enactment of the In-  
2           dividuals with Disabilities Education Improve-  
3           ment Act of 2003.

4           “(2) SPECIAL RULE.—The provisions of Public  
5           Law 95–134, permitting the consolidation of grants  
6           by the outlying areas, shall not apply to funds pro-  
7           vided to the outlying areas or the freely associated  
8           States under this section.

9           “(3) DEFINITION.—As used in this subsection,  
10          the term ‘freely associated States’ means the Repub-  
11          lic of the Marshall Islands, the Federated States of  
12          Micronesia, and the Republic of Palau.

13          “(c) SECRETARY OF THE INTERIOR.—From the  
14          amount appropriated for any fiscal year under subsection  
15          (i), the Secretary shall reserve 1.226 percent to provide  
16          assistance to the Secretary of the Interior in accordance  
17          with subsection (i).

18          “(d) ALLOCATIONS TO STATES.—

19                 “(1) IN GENERAL.—After reserving funds for  
20                 studies and evaluations under section 665, and for  
21                 payments to the outlying areas, the freely associated  
22                 States, and the Secretary of the Interior under sub-  
23                 sections (b) and (c) for a fiscal year, the Secretary  
24                 shall allocate the remaining amount among the  
25                 States in accordance with this subsection.

1           “(2) SPECIAL RULE FOR USE OF FISCAL YEAR  
2           1999 AMOUNT.—If a State received any funds under  
3           this section for fiscal year 1999 on the basis of chil-  
4           dren aged 3 through 5, but does not make a free ap-  
5           propriate public education available to all children  
6           with disabilities aged 3 through 5 in the State in  
7           any subsequent fiscal year, the Secretary shall com-  
8           pute the State’s amount for fiscal year 1999, solely  
9           for the purpose of calculating the State’s allocation  
10          in that subsequent year under paragraph (3) or (4),  
11          by subtracting the amount allocated to the State for  
12          fiscal year 1999 on the basis of those children.

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

19                 “(A) ALLOCATION OF INCREASE.—

20                         “(i) IN GENERAL.—Except as pro-  
21                         vided in subparagraph (B), the Secretary  
22                         shall allocate for the fiscal year—

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

1                   “(II) 85 percent of any remain-  
2                   ing funds to States on the basis of the  
3                   States’ relative populations of children  
4                   aged 3 through 21 who are of the  
5                   same age as children with disabilities  
6                   for whom the State ensures the avail-  
7                   ability of a free appropriate public  
8                   education under this part; and

9                   “(III) 15 percent of those re-  
10                  maining funds to States on the basis  
11                  of the States’ relative populations of  
12                  children described in subclause (II)  
13                  who are living in poverty.

14                  “(ii) DATA.—For the purpose of mak-  
15                  ing grants under this paragraph, the Sec-  
16                  retary shall use the most recent population  
17                  data, including data on children living in  
18                  poverty, that are available and satisfactory  
19                  to the Secretary.

20                  “(B) LIMITATIONS.—Notwithstanding sub-  
21                  paragraph (A), allocations under this paragraph  
22                  shall be subject to the following:

23                  “(i) PRECEDING YEAR ALLOCATION.—  
24                  No State’s allocation shall be less than its

1 allocation under this section for the pre-  
2 ceding fiscal year.

3 “(ii) MINIMUM.—No State’s allocation  
4 shall be less than the greatest of—

5 “(I) the sum of—

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

9 “(bb)  $\frac{1}{3}$  of 1 percent of the  
10 amount by which the amount ap-  
11 propriated under subsection (i)  
12 for the fiscal year exceeds the  
13 amount appropriated for this sec-  
14 tion for fiscal year 1999;

15 “(II) the sum of—

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

19 “(bb) that amount multi-  
20 plied by the percentage by which  
21 the increase in the funds appro-  
22 priated for this section from the  
23 preceding fiscal year exceeds 1.5  
24 percent; or

25 “(III) the sum of—



1           “(4) DECREASE IN FUNDS.—If the amount  
2 available for allocations to States under paragraph  
3 (1) for a fiscal year is less than the amount allo-  
4 cated to the States under this section for the pre-  
5 ceding fiscal year, those allocations shall be cal-  
6 culated as follows:

7           “(A) AMOUNTS GREATER THAN FISCAL  
8 YEAR 1999 ALLOCATIONS.—If the amount avail-  
9 able for allocations is greater than the amount  
10 allocated to the States for fiscal year 1999,  
11 each State shall be allocated the sum of—

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

14           “(ii) an amount that bears the same  
15 relation to any remaining funds as the in-  
16 crease the State received under this section  
17 for the preceding fiscal year over fiscal  
18 year 1999 bears to the total of all such in-  
19 creases for all States.

20           “(B) AMOUNTS EQUAL TO OR LESS THAN  
21 FISCAL YEAR 1999 ALLOCATIONS.—

22           “(i) IN GENERAL.—If the amount  
23 available for allocations under this para-  
24 graph is equal to or less than the amount  
25 allocated to the States for fiscal year 1999,



1 each State shall be allocated the amount  
2 the State received for fiscal year 1999.

3 “(ii) RATABLE REDUCTION.—If the  
4 amount available for allocations under this  
5 paragraph is insufficient to make the allo-  
6 cations described in clause (i), those alloca-  
7 tions shall be ratably reduced.

8 “(e) STATE-LEVEL ACTIVITIES.—

9 “(1) STATE ADMINISTRATION.—

10 “(A) IN GENERAL.—For the purpose of  
11 administering this part, including paragraph  
12 (3), section 619, and the coordination of activi-  
13 ties under this part with, and providing tech-  
14 nical assistance to, other programs that provide  
15 services to children with disabilities—

16 “(i) each State may reserve not more  
17 than the maximum amount the State was  
18 eligible to reserve for State administration  
19 for fiscal year 2003 or \$800,000 (adjusted  
20 by the cumulative rate of inflation since  
21 fiscal year 2003 as measured by the per-  
22 centage increase, if any, in the Consumer  
23 Price Index For All Urban Consumers,  
24 published by the Bureau of Labor Statis-



1 paragraph (1) from the amount of the  
2 State's allocation under subsection (d) for  
3 fiscal years 2004 and 2005, respectively.  
4 For fiscal years 2006, 2007, 2008, and  
5 2009, the State may reserve the maximum  
6 amount the State was eligible to reserve  
7 under the preceding sentence for fiscal  
8 year 2005 (adjusted by the cumulative rate  
9 of inflation since fiscal year 2005 as meas-  
10 ured by the percentage increase, if any, in  
11 the Consumer Price Index For All Urban  
12 Consumers, published by the Bureau of  
13 Labor Statistics of the Department of  
14 Labor).

15 “(ii) SMALL STATE ADJUSTMENT.—  
16 Notwithstanding clause (i), in the case of  
17 a State for which the maximum amount  
18 reserved for State administration under  
19 paragraph (1) is not greater than  
20 \$800,000 (as adjusted pursuant to para-  
21 graph (1)(A)(i)), the State may reserve for  
22 the purpose of carrying out State-level ac-  
23 tivities for each of the fiscal years 2004  
24 and 2005, not more than 12 percent of the  
25 amount that remains after subtracting the

1 amount reserved under paragraph (1) from  
2 the amount of the State's allocation under  
3 subsection (d) for fiscal years 2004 and  
4 2005, respectively. For each of the fiscal  
5 years 2006, 2007, 2008, and 2009, each  
6 such State may reserve for such purpose  
7 the maximum amount the State was eligi-  
8 ble to reserve under the preceding sentence  
9 for fiscal year 2005 (adjusted by the cu-  
10 mulative rate of inflation since fiscal year  
11 2005 as measured by the percentage in-  
12 crease, if any, in the Consumer Price  
13 Index For All Urban Consumers, published  
14 by the Bureau of Labor Statistics of the  
15 Department of Labor).

16 “(B) REQUIRED ACTIVITIES.—Funds re-  
17 served under subparagraph (A) shall be used to  
18 carry out the following activities:

19 “(i) For monitoring, enforcement and  
20 complaint investigation.

21 “(ii) To establish and implement the  
22 mediation, processes required by section  
23 615(e)(1), including providing for the costs  
24 of mediators and support personnel;

1           “(iii) To support the State protection  
2           and advocacy system to advise and assist  
3           parents in the areas of—

4                   “(I) dispute resolution and due  
5           process;

6                   “(II) voluntary mediation; and

7                   “(III) the opportunity to resolve  
8           complaints.

9           “(C) AUTHORIZED ACTIVITIES.—Funds re-  
10          served under subparagraph (A) may be used to  
11          carry out the following activities:

12                   “(i) For support and direct services,  
13           including technical assistance, personnel  
14           development and training.

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

18                   “(iii) To assist local educational agen-  
19           cies in providing positive behavioral inter-  
20           ventions and supports and mental health  
21           services for children with disabilities.

22                   “(iv) To improve the use of technology  
23           in the classroom by children with disabil-  
24           ities to enhance learning.

1           “(v) To support the development and  
2 use of technology, including universally de-  
3 signed technologies and assistive tech-  
4 nology devices, to maximize accessibility to  
5 the general curriculum for children with  
6 disabilities.

7           “(vi) Development and implementa-  
8 tion of transition programs, including co-  
9 ordination of services with agencies in-  
10 volved in supporting the transition of stu-  
11 dents with disabilities to post-secondary  
12 activities.

13           “(vii) To assist local educational agen-  
14 cies in meeting personnel shortages.

15           “(viii) To support capacity building  
16 activities and improve the delivery of serv-  
17 ices by local educational agencies to im-  
18 prove results for children with disabilities.

19           “(ix) Alternative programming for  
20 children who have been expelled from  
21 school, and services for children in correc-  
22 tional facilities, children enrolled in State-  
23 operated or State-supported schools, and  
24 children in charter schools.

1                   “(x) To support the development and  
2                   provision of appropriate accommodations  
3                   for children with disabilities, or the devel-  
4                   opment and provision of alternate assess-  
5                   ments that are valid and reliable for as-  
6                   sessing the performance of children with  
7                   disabilities, in accordance with sections  
8                   1111(b) and 6111 of the Elementary and  
9                   Secondary Education Act of 1965.

10                   “(3) LOCAL EDUCATIONAL AGENCY RISK  
11                   POOL.—

12                   “(A) IN GENERAL.—For the purpose of as-  
13                   sisting local educational agencies (and charter  
14                   schools that are local educational agencies) in  
15                   addressing the needs of high-need children and  
16                   the unanticipated enrollment of other children  
17                   eligible for services under this part, each State  
18                   shall reserve for each of the fiscal years 2004  
19                   through 2009, 2 percent of the amount that re-  
20                   mains after subtracting the amount reserved  
21                   under paragraph (1) from the amount of the  
22                   State’s allocation under subsection (d) for each  
23                   of the fiscal years 2004 through 2009, respec-  
24                   tively, to—

25                   “(i) establish a high-cost fund; and

1                   “(ii) make disbursements from the  
2                   high-cost fund to local educational agencies  
3                   in accordance with this paragraph.

4                   “(B) REQUIRED DISBURSEMENTS FROM  
5                   THE FUND.—

6                   “(i) IN GENERAL.—Each State edu-  
7                   cational agency shall make disbursements  
8                   from the fund established under subpara-  
9                   graph (A) to local educational agencies to  
10                  pay the percentage, described in subpara-  
11                  graph (D), of the costs of providing a free  
12                  appropriate public education to high-need  
13                  children.

14                  “(ii) SPECIAL RULE.—If funds re-  
15                  served for a fiscal year under subpara-  
16                  graph (A) are insufficient to pay the per-  
17                  centage described in subparagraph (D) to  
18                  assist all the local educational agencies  
19                  having applications approved under sub-  
20                  paragraph (C), then the State educational  
21                  agency shall ratably reduce the amount  
22                  paid to each local educational agency that  
23                  receives a disbursement for that fiscal  
24                  year.



1           “(C) APPLICATION.—A local educational  
2 agency that desires a disbursement under this  
3 subsection shall submit an application to the  
4 State educational agency at such time, in such  
5 manner, and containing such information as the  
6 State educational agency may require. Such ap-  
7 plication shall include assurances that funds  
8 provided under this paragraph shall not be used  
9 to pay costs that otherwise would be reimburs-  
10 able as medical assistance for a child with a  
11 disability under the State medicaid program  
12 under title XIX of the Social Security Act.

13           “(D) DISBURSEMENTS.—

14           “(i) IN GENERAL.—A State edu-  
15 cational agency shall make a disbursement  
16 to a local educational agency that submits  
17 an application under subparagraph (C) in  
18 an amount that is equal to 75 percent of  
19 the costs that are in excess of 4 times the  
20 average per-pupil expenditure in the  
21 United States or in the State where the  
22 child resides (whichever average per-pupil  
23 expenditure is lower) associated with edu-  
24 cating each high need child served by such

1 local educational agency in a fiscal year for  
2 whom such agency desires a disbursement.

3 “(ii) APPROPRIATE COSTS.—The costs  
4 associated with educating a high need child  
5 under clause (i) are only those costs associ-  
6 ated with providing direct special education  
7 and related services to such child that are  
8 identified in such child’s appropriately de-  
9 veloped IEP.

10 “(E) LEGAL FEES.—The disbursements  
11 under subparagraph (D) shall not support legal  
12 fees, court costs, or other costs associated with  
13 a cause of action brought on behalf of such  
14 child to ensure a free appropriate public edu-  
15 cation for such child.

16 “(F) PERMISSIBLE DISBURSEMENTS FROM  
17 REMAINING FUNDS.—A State educational agen-  
18 cy may make disbursements to local educational  
19 agencies from any funds that are remaining in  
20 the high cost fund after making the required  
21 disbursements under subparagraph (D) for a  
22 fiscal year for the following purposes:

23 “(i) To pay the costs associated with  
24 serving children with disabilities who  
25 moved into the areas served by such local

1 agencies after the budget for the following  
2 school year had been finalized to assist the  
3 local educational agencies in providing a  
4 free appropriate public education for such  
5 children in such year.

6 “(ii) To compensate local educational  
7 agencies for extraordinary costs, as deter-  
8 mined by the State, of any children eligible  
9 for services under this part due to—

10 “(I) unexpected enrollment or  
11 placement of children eligible for serv-  
12 ices under this part; or

13 “(II) a significant underestimate  
14 of the average cost of providing serv-  
15 ices to children eligible for services  
16 under this part.

17 “(G) REMAINING FUNDS.—Funds reserved  
18 under subparagraph (A) in any fiscal year but  
19 not expended in that fiscal year pursuant to  
20 subparagraph (D) or subparagraph (F) shall—

21 “(i) be allocated to local educational  
22 agencies pursuant to subparagraphs (D) or  
23 (F) for the next fiscal year; or

24 “(ii) be allocated to local educational  
25 agencies in the same manner as funds are

1 allocated to local educational agencies  
2 under subsection (f).

3 “(H) ASSURANCE OF A FREE APPRO-  
4 PRIATE PUBLIC EDUCATION.—Nothing in this  
5 section shall be construed—

6 “(i) to limit or condition the right of  
7 a child with a disability who is assisted  
8 under this part to receive a free appro-  
9 priate public education pursuant to section  
10 612(a)(1) in a least restrictive environment  
11 pursuant to section 612(a)(5); or

12 “(ii) to authorize a State educational  
13 agency or local educational agency to indi-  
14 cate a limit on what is expected to be  
15 spent on the education of a child with a  
16 disability.

17 “(I) MEDICAID SERVICES NOT AF-  
18 FECTED.—Disbursements provided under this  
19 subsection shall not be used to pay costs that  
20 otherwise would be reimbursable as medical as-  
21 sistance for a child with a disability under the  
22 State medicaid program under title XIX of the  
23 Social Security Act.

24 “(J) DEFINITIONS.—In this paragraph:

1                   “(i) AVERAGE PER-PUPIL EXPENDI-  
2                   TURE.—The term ‘average per-pupil ex-  
3                   penditure’ has the meaning given the term  
4                   in section 9101 of the Elementary and  
5                   Secondary Education Act of 1965.

6                   “(ii) HIGH-NEED CHILD.—The term  
7                   ‘high-need’, when used with respect to a  
8                   child with a disability, means a child with  
9                   a disability for whom a free appropriate  
10                  public education in a fiscal year costs more  
11                  than 4 times the average per-pupil expend-  
12                  iture for such fiscal year.

13                  “(K) SPECIAL RULE FOR RISK POOL AND  
14                  HIGH-NEED ASSISTANCE PROGRAMS IN EFFECT  
15                  AS OF JANUARY 1, 2003.—Notwithstanding the  
16                  provisions of subparagraphs (A) through (J), a  
17                  State may use funds reserved pursuant to this  
18                  paragraph for administering and implementing  
19                  a placement-neutral cost-sharing and reim-  
20                  bursement program of high-need, low-incidence,  
21                  emergency, catastrophic, or extraordinary aid to  
22                  local educational agencies that provides services  
23                  to students eligible under this part based on eli-  
24                  gibility criteria for such programs that were op-  
25                  erative on January 1, 2003.

1           “(4) INAPPLICABILITY OF CERTAIN PROHIBI-  
2           TIONS.—A State may use funds the State reserves  
3           under paragraphs (1), (2), and (3) without regard  
4           to—

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

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

9           “(5) REPORT ON USE OF FUNDS.—As part of  
10           the information required to be submitted to the Sec-  
11           retary under section 612, each State shall annually  
12           describe how amounts under this section—

13                   “(A) will be used to meet the requirements  
14                   of this Act; and

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

18           “(6) FLEXIBILITY IN USING FUNDS FOR PART  
19           C.—Any State eligible to receive a grant under sec-  
20           tion 619 may use funds made available under para-  
21           graph (1)(A), subsection (f)(3), or section 619(f)(5)  
22           to develop and implement a State policy jointly with  
23           the lead agency under part C and the State edu-  
24           cational agency to provide early intervention services  
25           (which shall include an educational component that

1 promotes school readiness and incorporates pre-lit-  
2 eracy, language, and numeracy skills) in accordance  
3 with part C to children with disabilities who are eli-  
4 gible for services under section 619 and who pre-  
5 viously received services under part C until such  
6 children enter, or are eligible under State law to  
7 enter, kindergarten.

8 “(f) SUBGRANTS TO LOCAL EDUCATIONAL AGEN-  
9 CIES.—

10 “(1) SUBGRANTS REQUIRED.—Each State that  
11 receives a grant under this section for any fiscal  
12 year shall distribute any funds the State does not re-  
13 serve under subsection (e) to local educational agen-  
14 cies (including public charter schools that operate as  
15 local educational agencies) in the State that have es-  
16 tablished their eligibility under section 613 for use  
17 in accordance with this part.

18 “(2) PROCEDURE FOR ALLOCATIONS TO LOCAL  
19 EDUCATIONAL AGENCIES.—

20 “(A) PROCEDURE.—For each fiscal year  
21 for which funds are allocated to States under  
22 subsection (d), each State shall allocate funds  
23 under paragraph (1) as follows:

24 “(i) BASE PAYMENTS.—The State  
25 shall first award each local educational

1 agency described in paragraph (1) the  
2 amount the local educational agency would  
3 have received under this section for fiscal  
4 year 1999, if the State had distributed 75  
5 percent of its grant for that year under  
6 section 611(d) as section 611(d) was then  
7 in effect.

8 “(ii) ALLOCATION OF REMAINING  
9 FUNDS.—After making allocations under  
10 clause (i), the State shall—

11 “(I) allocate 85 percent of any  
12 remaining funds to those local edu-  
13 cational agencies on the basis of the  
14 relative numbers of children enrolled  
15 in public and private elementary  
16 schools and secondary schools within  
17 the local educational agency’s jurisdic-  
18 tion; and

19 “(II) allocate 15 percent of those  
20 remaining funds to those local edu-  
21 cational agencies in accordance with  
22 their relative numbers of children liv-  
23 ing in poverty, as determined by the  
24 State educational agency.



1           “(3) REALLOCATION OF FUNDS.—If a State  
2 educational agency determines that a local edu-  
3 cational agency is adequately providing a free appro-  
4 priate public education to all children with disabil-  
5 ities residing in the area served by that local edu-  
6 cational agency with State and local funds, the State  
7 educational agency may reallocate any portion of the  
8 funds under this part that are not needed by that  
9 local educational agency to provide a free appro-  
10 priate public education to other local educational  
11 agencies in the State that are not adequately pro-  
12 viding special education and related services to all  
13 children with disabilities residing in the areas served  
14 by those other local educational agencies.

15           “(g) DEFINITIONS.—For the purpose of this  
16 section—

17           “(1) the term ‘average per-pupil expenditure in  
18 public elementary schools and secondary schools in  
19 the United States’ means—

20           “(A) without regard to the source of  
21 funds—

22           “(i) the aggregate current expendi-  
23 tures, during the second fiscal year pre-  
24 ceding the fiscal year for which the deter-  
25 mination is made (or, if satisfactory data

1 for that year are not available, during the  
2 most recent preceding fiscal year for which  
3 satisfactory data are available) of all local  
4 educational agencies in the 50 States and  
5 the District of Columbia; plus

6 “(ii) any direct expenditures by the  
7 State for the operation of those local edu-  
8 cational agencies; divided by

9 “(B) the aggregate number of children in  
10 average daily attendance to whom those local  
11 educational agencies provided free public edu-  
12 cation during that preceding year; and

13 “(2) the term ‘State’ means each of the 50  
14 States, the District of Columbia, and the Common-  
15 wealth of Puerto Rico.

16 “(h) USE OF AMOUNTS BY SECRETARY OF THE IN-  
17 TERIOR.—

18 “(1) PROVISION OF AMOUNTS FOR ASSIST-  
19 ANCE.—

20 “(A) IN GENERAL.—The Secretary of Edu-  
21 cation shall provide amounts to the Secretary of  
22 the Interior to meet the need for assistance for  
23 the education of children with disabilities on  
24 reservations aged 5 through 21 who are en-  
25 rolled in elementary schools and secondary

1 schools for Indian children operated or funded  
2 by the Secretary of the Interior. The amount of  
3 such payment for any fiscal year shall be equal  
4 to 80 percent of the amount allotted under sub-  
5 section (c) for that fiscal year.

6 “(B) CALCULATION OF NUMBER OF CHIL-  
7 DREN.—In the case of Indian students aged 3  
8 through 5 who are enrolled in programs affili-  
9 ated with the Bureau of Indian Affairs (here-  
10 after in this subsection referred to as ‘BIA’)  
11 schools, and that are required by the States in  
12 which such schools are located to attain or  
13 maintain State accreditation, and which schools  
14 had such accreditation prior to the date of en-  
15 actment of the Individuals with Disabilities  
16 Education Act Amendments of 1991, the school  
17 shall be allowed to count those children for the  
18 purpose of distribution of the funds provided  
19 under this paragraph to the Secretary of the  
20 Interior. The Secretary of the Interior shall be  
21 responsible for meeting all of the requirements  
22 of this part for these children, in accordance  
23 with paragraph (2).

24 “(C) ADDITIONAL REQUIREMENT.—With  
25 respect to all other children aged 3 through 21

1           on reservations, the State educational agency  
2           shall be responsible for ensuring that all of the  
3           requirements of this part are implemented.

4           “(2) SUBMISSION OF INFORMATION.—The Sec-  
5           retary of Education may provide the Secretary of  
6           the Interior amounts under paragraph (1) for a fis-  
7           cal year only if the Secretary of the Interior submits  
8           to the Secretary of Education information that—

9                   “(A) demonstrates that the Department of  
10                  the Interior meets the appropriate require-  
11                  ments, as determined by the Secretary of Edu-  
12                  cation, of sections 612 (including monitoring  
13                  and evaluation activities) and 613;

14                   “(B) includes a description of how the Sec-  
15                  retary of the Interior will coordinate the provi-  
16                  sion of services under this part with local edu-  
17                  cational agencies, tribes and tribal organiza-  
18                  tions, and other private and Federal service  
19                  providers;

20                   “(C) includes an assurance that there are  
21                  public hearings, adequate notice of such hear-  
22                  ings, and an opportunity for comment afforded  
23                  to members of tribes, tribal governing bodies,  
24                  and affected local school boards before the

1 adoption of the policies, programs, and proce-  
2 dures described in subparagraph (A);

3 “(D) includes an assurance that the Sec-  
4 retary of the Interior will provide such informa-  
5 tion as the Secretary of Education may require  
6 to comply with section 618;

7 “(E) includes an assurance that the Sec-  
8 retary of the Interior and the Secretary of  
9 Health and Human Services have entered into  
10 a memorandum of agreement, to be provided to  
11 the Secretary of Education, for the coordination  
12 of services, resources, and personnel between  
13 their respective Federal, State, and local offices  
14 and with State and local educational agencies  
15 and other entities to facilitate the provision of  
16 services to Indian children with disabilities re-  
17 siding on or near reservations (such agreement  
18 shall provide for the apportionment of respon-  
19 sibilities and costs including, but not limited to,  
20 child find, evaluation, diagnosis, remediation or  
21 therapeutic measures, and (where appropriate)  
22 equipment and medical or personal supplies as  
23 needed for a child to remain in school or a pro-  
24 gram); and

1           “(F) includes an assurance that the De-  
2           partment of the Interior will cooperate with the  
3           Department of Education in its exercise of  
4           monitoring and oversight of this application,  
5           and any agreements entered into between the  
6           Secretary of the Interior and other entities  
7           under this part, and will fulfill its duties under  
8           this part.

9           “(3) APPLICABILITY.—Section 616(a) shall  
10          apply to the information described in this paragraph.

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

14                 “(A) IN GENERAL.—With funds appro-  
15                 priated under subsection (i), the Secretary of  
16                 Education shall make payments to the Sec-  
17                 retary of the Interior to be distributed to tribes  
18                 or tribal organizations (as defined under section  
19                 4 of the Indian Self-Determination and Edu-  
20                 cation Assistance Act) or consortia of the above  
21                 to provide for the coordination of assistance for  
22                 special education and related services for chil-  
23                 dren with disabilities aged 3 through 5 on res-  
24                 ervations served by elementary schools and sec-  
25                 ondary schools for Indian children operated or

1 funded by the Department of the Interior. The  
2 amount of such payments under subparagraph  
3 (B) for any fiscal year shall be equal to 20 per-  
4 cent of the amount allotted under subsection  
5 (c).

6 “(B) DISTRIBUTION OF FUNDS.—The Sec-  
7 retary of the Interior shall distribute the total  
8 amount of the payment under subparagraph  
9 (A) by allocating to each tribe or tribal organi-  
10 zation an amount based on the number of chil-  
11 dren with disabilities ages 3 through 5 residing  
12 on reservations as reported annually, divided by  
13 the total of those children served by all tribes  
14 or tribal organizations.

15 “(C) SUBMISSION OF INFORMATION.—To  
16 receive a payment under this paragraph, the  
17 tribe or tribal organization shall submit such  
18 figures to the Secretary of the Interior as re-  
19 quired to determine the amounts to be allocated  
20 under subparagraph (B). This information shall  
21 be compiled and submitted to the Secretary of  
22 Education.

23 “(D) USE OF FUNDS.—The funds received  
24 by a tribe or tribal organization shall be used  
25 to assist in child find, screening, and other pro-

1           cedures for the early identification of children  
2           aged 3 through 5, parent training, and the pro-  
3           vision of direct services. These activities may be  
4           carried out directly or through contracts or co-  
5           operative agreements with the BIA, local edu-  
6           cational agencies, and other public or private  
7           nonprofit organizations. The tribe or tribal or-  
8           ganization is encouraged to involve Indian par-  
9           ents in the development and implementation of  
10          these activities. The above entities shall, as ap-  
11          propriate, make referrals to local, State, or  
12          Federal entities for the provision of services or  
13          further diagnosis.

14                 “(E) BIENNIAL REPORT.—To be eligible to  
15          receive a grant pursuant to subparagraph (A),  
16          the tribe or tribal organization shall provide to  
17          the Secretary of the Interior a biennial report  
18          of activities undertaken under this paragraph,  
19          including the number of contracts and coopera-  
20          tive agreements entered into, the number of  
21          children contacted and receiving services for  
22          each year, and the estimated number of chil-  
23          dren needing services during the 2 years fol-  
24          lowing the year in which the report is made.  
25          The Secretary of the Interior shall include a



1 summary of this information on a biennial basis  
2 in the report to the Secretary of Education re-  
3 quired under this subsection. The Secretary of  
4 Education may require any additional informa-  
5 tion from the Secretary of the Interior.

6 “(F) PROHIBITIONS.—None of the funds  
7 allocated under this paragraph may be used by  
8 the Secretary of the Interior for administrative  
9 purposes, including child count and the provi-  
10 sion of technical assistance.

11 “(5) PLAN FOR COORDINATION OF SERVICES.—  
12 The Secretary of the Interior shall develop and im-  
13 plement a plan for the coordination of services for  
14 all Indian children with disabilities residing on res-  
15 ervations covered under this Act. Such plan shall  
16 provide for the coordination of services benefiting  
17 these children from whatever source, including  
18 tribes, the Indian Health Service, other BIA divi-  
19 sions, and other Federal agencies. In developing the  
20 plan, the Secretary of the Interior shall consult with  
21 all interested and involved parties. The plan shall be  
22 based on the needs of the children and the system  
23 best suited for meeting those needs, and may involve  
24 the establishment of cooperative agreements between  
25 the BIA, other Federal agencies, and other entities.

1 The plan shall also be distributed upon request to  
2 States, State and local educational agencies, and  
3 other agencies providing services to infants, toddlers,  
4 and children with disabilities, to tribes, and to other  
5 interested parties.

6 “(6) ESTABLISHMENT OF ADVISORY BOARD.—  
7 To meet the requirements of section 612(a)(20), the  
8 Secretary of the Interior shall establish, under the  
9 BIA, an advisory board composed of individuals in-  
10 volved in or concerned with the education and provi-  
11 sion of services to Indian infants, toddlers, children,  
12 and youth with disabilities, including Indians with  
13 disabilities, Indian parents or guardians of such chil-  
14 dren, teachers, service providers, State and local  
15 educational officials, representatives of tribes or trib-  
16 al organizations, representatives from State Inter-  
17 agency Coordinating Councils under section 641 in  
18 States having reservations, and other members rep-  
19 resenting the various divisions and entities of the  
20 BIA. The chairperson shall be selected by the Sec-  
21 retary of the Interior. The advisory board shall—

22 “(A) assist in the coordination of services  
23 within the BIA and with other local, State, and  
24 Federal agencies in the provision of education

1 for infants, toddlers, and children with disabili-  
2 ties;

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

6 “(C) develop and recommend policies con-  
7 cerning effective inter- and intra-agency collabo-  
8 ration, including modifications to regulations,  
9 and the elimination of barriers to inter- and  
10 intra-agency programs and activities;

11 “(D) provide assistance and disseminate  
12 information on best practices, effective program  
13 coordination strategies, and recommendations  
14 for improved educational programming for In-  
15 dian infants, toddlers, and children with disabili-  
16 ties; and

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

20 “(7) ANNUAL REPORTS.—

21 “(A) IN GENERAL.—The advisory board  
22 established under paragraph (6) shall prepare  
23 and submit to the Secretary of the Interior and  
24 to Congress an annual report containing a de-

1           description of the activities of the advisory board  
2           for the preceding year.

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

7           “(i) AUTHORIZATION OF APPROPRIATIONS.—For the  
8           purpose of carrying out this part, other than section 619,  
9           there are authorized to be appropriated such sums as may  
10          be necessary.

11       **“SEC. 612. STATE ELIGIBILITY.**

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

17                   “(1) FREE APPROPRIATE PUBLIC EDU-  
18          CATION.—

19                           “(A) IN GENERAL.—A free appropriate  
20          public education is available to all children with  
21          disabilities residing in the State between the  
22          ages of 3 and 21, inclusive, including children  
23          with disabilities who have been suspended or ex-  
24          pelled from school.

1           “(B) LIMITATION.—The obligation to  
2           make a free appropriate public education avail-  
3           able to all children with disabilities does not  
4           apply with respect to children—

5                   “(i) aged 3 through 5 and 18 through  
6                   21 in a State to the extent that its applica-  
7                   tion to those children would be inconsistent  
8                   with State law or practice, or the order of  
9                   any court, respecting the provision of pub-  
10                  lic education to children in those age  
11                  ranges; and

12                   “(ii) aged 18 through 21 to the extent  
13                   that State law does not require that special  
14                   education and related services under this  
15                   part be provided to children with disabili-  
16                   ties who, in the educational placement  
17                   prior to their incarceration in an adult cor-  
18                   rectional facility—

19                           “(I) were not actually identified  
20                           as being a child with a disability  
21                           under section 602(3); or

22                           “(II) did not have an individual-  
23                           ized education program under this  
24                           part.

1           “(C) STATE FLEXIBILITY.—A State that  
2 provides early intervention services in accord-  
3 ance with part C to a child who is eligible for  
4 services under section 619, is not required to  
5 provide such child with a free appropriate pub-  
6 lic education.

7           “(2) FULL EDUCATIONAL OPPORTUNITY  
8 GOAL.—The State has established a goal of pro-  
9 viding full educational opportunity to all children  
10 with disabilities and a detailed timetable for accom-  
11 plishing that goal.

12           “(3) CHILD FIND.—

13           “(A) IN GENERAL.—All children with dis-  
14 abilities residing in the State, including children  
15 with disabilities attending private schools, re-  
16 gardless of the severity of their disabilities, and  
17 who are in need of special education and related  
18 services, are identified, located, and evaluated  
19 and a practical method is developed and imple-  
20 mented to determine which children with dis-  
21 abilities are currently receiving needed special  
22 education and related services.

23           “(B) CONSTRUCTION.—Nothing in this  
24 Act requires that children be classified by their  
25 disability so long as each child who has a dis-

1 ability listed in section 602 and who, by reason  
2 of that disability, needs special education and  
3 related services is regarded as a child with a  
4 disability under this part.

5 “(4) INDIVIDUALIZED EDUCATION PROGRAM.—  
6 An individualized education program, or an individ-  
7 ualized family service plan that meets the require-  
8 ments of section 636(d), is developed, reviewed, and  
9 revised for each child with a disability in accordance  
10 with section 614(d).

11 “(5) LEAST RESTRICTIVE ENVIRONMENT.—

12 “(A) IN GENERAL.—To the maximum ex-  
13 tent appropriate, children with disabilities, in-  
14 cluding children in public or private institutions  
15 or other care facilities, are educated with chil-  
16 dren who are not disabled, and special classes,  
17 separate schooling, or other removal of children  
18 with disabilities from the regular educational  
19 environment occurs only when the nature or se-  
20 verity of the disability of a child is such that  
21 education in regular classes with the use of sup-  
22 plementary aids and services cannot be achieved  
23 satisfactorily.

24 “(B) ADDITIONAL REQUIREMENT.—

1           “(i) IN GENERAL.—A State funding  
2           mechanism shall not result in placements  
3           that violate the requirements of subpara-  
4           graph (A), and a State shall not use a  
5           funding mechanism by which the State dis-  
6           tributes funds on the basis of the type of  
7           setting in which a child is served that will  
8           result in the failure to provide a child with  
9           a disability a free appropriate public edu-  
10          cation according to the unique needs of the  
11          child as described in the child’s IEP.

12          “(ii) ASSURANCE.—If the State does  
13          not have policies and procedures to ensure  
14          compliance with clause (i), the State shall  
15          provide the Secretary an assurance that  
16          the State will revise the funding mecha-  
17          nism as soon as feasible to ensure that  
18          such mechanism does not result in such  
19          placements.

20          “(6) PROCEDURAL SAFEGUARDS.—

21                 “(A) IN GENERAL.—Children with disabil-  
22                 ities and their parents are afforded the proce-  
23                 dural safeguards required by section 615.

24                 “(B) ADDITIONAL PROCEDURAL SAFE-  
25                 GUARDS.—Procedures to ensure that testing



1           and evaluation materials and procedures uti-  
2           lized for the purposes of evaluation and place-  
3           ment of children with disabilities will be se-  
4           lected and administered so as not to be racially  
5           or culturally discriminatory. Such materials or  
6           procedures shall be provided and administered  
7           in the child's native language or mode of com-  
8           munication, unless it clearly is not feasible to  
9           do so, and no single procedure shall be the sole  
10          criterion for determining an appropriate edu-  
11          cational program for a child.

12           “(7) EVALUATION.—Children with disabilities  
13          are evaluated in accordance with subsections (a) and  
14          (b) of section 614.

15           “(8) CONFIDENTIALITY.—Agencies in the State  
16          comply with section 617(c) (relating to the confiden-  
17          tiality of records and information).

18           “(9) TRANSITION FROM PART C TO PRESCHOOL  
19          PROGRAMS.—Children participating in early-inter-  
20          vention programs assisted under part C, and who  
21          will participate in preschool programs assisted under  
22          this part, experience a smooth and effective transi-  
23          tion to those preschool programs in a manner con-  
24          sistent with section 637(a)(8). By the third birthday  
25          of such a child, an individualized education program

1 or, if consistent with sections 614(d)(2)(B) and  
2 636(d), an individualized family service plan, has  
3 been developed and is being implemented for the  
4 child. The local educational agency will participate in  
5 transition planning conferences arranged by the des-  
6 ignated lead agency under section 635(a)(10).

7 “(10) CHILDREN IN PRIVATE SCHOOLS.—

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

10 “(i) IN GENERAL.—To the extent con-  
11 sistent with the number and location of  
12 children with disabilities in the State who  
13 are enrolled by their parents in private ele-  
14 mentary schools and secondary schools in  
15 the school district served by a local edu-  
16 cational agency, provision is made for the  
17 participation of those children in the pro-  
18 gram assisted or carried out under this  
19 part by providing for such children special  
20 education and related services in accord-  
21 ance with the following requirements, un-  
22 less the Secretary has arranged for serv-  
23 ices to those children under subsection (f):

24 “(I) Amounts to be expended for  
25 the provision of those services (includ-



1 rolled in private, including religious,  
2 elementary schools and secondary  
3 schools. Such child find process shall  
4 be conducted in a comparable time pe-  
5 riod as for other students attending  
6 public schools in the local educational  
7 agency.

8 “(II) EQUITABLE PARTICIPA-  
9 TION.—The child find process shall be  
10 designed to ensure the equitable par-  
11 ticipation of parentally placed private  
12 school children and an accurate count  
13 of such children.

14 “(III) ACTIVITIES.—In carrying  
15 out this clause, the local educational  
16 agency, or where applicable, the State  
17 educational agency, shall undertake  
18 activities similar to those activities un-  
19 dertaken for its public school children.

20 “(IV) COST.—The cost of car-  
21 rying out this clause, including indi-  
22 vidual evaluations, may not be consid-  
23 ered in determining whether a local  
24 education agency has met its obliga-  
25 tions under clause (i).

1                   “(iii) CONSULTATION.—To ensure  
2                   timely and meaningful consultation, a local  
3                   educational agency, or where appropriate,  
4                   a State educational agency, shall consult,  
5                   with representatives of children with dis-  
6                   abilities who are parentally placed in pri-  
7                   vate schools, during the design and devel-  
8                   opment of special education and related  
9                   services for these children, including con-  
10                  sultation regarding—

11                   “(I) the child find process and  
12                   how parentally placed private school  
13                   children suspected of having a dis-  
14                   ability can participate equitably, in-  
15                   cluding how parents, teachers, and  
16                   private school officials will be in-  
17                   formed of the process;

18                   “(II) the determination of the  
19                   proportionate share of Federal funds  
20                   available to serve parentally placed  
21                   private school children with disabil-  
22                   ities under this paragraph, including  
23                   the determination of how the propor-  
24                   tionate share of those funds were cal-  
25                   culated;

1                   “(III) the consultation process  
2                   among the school district, private  
3                   school officials, and parents of paren-  
4                   tally placed private school children  
5                   with disabilities, including how such  
6                   process will operate throughout the  
7                   school year to ensure that parentally  
8                   placed children with disabilities identi-  
9                   fied through the child find process can  
10                  meaningfully participate in special  
11                  education and related services;

12                  “(IV) how, where, and by whom  
13                  special education and related services  
14                  will be provided for parentally placed  
15                  private school children, including a  
16                  discussion of alternate service delivery  
17                  mechanisms, how such services will be  
18                  apportioned if funds are insufficient  
19                  to serve all children, and how and  
20                  when these decisions will be made;  
21                  and

22                  “(V) how, if the local educational  
23                  agency disagrees with the views of the  
24                  private school officials on the provi-  
25                  sion of services through a contract,

1 the local educational agency shall pro-  
2 vide to the private school officials a  
3 written explanation of the reasons  
4 why the local educational agency  
5 chose not to provide services through  
6 a contract.

7 “(iv) WRITTEN AFFIRMATION.—When  
8 timely and meaningful consultation as re-  
9 quired by this section has occurred, the  
10 local educational agency shall obtain a  
11 written affirmation signed by the rep-  
12 resentatives of participating private  
13 schools, and if such officials do not provide  
14 such affirmations within a reasonable pe-  
15 riod of time, the local educational agency  
16 shall forward the documentation of the  
17 consultation process to the State edu-  
18 cational agency.

19 “(v) COMPLIANCE.—

20 “(I) IN GENERAL.—A private  
21 school official shall have the right to  
22 complain to the State educational  
23 agency that the local educational  
24 agency did not engage in consultation  
25 that was meaningful and timely, or

1 did not give due consideration to the  
2 views of the private school official.

3 “(II) PROCEDURE.—If the pri-  
4 vate school official wishes to complain,  
5 the official shall provide the basis of  
6 the noncompliance with this section by  
7 the local educational agency to the  
8 State educational agency, and the  
9 local educational agency shall forward  
10 the appropriate documentation to the  
11 State educational agency. If the pri-  
12 vate school official is dissatisfied with  
13 the decision of the State educational  
14 agency, such official may complain to  
15 the Secretary by providing the basis  
16 of the noncompliance with this section  
17 by the local educational agency to the  
18 Secretary, and the State educational  
19 agency shall forward the appropriate  
20 documentation to the Secretary.

21 “(vi) PROVISION OF EQUITABLE SERV-  
22 ICES.—

23 “(I) DIRECT SERVICES.—To the  
24 extent practicable, the local edu-  
25 cational agency shall provide direct



1 services to children with disabilities  
2 parentally placed in private schools.

3 “(II) DIRECTLY OR THROUGH  
4 CONTRACTS.—A public agency may  
5 provide special education and related  
6 services directly or through contracts  
7 with public and private agencies, orga-  
8 nizations, and institutions.

9 “(III) SECULAR, NEUTRAL, NON-  
10 IDEOLOGICAL.—Special education and  
11 related services provided to children  
12 with disabilities attending private  
13 schools, including materials and  
14 equipment, shall be secular, neutral,  
15 and nonideological.

16 “(vii) PUBLIC CONTROL OF FUNDS.—  
17 The control of funds used to provide spe-  
18 cial education and related services under  
19 this section, and title to materials, equip-  
20 ment, and property purchased with those  
21 funds, shall be in a public agency for the  
22 uses and purposes provided in this Act,  
23 and a public agency shall administer the  
24 funds and property.

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

3                   “(i) IN GENERAL.—Children with dis-  
4 abilities in private schools and facilities are  
5 provided special education and related  
6 services, in accordance with an individual-  
7 ized education program, at no cost to their  
8 parents, if such children are placed in, or  
9 referred to, such schools or facilities by the  
10 State or appropriate local educational  
11 agency as the means of carrying out the  
12 requirements of this part or any other ap-  
13 plicable law requiring the provision of spe-  
14 cial education and related services to all  
15 children with disabilities within such State.

16                   “(ii) STANDARDS.—In all cases de-  
17 scribed in clause (i), the State educational  
18 agency shall determine whether such  
19 schools and facilities meet standards that  
20 apply to State and local educational agen-  
21 cies and that children so served have all  
22 the rights the children would have if served  
23 by such agencies.

24                   “(C) PAYMENT FOR EDUCATION OF CHIL-  
25 DREN ENROLLED IN PRIVATE SCHOOLS WITH-



1 cation available to the child in a timely  
2 manner prior to that enrollment.

3 “(iii) LIMITATION ON REIMBURSE-  
4 MENT.—The cost of reimbursement de-  
5 scribed in clause (ii) may be reduced or  
6 denied—

7 “(I) if—

8 “(aa) at the most recent  
9 IEP meeting that the parents at-  
10 tended prior to removal of the  
11 child from the public school, the  
12 parents did not inform the IEP  
13 Team that they were rejecting  
14 the placement proposed by the  
15 public agency to provide a free  
16 appropriate public education to  
17 their child, including stating their  
18 concerns and their intent to en-  
19 roll their child in a private school  
20 at public expense; or

21 “(bb) 10 business days (in-  
22 cluding any holidays that occur  
23 on a business day) prior to the  
24 removal of the child from the  
25 public school, the parents did not

1 give written notice to the public  
2 agency of the information de-  
3 scribed in division (aa);

4 “(II) if, prior to the parents’ re-  
5 moval of the child from the public  
6 school, the public agency informed the  
7 parents, through the notice require-  
8 ments described in section 615(b)(3),  
9 of its intent to evaluate the child (in-  
10 cluding a statement of the purpose of  
11 the evaluation that was appropriate  
12 and reasonable), but the parents did  
13 not make the child available for such  
14 evaluation; or

15 “(III) upon a judicial finding of  
16 unreasonableness with respect to ac-  
17 tions taken by the parents.

18 “(iv) EXCEPTION.—Notwithstanding  
19 the notice requirement in clause (iii)(I),  
20 the cost of reimbursement—

21 “(I) shall not be reduced or de-  
22 nied for failure to provide such notice  
23 if—

1                   “(aa) the school prevented  
2                   the parent from providing such  
3                   notice; or

4                   “(bb) the parents had not  
5                   received notice, pursuant to sec-  
6                   tion 615, of the notice require-  
7                   ment in clause (iii)(I); and

8                   “(II) may, in the discretion of a  
9                   court or a hearing officer, not be re-  
10                  duced or denied for failure to provide  
11                  such notice if—

12                   “(aa) the parent is illiterate  
13                   and cannot write in English; or

14                   “(bb) compliance with clause  
15                   (iii)(I) would likely have resulted  
16                   in physical or serious emotional  
17                   harm to the child.

18                   “(11) STATE EDUCATIONAL AGENCY RESPON-  
19                   SIBLE FOR GENERAL SUPERVISION.—

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

22                   “(i) the requirements of this part are  
23                   met; and

24                   “(ii) all educational programs for chil-  
25                   dren with disabilities in the State, includ-

1           ing all such programs administered by any  
2           other State or local agency—

3                   “(I) are under the general super-  
4                   vision of individuals in the State who  
5                   are responsible for educational pro-  
6                   grams for children with disabilities;  
7                   and

8                   “(II) meet the educational stand-  
9                   ards of the State educational agency.

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

16           “(C)   EXCEPTION.—Notwithstanding sub-  
17           paragraphs (A) and (B), the Governor (or an-  
18           other individual pursuant to State law), con-  
19           sistent with State law, may assign to any public  
20           agency in the State the responsibility of ensur-  
21           ing that the requirements of this part are met  
22           with respect to children with disabilities who  
23           are convicted as adults under State law and in-  
24           carcerated in adult prisons.

1           “(12) OBLIGATIONS RELATED TO AND METH-  
2           ODS OF ENSURING SERVICES.—

3           “(A) ESTABLISHING RESPONSIBILITY FOR  
4           SERVICES.—The Chief Executive Officer of a  
5           State or designee of the officer shall ensure  
6           that an interagency agreement or other mecha-  
7           nism for interagency coordination is in effect  
8           between each public agency described in sub-  
9           paragraph (B) and the State educational agen-  
10          cy, in order to ensure that all services described  
11          in subparagraph (B)(i) that are needed to en-  
12          sure a free appropriate public education are  
13          provided, including the provision of such serv-  
14          ices during the pendency of any dispute under  
15          clause (iii). Such agreement or mechanism shall  
16          include the following:

17                 “(i) AGENCY FINANCIAL RESPONSI-  
18                 BILITY.—An identification of, or a method  
19                 for defining, the financial responsibility of  
20                 each agency for providing services de-  
21                 scribed in subparagraph (B)(i) to ensure a  
22                 free appropriate public education to chil-  
23                 dren with disabilities, provided that the fi-  
24                 nancial responsibility of each public agency  
25                 described in subparagraph (B), including



1 the State Medicaid agency and other public  
2 insurers of children with disabilities, shall  
3 precede the financial responsibility of the  
4 local educational agency (or the State  
5 agency responsible for developing the  
6 child's IEP).

7 “(ii) CONDITIONS AND TERMS OF RE-  
8 IMBURSEMENT.—The conditions, terms,  
9 and procedures under which a local edu-  
10 cational agency shall be reimbursed by  
11 other agencies.

12 “(iii) INTERAGENCY DISPUTES.—Pro-  
13 cedures for resolving interagency disputes  
14 (including procedures under which local  
15 educational agencies may initiate pro-  
16 ceedings) under the agreement or other  
17 mechanism to secure reimbursement from  
18 other agencies or otherwise implement the  
19 provisions of the agreement or mechanism.

20 “(iv) COORDINATION OF SERVICES  
21 PROCEDURES.—Policies and procedures for  
22 agencies to determine and identify the  
23 interagency coordination responsibilities of  
24 each agency to promote the coordination

1 and timely and appropriate delivery of  
2 services described in subparagraph (B)(i).  
3 “(B) OBLIGATION OF PUBLIC AGENCY.—  
4 “(i) IN GENERAL.—If any public  
5 agency other than an educational agency is  
6 otherwise obligated under Federal or State  
7 law, or assigned responsibility under State  
8 policy pursuant to subparagraph (A), to  
9 provide or pay for any services that are  
10 also considered special education or related  
11 services (such as, but not limited to, serv-  
12 ices described in section 602(1) relating to  
13 assistive technology devices, 602(2) relat-  
14 ing to assistive technology services,  
15 602(25) relating to related services,  
16 602(32) relating to supplementary aids  
17 and services, and 602(33) relating to tran-  
18 sition services) that are necessary for en-  
19 suring a free appropriate public education  
20 to children with disabilities within the  
21 State, such public agency shall fulfill that  
22 obligation or responsibility, either directly  
23 or through contract or other arrangement  
24 pursuant to subparagraph (A) or an agree-  
25 ment pursuant to subparagraph (C).

1                   “(ii) REIMBURSEMENT FOR SERVICES  
2                   BY PUBLIC AGENCY.—If a public agency  
3                   other than an educational agency fails to  
4                   provide or pay for the special education  
5                   and related services described in clause (i),  
6                   the local educational agency (or State  
7                   agency responsible for developing the  
8                   child’s IEP) shall provide or pay for such  
9                   services to the child. Such local educational  
10                  agency or State agency is authorized to  
11                  claim reimbursement for the services from  
12                  the public agency that failed to provide or  
13                  pay for such services and such public agen-  
14                  cy shall reimburse the local educational  
15                  agency or State agency pursuant to the  
16                  terms of the interagency agreement or  
17                  other mechanism described in subpara-  
18                  graph (A)(i) according to the procedures  
19                  established in such agreement pursuant to  
20                  subparagraph (A)(ii).

21                  “(C) SPECIAL RULE.—The requirements of  
22                  subparagraph (A) may be met through—

23                         “(i) State statute or regulation;

24                         “(ii) signed agreements between re-  
25                         spective agency officials that clearly iden-

1           tify the responsibilities of each agency re-  
2           lating to the provision of services; or

3                   “(iii) other appropriate written meth-  
4                   ods as determined by the Chief Executive  
5                   Officer of the State or designee of the offi-  
6                   cer and approved by the Secretary.

7           “(13) PROCEDURAL REQUIREMENTS RELATING  
8           TO LOCAL EDUCATIONAL AGENCY ELIGIBILITY.—  
9           The State educational agency will not make a final  
10          determination that a local educational agency is not  
11          eligible for assistance under this part without first  
12          affording that agency reasonable notice and an op-  
13          portunity for a hearing.

14          “(14) PERSONNEL STANDARDS.—

15                   “(A) IN GENERAL.—The State educational  
16                   agency has established and maintains standards  
17                   to ensure that personnel necessary to carry out  
18                   this part are appropriately and adequately pre-  
19                   pared and trained, including that those per-  
20                   sonnel have the content knowledge and skills to  
21                   serve children with disabilities.

22                   “(B) RELATED SERVICES PERSONNEL AND  
23                   PARAPROFESSIONALS.—The standards under  
24                   subparagraph (A) include standards for related  
25                   services personnel and paraprofessionals that—

1           “(i) are consistent with any State-ap-  
2           proved or State-recognized certification, li-  
3           censing, registration, or other comparable  
4           requirements that apply to the professional  
5           discipline in which those personnel are pro-  
6           viding special education or related services;

7           “(ii) ensure that related services per-  
8           sonnel who deliver services in their dis-  
9           cipline or profession meet the requirements  
10          of clause (i) and have not had certification  
11          or licensure requirements waived on an  
12          emergency, temporary, or provisional basis;  
13          and

14          “(iii) allow paraprofessionals and as-  
15          sistants who are appropriately trained and  
16          supervised, in accordance with State law,  
17          regulation, or written policy, in meeting  
18          the requirements of this part to be used to  
19          assist in the provision of special education  
20          and related services under this part to chil-  
21          dren with disabilities.

22          “(C) STANDARDS FOR SPECIAL EDUCATION  
23          TEACHERS.—

24          “(i) IN GENERAL.—The standards de-  
25          scribed in subparagraph (A) shall ensure

1           that each person employed as a special  
2           education teacher in the State who teaches  
3           in an elementary, middle, or secondary  
4           school is highly qualified not later than the  
5           end of the 2006–2007 school year.

6           “(ii) COMPLIANCE.—Compliance with  
7           clause (i) by the deadline established in  
8           such clause shall be deemed to be compli-  
9           ance with section 1119(a)(2) of the Ele-  
10          mentary and Secondary Education Act of  
11          1965 with respect to such teachers.

12          “(D) POLICY.—In implementing this sec-  
13          tion, a State shall adopt a policy that includes  
14          a requirement that local educational agencies in  
15          the State take measurable steps to recruit, hire,  
16          train, and retain highly qualified personnel to  
17          provide special education and related services  
18          under this part to children with disabilities.

19          “(E) RULE OF CONSTRUCTION.—Notwith-  
20          standing any other individual right of action  
21          that a parent or student may maintain under  
22          this part, nothing in this subsection shall be  
23          construed to create a right of action on behalf  
24          of an individual student for the failure of a par-  
25          ticular State educational agency or local edu-

1           cational agency staff person to be highly quali-  
2           fied, or to prevent a parent from filing a com-  
3           plaint about staff qualifications with the State  
4           educational agency as provided for under this  
5           part.

6           “(15) PERFORMANCE GOALS AND INDICA-  
7           TORS.—The State—

8                   “(A) has established goals for the perform-  
9                   ance of children with disabilities in the State  
10                  that—

11                           “(i) promote the purposes of this Act,  
12                           as stated in section 601(d);

13                           “(ii) are the same as the State’s defi-  
14                           nition of adequate yearly progress, includ-  
15                           ing the State’s objectives for progress by  
16                           children with disabilities, under section  
17                           1111(b)(2)(C) of the Elementary and Sec-  
18                           ondary Education Act of 1965;

19                           “(iii) address graduation rates and  
20                           drop out rates, as well as such other fac-  
21                           tors as the State may determine; and

22                           “(iv) are consistent, to the extent ap-  
23                           propriate, with any other goals and stand-  
24                           ards for children established by the State;

1           “(B) has established performance indica-  
2           tors the State will use to assess progress toward  
3           achieving the goals described in subparagraph  
4           (A), including measurable annual objectives for  
5           progress by children with disabilities under sec-  
6           tion 1111(b)(2)(C)(v)(II)(cc) of the Elementary  
7           and Secondary Education Act of 1965; and

8           “(C) will annually report to the Secretary  
9           and the public on the progress of the State, and  
10          of children with disabilities in the State, toward  
11          meeting the goals established under subpara-  
12          graph (A).

13          (16) PARTICIPATION IN ASSESSMENTS.—

14           (A) IN GENERAL.— All children with dis-  
15           abilities are included in all general State and  
16           districtwide assessment programs and account-  
17           ability systems, including assessments and ac-  
18           countability systems described under section  
19           1111 of the Elementary and Secondary Edu-  
20           cation Act of 1965, with appropriate accom-  
21           modations, alternate assessments where nec-  
22           essary, and as indicated in their respective indi-  
23           vidualized education programs.

24           (B) ACCOMMODATION GUIDELINES.—The  
25           State (or, in the case of a districtwide assess-



1           ment, the local educational agency) has devel-  
2           oped guidelines for the provision of appropriate  
3           accommodations.

4           (C) ALTERNATE ASSESSMENTS.—

5           “ (i) IN GENERAL.—The State (or, in  
6           the case of a districtwide assessment, the  
7           local educational agency) has developed  
8           and implemented guidelines for the partici-  
9           pation of children with disabilities in alter-  
10          nate assessments for those children who  
11          cannot participate in regular assessments  
12          under subparagraph (B) as indicated in  
13          their respective individualized education  
14          programs.

15          “ (ii) REQUIREMENTS FOR ALTERNATE  
16          ASSESSMENTS.—The guidelines under  
17          clause (i) shall provide for alternate assess-  
18          ments that—

19                  (I) are aligned with the State’s  
20                  challenging academic content and aca-  
21                  demic achievement standards; or

22                  (II) measure the achievement of  
23                  students against alternate academic  
24                  achievement standards that are

1 aligned with the State's academic con-  
2 tent standards.

3 (iii) CONDUCT OF ALTERNATIVE AS-  
4 SESSMENTS.—The State conducts the al-  
5 ternate assessments described in this sub-  
6 paragraph.

7 (D) REPORTS.—The State educational  
8 agency (or, in the case of a districtwide assess-  
9 ment, the local educational agency) makes  
10 available to the public, and reports to the public  
11 with the same frequency and in the same detail  
12 as it reports on the assessment of nondisabled  
13 children, the following:

14 (i) The number of children with dis-  
15 abilities participating in regular assess-  
16 ments, and the number of those children  
17 who were provided accommodations in  
18 order to participate in those assessments.

19 (ii) The number of children with dis-  
20 abilities participating in alternate assess-  
21 ments described in subparagraph (C)(ii)(I).

22 (iii) The number of children with dis-  
23 abilities participating in alternate assess-  
24 ments described in subparagraph  
25 (C)(ii)(II).

1 (iv) The performance of children with  
2 disabilities on regular assessments and on  
3 alternate assessments (if the number of  
4 children with disabilities participating in  
5 those assessments is sufficient to yield sta-  
6 tistically reliable information and reporting  
7 that information will not reveal personally  
8 identifiable information about an individual  
9 student), compared with the achievement  
10 of all children, including children with dis-  
11 abilities, on those assessments.

12 (E) UNIVERSAL DESIGN.—The State edu-  
13 cational agency (or, in the case of a districtwide  
14 assessment, the local educational agency) shall,  
15 to the extent feasible, use universal design prin-  
16 ciples in developing and administering any as-  
17 sessments under this paragraph.

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

20 “(A) EXPENDITURES.—Funds paid to a  
21 State under this part will be expended in ac-  
22 cordance with all the provisions of this part.

23 “(B) PROHIBITION AGAINST COMMING-  
24 GLING.—Funds paid to a State under this part  
25 will not be commingled with State funds.

1           “(C) PROHIBITION AGAINST SUPPLAN-  
2 TATION AND CONDITIONS FOR WAIVER BY SEC-  
3 RETARY.—Except as provided in section 613,  
4 funds paid to a State under this part will be  
5 used to supplement the level of Federal, State,  
6 and local funds (including funds that are not  
7 under the direct control of State or local edu-  
8 cational agencies) expended for special edu-  
9 cation and related services provided to children  
10 with disabilities under this part and in no case  
11 to supplant such Federal, State, and local  
12 funds, except that, where the State provides  
13 clear and convincing evidence that all children  
14 with disabilities have available to them a free  
15 appropriate public education, the Secretary may  
16 waive, in whole or in part, the requirements of  
17 this subparagraph if the Secretary concurs with  
18 the evidence provided by the State.

19           “(18) MAINTENANCE OF STATE FINANCIAL  
20 SUPPORT.—

21           “(A) IN GENERAL.—The State does not re-  
22 duce the amount of State financial support for  
23 special education and related services for chil-  
24 dren with disabilities, or otherwise made avail-  
25 able because of the excess costs of educating

1           those children, below the amount of that sup-  
2           port for the preceding fiscal year.

3           “(B) REDUCTION OF FUNDS FOR FAILURE  
4           TO MAINTAIN SUPPORT.—The Secretary shall  
5           reduce the allocation of funds under section 611  
6           for any fiscal year following the fiscal year in  
7           which the State fails to comply with the re-  
8           quirement of subparagraph (A) by the same  
9           amount by which the State fails to meet the re-  
10          quirement.

11          “(C) WAIVERS FOR EXCEPTIONAL OR UN-  
12          CONTROLLABLE CIRCUMSTANCES.—The Sec-  
13          retary may waive the requirement of subpara-  
14          graph (A) for a State, for 1 fiscal year at a  
15          time, if the Secretary determines that—

16                 “(i) granting a waiver would be equi-  
17                 table due to exceptional or uncontrollable  
18                 circumstances such as a natural disaster or  
19                 a precipitous and unforeseen decline in the  
20                 financial resources of the State; or

21                 “(ii) the State meets the standard in  
22                 paragraph (17)(C) for a waiver of the re-  
23                 quirement to supplement, and not to sup-  
24                 plant, funds received under this part.

1           “(D) SUBSEQUENT YEARS.—If, for any  
2           year, a State fails to meet the requirement of  
3           subparagraph (A), including any year for which  
4           the State is granted a waiver under subpara-  
5           graph (C), the financial support required of the  
6           State in future years under subparagraph (A)  
7           shall be the amount that would have been re-  
8           quired in the absence of that failure and not  
9           the reduced level of the State’s support.

10          “(19) PUBLIC PARTICIPATION.—Prior to the  
11          adoption of any policies and procedures needed to  
12          comply with this section (including any amendments  
13          to such policies and procedures), the State ensures  
14          that there are public hearings, adequate notice of  
15          the hearings, and an opportunity for comment avail-  
16          able to the general public, including individuals with  
17          disabilities and parents of children with disabilities.

18          “(20) STATE ADVISORY PANEL.—

19                 “(A) IN GENERAL.—The State has estab-  
20                 lished and maintains an advisory panel for the  
21                 purpose of providing policy guidance with re-  
22                 spect to special education and related services  
23                 for children with disabilities in the State.

24                 “(B) MEMBERSHIP.—Such advisory panel  
25                 shall consist of members appointed by the Gov-

1           ernor, or any other official authorized under  
2           State law to make such appointments, that is  
3           representative of the State population and that  
4           is composed of individuals involved in, or con-  
5           cerned with, the education of children with dis-  
6           abilities, including—

7                   “(i) parents of children with disabil-  
8                   ities ages birth through 26;

9                   “(ii) individuals with disabilities;

10                  “(iii) teachers;

11                  “(iv) representatives of institutions of  
12                  higher education that prepare special edu-  
13                  cation and related services personnel;

14                  “(v) State and local education offi-  
15                  cials;

16                  “(vi) administrators of programs for  
17                  children with disabilities;

18                  “(vii) representatives of other State  
19                  agencies involved in the financing or deliv-  
20                  ery of related services to children with dis-  
21                  abilities;

22                  “(viii) representatives of private  
23                  schools and public charter schools;

24                  “(ix) at least 1 representative of a vo-  
25                  cational, community, or business organiza-

1                   tion concerned with the provision of transi-  
2                   tion services to children with disabilities;  
3                   and

4                   “(x) representatives from the State  
5                   juvenile and adult corrections agencies.

6                   “(C) SPECIAL RULE.—A majority of the  
7                   members of the panel shall be individuals with  
8                   disabilities ages birth through 26 or parents of  
9                   such individuals.

10                  “(D) DUTIES.—The advisory panel shall—

11                   “(i) advise the State educational agen-  
12                   cy of unmet needs within the State in the  
13                   education of children with disabilities;

14                   “(ii) comment publicly on any rules or  
15                   regulations proposed by the State regard-  
16                   ing the education of children with disabil-  
17                   ities;

18                   “(iii) advise the State educational  
19                   agency in developing evaluations and re-  
20                   porting on data to the Secretary under sec-  
21                   tion 618;

22                   “(iv) advise the State educational  
23                   agency in developing corrective action  
24                   plans to address findings identified in Fed-



1 eral monitoring reports under this part;  
2 and

3 “(v) advise the State educational  
4 agency in developing and implementing  
5 policies relating to the coordination of serv-  
6 ices for children with disabilities.

7 “(21) SUSPENSION AND EXPULSION RATES.—

8 “(A) IN GENERAL.—The State educational  
9 agency examines data to determine if signifi-  
10 cant discrepancies are occurring in the rate of  
11 long-term suspensions and expulsions of chil-  
12 dren with disabilities—

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

15 “(ii) compared to such rates for non-  
16 disabled children within such agencies.

17 “(B) REVIEW AND REVISION OF POLI-  
18 CIES.—If such discrepancies are occurring, the  
19 State educational agency reviews and, if appro-  
20 priate, revises (or requires the affected State or  
21 local educational agency to revise) its policies,  
22 procedures, and practices relating to the devel-  
23 opment and implementation of IEPs, the use of  
24 behavioral interventions, and procedural safe-

1           guards, to ensure that such policies, procedures,  
2           and practices comply with this Act.

3           “(22) ACCESS TO INSTRUCTIONAL MATE-  
4           RIALS.—

5                   “(A) IN GENERAL.—The State adopts the  
6           national Instructional Materials Accessibility  
7           Standard described in section 675(a) for the  
8           purposes of providing instructional materials to  
9           blind persons or other persons with print dis-  
10          abilities in a timely manner after the publica-  
11          tion of the standard in the Federal Register.

12                   “(B) PREPARATION AND DELIVERY OF  
13          FILES.—Not later than 2 years after the date  
14          of enactment of the Individuals with Disabilities  
15          Education Improvement Act of 2003, a State  
16          educational agency, as part of any print in-  
17          structional materials adoption process, procure-  
18          ment contract, or other practice or instrument  
19          used for purchase of print instructional mate-  
20          rials, enters into a written contract with the  
21          publisher of the print instructional materials  
22          to—

23                           “(i) prepare, and on or before delivery  
24                           of the print instructional materials, provide  
25                           to the National Instructional Materials Ac-

1           cess Center, established pursuant to sec-  
2           tion 675(b), electronic files containing the  
3           contents of the print instructional mate-  
4           rials using the Instructional Materials Ac-  
5           cessibility Standard; or

6                   “(ii) purchase instructional materials  
7                   from a publisher that are produced in or  
8                   may be rendered in the specialized formats  
9                   described in section 675(a)(4)(C).

10                   “(C) ASSISTIVE TECHNOLOGY.—In car-  
11                   rying out subparagraph (B), the State edu-  
12                   cational agency, to the maximum extent pos-  
13                   sible, shall work collaboratively with the State  
14                   agency responsible for assistive technology pro-  
15                   grams.

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

21                           “(1) shall comply with any additional require-  
22                           ments of section 613(a), as if such agency were a  
23                           local educational agency; and

24                           “(2) may use amounts that are otherwise avail-  
25                           able to such agency under this part to serve those

1 children without regard to section 613(a)(2)(A)(i)  
2 (relating to excess costs).

3 “(c) EXCEPTION FOR PRIOR STATE PLANS.—

4 “(1) IN GENERAL.—If a State has on file with  
5 the Secretary policies and procedures that dem-  
6 onstrate that such State meets any requirement of  
7 subsection (a), including any policies and procedures  
8 filed under this part as in effect before the effective  
9 date of the Individuals with Disabilities Education  
10 Improvement Act of 2003, the Secretary shall con-  
11 sider such State to have met such requirement for  
12 purposes of receiving a grant under this part.

13 “(2) MODIFICATIONS MADE BY STATE.—Sub-  
14 ject to paragraph (3), an application submitted by a  
15 State in accordance with this section shall remain in  
16 effect until the State submits to the Secretary such  
17 modifications as the State determines necessary.  
18 This section shall apply to a modification to an ap-  
19 plication to the same extent and in the same manner  
20 as this section applies to the original plan.

21 “(3) MODIFICATIONS REQUIRED BY THE SEC-  
22 RETARY.—If, after the effective date of the Individ-  
23 uals with Disabilities Education Improvement Act of  
24 2003, the provisions of this Act are amended (or the  
25 regulations developed to carry out this Act are

1 amended), there is a new interpretation of this Act  
2 by a Federal court or a State's highest court, or  
3 there is an official finding of noncompliance with  
4 Federal law or regulations, then the Secretary may  
5 require a State to modify its application only to the  
6 extent necessary to ensure the State's compliance  
7 with this part.

8 “(d) APPROVAL BY THE SECRETARY.—

9 “(1) IN GENERAL.—If the Secretary determines  
10 that a State is eligible to receive a grant under this  
11 part, the Secretary shall notify the State of that de-  
12 termination.

13 “(2) NOTICE AND HEARING.—The Secretary  
14 shall not make a final determination that a State is  
15 not eligible to receive a grant under this part until  
16 after providing the State—

17 “(A) with reasonable notice; and

18 “(B) with an opportunity for a hearing.

19 “(e) ASSISTANCE UNDER OTHER FEDERAL PRO-  
20 GRAMS.—Nothing in this title permits a State to reduce  
21 medical and other assistance available, or to alter eligi-  
22 bility, under titles V and XIX of the Social Security Act  
23 with respect to the provision of a free appropriate public  
24 education for children with disabilities in the State.

1           “(f) BY-PASS FOR CHILDREN IN PRIVATE  
2 SCHOOLS.—

3           “(1) IN GENERAL.—If, on the date of enact-  
4 ment of the Education of the Handicapped Act  
5 Amendments of 1983, a State educational agency  
6 was prohibited by law from providing for the equi-  
7 table participation in special programs of children  
8 with disabilities enrolled in private elementary  
9 schools and secondary schools as required by sub-  
10 section (a)(10)(A), or if the Secretary determines  
11 that a State educational agency, local educational  
12 agency, or other entity has substantially failed or is  
13 unwilling to provide for such equitable participation,  
14 then the Secretary shall, notwithstanding such provi-  
15 sion of law, arrange for the provision of services to  
16 such children through arrangements which shall be  
17 subject to the requirements of such subsection.

18           “(2) PAYMENTS.—

19           “(A) DETERMINATION OF AMOUNTS.—If  
20 the Secretary arranges for services pursuant to  
21 this subsection, the Secretary, after consulta-  
22 tion with the appropriate public and private  
23 school officials, shall pay to the provider of such  
24 services for a fiscal year an amount per child

1 that does not exceed the amount determined by  
2 dividing—

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

6 “(ii) the number of children with dis-  
7 abilities served in the prior year, as re-  
8 ported to the Secretary by the State under  
9 section 618.

10 “(B) WITHHOLDING OF CERTAIN  
11 AMOUNTS.—Pending final resolution of any in-  
12 vestigation or complaint that may result in a  
13 determination under this subsection, the Sec-  
14 retary may withhold from the allocation of the  
15 affected State educational agency the amount  
16 the Secretary estimates will be necessary to pay  
17 the cost of services described in subparagraph  
18 (A).

19 “(C) PERIOD OF PAYMENTS.—The period  
20 under which payments are made under sub-  
21 paragraph (A) shall continue until the Sec-  
22 retary determines that there will no longer be  
23 any failure or inability on the part of the State  
24 educational agency to meet the requirements of  
25 subsection (a)(10)(A).

1 “(3) NOTICE AND HEARING.—

2 “(A) IN GENERAL.—The Secretary shall  
3 not take any final action under this subsection  
4 until the State educational agency affected by  
5 such action has had an opportunity, for at least  
6 45 days after receiving written notice thereof,  
7 to submit written objections and to appear be-  
8 fore the Secretary or the Secretary’s designee  
9 to show cause why such action should not be  
10 taken.

11 “(B) REVIEW OF ACTION.—If a State edu-  
12 cational agency is dissatisfied with the Sec-  
13 retary’s final action after a proceeding under  
14 subparagraph (A), such agency may, not later  
15 than 60 days after notice of such action, file  
16 with the United States court of appeals for the  
17 circuit in which such State is located a petition  
18 for review of that action. A copy of the petition  
19 shall be forthwith transmitted by the clerk of  
20 the court to the Secretary. The Secretary there-  
21 upon shall file in the court the record of the  
22 proceedings on which the Secretary based the  
23 Secretary’s action, as provided in section 2112  
24 of title 28, United States Code.



1           “(C) REVIEW OF FINDINGS OF FACT.—The  
2 findings of fact by the Secretary, if supported  
3 by substantial evidence, shall be conclusive, but  
4 the court, for good cause shown, may remand  
5 the case to the Secretary to take further evi-  
6 dence, and the Secretary may thereupon make  
7 new or modified findings of fact and may mod-  
8 ify the Secretary’s previous action, and shall file  
9 in the court the record of the further pro-  
10 ceedings. Such new or modified findings of fact  
11 shall likewise be conclusive if supported by sub-  
12 stantial evidence.

13           “(D) JURISDICTION OF COURT OF AP-  
14 PEALS; REVIEW BY UNITED STATES SUPREME  
15 COURT.—Upon the filing of a petition under  
16 subparagraph (B), the United States court of  
17 appeals shall have jurisdiction to affirm the ac-  
18 tion of the Secretary or to set it aside, in whole  
19 or in part. The judgment of the court shall be  
20 subject to review by the Supreme Court of the  
21 United States upon certiorari or certification as  
22 provided in section 1254 of title 28, United  
23 States Code.

1 **“SEC. 613. LOCAL EDUCATIONAL AGENCY ELIGIBILITY.**

2 “(a) IN GENERAL.—A local educational agency is eli-  
3 gible for assistance under this part for a fiscal year if such  
4 agency submits a plan that provides assurances to the  
5 State educational agency that the local educational agency  
6 meets each of the following conditions:

7 “(1) CONSISTENCY WITH STATE POLICIES.—

8 The local educational agency, in providing for the  
9 education of children with disabilities within its ju-  
10 risdiction, has in effect policies, procedures, and pro-  
11 grams that are consistent with the State policies and  
12 procedures established under section 612.

13 “(2) USE OF AMOUNTS.—

14 “(A) IN GENERAL.—Amounts provided to  
15 the local educational agency under this part  
16 shall be expended in accordance with the appli-  
17 cable provisions of this part and—

18 “(i) shall be used only to pay the ex-  
19 cess costs of providing special education  
20 and related services to children with dis-  
21 abilities;

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

25 “(iii) shall not be used, except as pro-  
26 vided in subparagraphs (B) and (C), to re-



1 provide a free appropriate public edu-  
2 cation to the child has terminated; or

3 “(III) no longer needs such pro-  
4 gram of special education; or

5 “(iv) the termination of costly expend-  
6 itures for long-term purchases, such as the  
7 acquisition of equipment or the construc-  
8 tion of school facilities.

9 “(C) TREATMENT OF FEDERAL FUNDS IN  
10 CERTAIN FISCAL YEARS.—

11 “(i) 8 PERCENT RULE.—Notwith-  
12 standing clauses (ii) and (iii) of subpara-  
13 graph (A), a local educational agency may  
14 treat as local funds, for the purposes of  
15 such clauses, not more than 8 percent of  
16 the amount of funds the local educational  
17 agency receives under this part.

18 “(ii) 40 PERCENT RULE.—Notwith-  
19 standing clauses (ii) and (iii) of subpara-  
20 graph (A), for any fiscal year for which  
21 States are allocated the maximum amount  
22 of grants pursuant to section 611(a)(2), a  
23 local educational agency may treat as local  
24 funds, for the purposes of such clauses, not  
25 more than 40 percent of the amount of

1 funds the local educational agency receives  
2 under this part, subject to clause (iv).

3 “(iii) EARLY INTERVENING SERV-  
4 ICES.—

5 “(I) 8 PERCENT RULE.—If a  
6 local educational agency exercises au-  
7 thority pursuant to clause (i), the 8  
8 percent funds shall be counted toward  
9 the percentage and amount of funds  
10 that may be used to provide early in-  
11 tervening educational services pursu-  
12 ant to subsection (f).

13 “(II) 40 PERCENT RULE.—If a  
14 local educational agency exercises au-  
15 thority pursuant to clause (ii), the  
16 local educational agency shall use an  
17 amount of the 40 percent funds from  
18 clause (ii) that represents 15 percent  
19 of the total amount of funds the local  
20 educational agency receives under this  
21 part, to provide early intervening edu-  
22 cational services pursuant to sub-  
23 section (f).

24 “(iv) SPECIAL RULE.—Funds treated  
25 as local funds pursuant to clause (i) or (ii)

1 may be considered non-Federal or local  
2 funds for the purposes of—

3 “(I) clauses (ii) and (iii) of sub-  
4 paragraph (A); and

5 “(II) the provision of the local  
6 share of costs for title XIX of the So-  
7 cial Security Act.

8 “(v) PROHIBITION.—If a State edu-  
9 cational agency determines that a local  
10 educational agency is unable to establish  
11 and maintain programs of free appropriate  
12 public education that meet the require-  
13 ments of this subsection, then the State  
14 educational agency shall prohibit the local  
15 educational agency from treating funds re-  
16 ceived under this part as local funds under  
17 clause (i) or (ii) for that fiscal year, but  
18 only if the State educational agency is au-  
19 thorized to do so by the State constitution  
20 or a State statute.

21 “(vi) REPORT.—For each fiscal year  
22 in which a local educational agency exer-  
23 cises its authority pursuant to this sub-  
24 paragraph and treats Federal funds as  
25 local funds, the local educational agency

1 shall report to the State educational agen-  
2 cy the amount of funds so treated and the  
3 activities that were funded with such  
4 funds.

5 “(D) SCHOOLWIDE PROGRAMS UNDER  
6 TITLE I OF THE ESEA.—Notwithstanding sub-  
7 paragraph (A) or any other provision of this  
8 part, a local educational agency may use funds  
9 received under this part for any fiscal year to  
10 carry out a schoolwide program under section  
11 1114 of the Elementary and Secondary Edu-  
12 cation Act of 1965, except that the amount so  
13 used in any such program shall not exceed—

14 “(i) the number of children with dis-  
15 abilities participating in the schoolwide  
16 program; multiplied by

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

20 “(II) the number of children with dis-  
21 abilities in the jurisdiction of that agency.

22 “(3) PERSONNEL DEVELOPMENT.—The local  
23 educational agency shall ensure that all personnel  
24 necessary to carry out this part are appropriately  
25 and adequately prepared, consistent with the re-

1        requirements of section 612(a)(14) of this Act and  
2        section 2122 of the Elementary and Secondary Edu-  
3        cation Act of 1965.

4                “(4) PERMISSIVE USE OF FUNDS.—

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

10                                “(i) SERVICES AND AIDS THAT ALSO  
11                                BENEFIT NONDISABLED CHILDREN.—For  
12                                the costs of special education and related  
13                                services, and supplementary aids and serv-  
14                                ices, provided in a regular class or other  
15                                education-related setting to a child with a  
16                                disability in accordance with the individual-  
17                                ized education program of the child, even  
18                                if 1 or more nondisabled children benefit  
19                                from such services.

20                                “(ii) EARLY INTERVENING SERV-  
21                                ICES.—To develop and implement coordi-  
22                                nated, early intervening educational serv-  
23                                ices in accordance with subsection (f).

24                                “(B) ADMINISTRATIVE CASE MANAGE-  
25                                MENT.—A local educational agency may use



1 funds received under this part to purchase ap-  
2 propriate technology, for recordkeeping, data  
3 collection, and related case management activi-  
4 ties of teachers and related services personnel  
5 providing services described in the individual-  
6 ized education program of children with disabil-  
7 ities, that is necessary to the implementation of  
8 such case management activities.

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

14 “(A) serves children with disabilities at-  
15 tending those charter schools in the same man-  
16 ner as the local educational agency serves chil-  
17 dren with disabilities in its other schools, in-  
18 cluding providing supplementary and related  
19 services on site at the charter school to the  
20 same extent to which the local educational  
21 agency has a policy or practice of providing  
22 such services on the site to its other public  
23 schools; and

24 “(B) provides funds under this part to  
25 those charter schools on the same basis, includ-

1           ing proportional distribution based on relative  
2           enrollment of children with disabilities, and at  
3           the same time, as the local educational agency  
4           distributes State, local, or a combination of  
5           State and local, funds to those charter schools  
6           under the State’s charter school law.

7           “(6) PURCHASE OF INSTRUCTIONAL MATE-  
8           RIALS.—Not later than 2 years after the date of en-  
9           actment of the Individuals with Disabilities Edu-  
10          cation Improvement Act of 2003, a local educational  
11          agency, when purchasing print instructional mate-  
12          rials, acquires these instructional materials in the  
13          same manner as a State educational agency de-  
14          scribed in section 612(a)(22).

15          “(7) INFORMATION FOR STATE EDUCATIONAL  
16          AGENCY.—The local educational agency shall provide  
17          the State educational agency with information nec-  
18          essary to enable the State educational agency to  
19          carry out its duties under this part, including, with  
20          respect to paragraphs (15) and (16) of section  
21          612(a), information relating to the performance of  
22          children with disabilities participating in programs  
23          carried out under this part.

24          “(8) PUBLIC INFORMATION.—The local edu-  
25          cational agency shall make available to parents of

1 children with disabilities and to the general public  
2 all documents relating to the eligibility of such agen-  
3 cy under this part.

4 “(9) RECORDS REGARDING MIGRATORY CHIL-  
5 DREN WITH DISABILITIES.—The local educational  
6 agency shall cooperate in the Secretary’s efforts  
7 under section 1308 of the Elementary and Sec-  
8 ondary Education Act of 1965 (20 U.S.C. 6398) to  
9 ensure the linkage of records pertaining to migratory  
10 children with a disability for the purpose of elec-  
11 tronically exchanging, among the States, health and  
12 educational information regarding such children.

13 “(b) EXCEPTION FOR PRIOR LOCAL PLANS.—

14 “(1) IN GENERAL.—If a local educational agen-  
15 cy or State agency has on file with the State edu-  
16 cational agency policies and procedures that dem-  
17 onstrate that such local educational agency, or such  
18 State agency, as the case may be, meets any require-  
19 ment of subsection (a), including any policies and  
20 procedures filed under this part as in effect before  
21 the effective date of the Individuals with Disabilities  
22 Education Improvement Act of 2003, the State edu-  
23 cational agency shall consider such local educational  
24 agency or State agency, as the case may be, to have

1 met such requirement for purposes of receiving as-  
2 sistance under this part.

3 “(2) MODIFICATION MADE BY LOCAL EDU-  
4 CATIONAL AGENCY.—Subject to paragraph (3), an  
5 application submitted by a local educational agency  
6 in accordance with this section shall remain in effect  
7 until the local educational agency submits to the  
8 State educational agency such modifications as the  
9 local educational agency determines necessary.

10 “(3) MODIFICATIONS REQUIRED BY STATE  
11 EDUCATIONAL AGENCY.—If, after the effective date  
12 of the Individuals with Disabilities Education Im-  
13 provement Act of 2003, the provisions of this Act  
14 are amended (or the regulations developed to carry  
15 out this Act are amended), there is a new interpreta-  
16 tion of this Act by Federal or State courts, or there  
17 is an official finding of noncompliance with Federal  
18 or State law or regulations, then the State edu-  
19 cational agency may require a local educational  
20 agency to modify its application only to the extent  
21 necessary to ensure the local educational agency’s  
22 compliance with this part or State law.

23 “(c) NOTIFICATION OF LOCAL EDUCATIONAL AGEN-  
24 CY OR STATE AGENCY IN CASE OF INELIGIBILITY.—If the  
25 State educational agency determines that a local edu-

1 cational agency or State agency is not eligible under this  
2 section, then the State educational agency shall notify the  
3 local educational agency or State agency, as the case may  
4 be, of that determination and shall provide such local edu-  
5 cational agency or State agency with reasonable notice and  
6 an opportunity for a hearing.

7 “(d) LOCAL EDUCATIONAL AGENCY COMPLIANCE.—

8 “(1) IN GENERAL.—If the State educational  
9 agency, after reasonable notice and an opportunity  
10 for a hearing, finds that a local educational agency  
11 or State agency that has been determined to be eligi-  
12 ble under this section is failing to comply with any  
13 requirement described in subsection (a), the State  
14 educational agency shall reduce or shall not provide  
15 any further payments to the local educational agency  
16 or State agency until the State educational agency  
17 is satisfied that the local educational agency or State  
18 agency, as the case may be, is complying with that  
19 requirement.

20 “(2) ADDITIONAL REQUIREMENT.—Any State  
21 agency or local educational agency in receipt of a no-  
22 tice described in paragraph (1) shall, by means of  
23 public notice, take such measures as may be nec-  
24 essary to bring the pendency of an action pursuant

1 to this subsection to the attention of the public with-  
2 in the jurisdiction of such agency.

3 “(3) CONSIDERATION.—In carrying out its re-  
4 sponsibilities under paragraph (1), the State edu-  
5 cational agency shall consider any decision made in  
6 a hearing held under section 615 that is adverse to  
7 the local educational agency or State agency involved  
8 in that decision.

9 “(e) JOINT ESTABLISHMENT OF ELIGIBILITY.—

10 “(1) JOINT ESTABLISHMENT.—

11 “(A) IN GENERAL.—A State educational  
12 agency may require a local educational agency  
13 to establish its eligibility jointly with another  
14 local educational agency if the State educational  
15 agency determines that the local educational  
16 agency will be ineligible under this section be-  
17 cause the local educational agency will not be  
18 able to establish and maintain programs of suf-  
19 ficient size and scope to effectively meet the  
20 needs of children with disabilities.

21 “(B) CHARTER SCHOOL EXCEPTION.—A  
22 State educational agency may not require a  
23 charter school that is a local educational agency  
24 to jointly establish its eligibility under subpara-  
25 graph (A) unless the charter school is explicitly

1           permitted to do so under the State’s charter  
2           school law.

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

11          “(3) REQUIREMENTS.—Local educational agen-  
12          cies that establish joint eligibility under this sub-  
13          section shall—

14                 “(A) adopt policies and procedures that  
15                 are consistent with the State’s policies and pro-  
16                 cedures under section 612(a); and

17                 “(B) be jointly responsible for imple-  
18                 menting programs that receive assistance under  
19                 this part.

20          “(4) REQUIREMENTS FOR EDUCATIONAL SERV-  
21          ICE AGENCIES.—

22                 “(A) IN GENERAL.—If an educational serv-  
23                 ice agency is required by State law to carry out  
24                 programs under this part, the joint responsibil-

1           ities given to local educational agencies under  
2           this subsection shall—

3                   “(i) not apply to the administration  
4                   and disbursement of any payments re-  
5                   ceived by that educational service agency;  
6                   and

7                   “(ii) be carried out only by that edu-  
8                   cational service agency.

9                   “(B) ADDITIONAL REQUIREMENT.—Not-  
10                  withstanding any other provision of this sub-  
11                  section, an educational service agency shall pro-  
12                  vide for the education of children with disabil-  
13                  ities in the least restrictive environment, as re-  
14                  quired by section 612(a)(5).

15               “(f) EARLY INTERVENING SERVICES.—

16                   “(1) IN GENERAL.—A local educational agency  
17                   may not use more than 15 percent of the amount  
18                   such agency receives under this part for any fiscal  
19                   year, less any amount treated as local funds pursu-  
20                   ant to subsection (a)(2)(C), if any, in combination  
21                   with other amounts (which may include amounts  
22                   other than education funds), to develop and imple-  
23                   ment coordinated, early intervening educational serv-  
24                   ices, which may include interagency financing struc-  
25                   tures, for students in kindergarten through grade 12



1 (with a particular emphasis on students in kinder-  
2 garten through grade 3) who do not meet the defini-  
3 tion of a child with a disability under section 602(3)  
4 but who need additional academic and behavioral  
5 support to succeed in a general education environ-  
6 ment.

7 “(2) ACTIVITIES.—In implementing coordi-  
8 nated, early intervening educational services under  
9 this subsection, a local educational agency may carry  
10 out activities that include—

11 “(A) professional development (which may  
12 be provided by entities other than local edu-  
13 cational agencies) for teachers and other school  
14 staff to enable such personnel to deliver sci-  
15 entifically based academic and behavioral inter-  
16 ventions, including scientifically based literacy  
17 instruction, and, where appropriate, instruction  
18 on the use of adaptive and instructional soft-  
19 ware;

20 “(B) providing educational and behavioral  
21 evaluations, services, and supports, including  
22 scientifically based literacy instruction; and

23 “(C) developing and implementing inter-  
24 agency financing structures for the provision of  
25 such services and supports.

1           “(3) CONSTRUCTION.—Nothing in this sub-  
2 section shall be construed to either limit or create a  
3 right to a free appropriate public education under  
4 this part.

5           “(4) REPORTING.—Each local educational  
6 agency that develops and maintains coordinated,  
7 early intervening educational services with funds  
8 made available for this subsection, shall annually re-  
9 port to the State educational agency on—

10                   “(A) the number of children served under  
11 this subsection; and

12                   “(B) the number of children served under  
13 this subsection who are subsequently referred to  
14 special education.

15           “(5) COORDINATION WITH CERTAIN PROJECTS  
16 UNDER ELEMENTARY AND SECONDARY EDUCATION  
17 ACT OF 1965.—Funds made available to carry out  
18 this subsection may be used to carry out coordi-  
19 nated, early intervening educational services aligned  
20 with activities funded by, and carried out under, the  
21 Elementary and Secondary Education Act of 1965 if  
22 such funds are used to supplement, and not sup-  
23 plant, funds made available under the Elementary  
24 and Secondary Education Act of 1965 for the activi-  
25 ties and services assisted under this subsection.

1       “(g) DIRECT SERVICES BY THE STATE EDU-  
2       CATIONAL AGENCY.—

3               “(1) IN GENERAL.—A State educational agency  
4       shall use the payments that would otherwise have  
5       been available to a local educational agency or to a  
6       State agency to provide special education and re-  
7       lated services directly to children with disabilities re-  
8       siding in the area served by that local educational  
9       agency, or for whom that State agency is respon-  
10      sible, if the State educational agency determines  
11      that the local educational agency or State agency, as  
12      the case may be—

13               “(A) has not provided the information  
14      needed to establish the eligibility of such agency  
15      under this section;

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

19               “(C) is unable or unwilling to be consoli-  
20      dated with 1 or more local educational agencies  
21      in order to establish and maintain such pro-  
22      grams; or

23               “(D) has 1 or more children with disabil-  
24      ities who can best be served by a regional or

1 State program or service delivery system de-  
2 signed to meet the needs of such children.

3 “(2) MANNER AND LOCATION OF EDUCATION  
4 AND SERVICES.—The State educational agency may  
5 provide special education and related services under  
6 paragraph (1) in such manner and at such locations  
7 (including regional or State centers) as the State  
8 agency considers appropriate. Such education and  
9 services shall be provided in accordance with this  
10 part.

11 “(h) STATE AGENCY ELIGIBILITY.—Any State agen-  
12 cy that desires to receive a subgrant for any fiscal year  
13 under section 611(f) shall demonstrate to the satisfaction  
14 of the State educational agency that—

15 “(1) all children with disabilities who are par-  
16 ticipating in programs and projects funded under  
17 this part receive a free appropriate public education,  
18 and that those children and their parents are pro-  
19 vided all the rights and procedural safeguards de-  
20 scribed in this part; and

21 “(2) the agency meets such other conditions of  
22 this section as the Secretary determines to be appro-  
23 priate.

24 “(i) DISCIPLINARY INFORMATION.—The State may  
25 require that a local educational agency include in the

1 records of a child with a disability a statement of any cur-  
2 rent or previous disciplinary action that has been taken  
3 against the child and transmit such statement to the same  
4 extent that such disciplinary information is included in,  
5 and transmitted with, the student records of nondisabled  
6 children. The statement may include a description of any  
7 behavior engaged in by the child that required disciplinary  
8 action, a description of the disciplinary action taken, and  
9 any other information that is relevant to the safety of the  
10 child and other individuals involved with the child. If the  
11 State adopts such a policy, and the child transfers from  
12 1 school to another, the transmission of any of the child's  
13 records shall include both the child's current individual-  
14 ized education program and any such statement of current  
15 or previous disciplinary action that has been taken against  
16 the child.

17 “(j) STATE AGENCY FLEXIBILITY.—

18 “(1) TREATMENT OF FEDERAL FUNDS IN CER-  
19 TAIN FISCAL YEARS.—If a State educational agency  
20 pays or reimburses local educational agencies within  
21 the State for not less than 80 percent of the non-  
22 Federal share of the costs of special education and  
23 related services, or the State is the sole provider of  
24 free appropriate public education or direct services  
25 pursuant to section 612(b), then the State edu-

1        cational agency, notwithstanding sections 612(a)  
2        (17) and (18) and 612(b), may treat funds allocated  
3        pursuant to section 611 as general funds available  
4        to support the educational purposes described in  
5        paragraph (2) (A) and (B).

6            “(2) CONDITIONS.—A State educational agency  
7        may use funds in accordance with paragraph (1)  
8        subject to the following conditions:

9            “(A) 8 PERCENT RULE.—A State edu-  
10        cational agency may treat not more than 8 per-  
11        cent of the funds the State educational agency  
12        receives under this part as general funds to  
13        support any educational purpose described in  
14        the Elementary and Secondary Education Act  
15        of 1965, needs-based student or teacher higher  
16        education programs, or the non-Federal share  
17        of costs of title XIX of the Social Security Act.

18            “(B) 40 PERCENT RULE.—For any fiscal  
19        year for which States are allocated the max-  
20        imum amount of grants pursuant to section  
21        611(a)(2), a State educational agency may  
22        treat not more than 40 percent of the amount  
23        of funds the State educational agency receives  
24        under this part as general funds to support any  
25        educational purpose described in the Elemen-

1           tary and Secondary Education Act of 1965,  
2           needs-based student or teacher higher education  
3           programs, or the non-Federal share of costs of  
4           title XIX of the Social Security Act, subject to  
5           subparagraph (C).

6           “(C) REQUIREMENT.—A State educational  
7           agency may exercise its authority pursuant to  
8           subparagraph (B) only if the State educational  
9           agency uses an amount of the 40 percent funds  
10          from subparagraph (B) that represents 15 per-  
11          cent of the total amount of funds the State edu-  
12          cational agency receives under this part, to pro-  
13          vide, or to pay or reimburse local educational  
14          agencies for providing, early intervening  
15          prereferral services pursuant to subsection (f).

16          “(2) PROHIBITION.—Notwithstanding sub-  
17          section (a), if the Secretary determines that a State  
18          educational agency is unable to establish, maintain,  
19          or oversee programs of free appropriate public edu-  
20          cation that meet the requirements of this part, then  
21          the Secretary shall prohibit the State educational  
22          agency from treating funds allocated under this part  
23          as general funds pursuant to paragraph (1).

24          “(3) REPORT.—For each fiscal year for which  
25          a State educational agency exercises its authority

1       pursuant to paragraph (1) and treats Federal funds  
2       as general funds, the State educational agency shall  
3       report to the Secretary the amount of funds so  
4       treated and the activities that were funded with such  
5       funds.